

TOWN OF CUTLER BAY

Mayor Paul S. Vrooman
Vice Mayor Edward P. MacDougall
Council Member Timothy J. Meerbott
Council Member Ernest N. Sochin
Council Member Peggy R. Bell

Interim Town Manager Steve Alexander
Interim Town Attorney Mitchell Bierman
Town Clerk Erika Gonzalez-Santamaria

In accordance with the American with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Interim Town Clerk at (305) 234-4262 for assistance no later than four days prior to the meeting.

TOWN COUNCIL MEETING AGENDA

Wednesday, July 5, 2006

7:00 PM

South Dade Regional Library
10750 SW 211 Street, 2nd Floor
Cutler Bay, Florida 33189

I. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE

II. INVOCATION

III. PROCLAMATIONS, AWARDS, PRESENTATIONS

- A. Presentation of Certificate of Completion to Member Sochin – Florida League of Cities, “Institute for Elected Municipal Officials.”

IV. APPROVAL OF MINUTES

- A. June 7, 2006 (REGULAR)
- B. June 15, 2006 (SPECIAL)

V. ADDITIONS, DELETIONS, AND DEFERRALS

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE SECTION ENTITLED, “NUISANCE VEGETATION ABATEMENT”; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

VI. TOWN MANAGER’S REPORT

VII. TOWN ATTORNEY’S REPORT

VIII. BOARD AND COMMITTEE REPORTS

- IX. CONSENT AGENDA (ANY ITEM SHALL BE REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION OR SEPARATE VOTE IF REQUESTED BY A COUNCILMEMBER)**

- X. QUASI-JUDICIAL CONSENT AGENDA (ANY ITEM MAY BE REMOVED FROM THE CONSENT AGENDA IF REQUESTED BY A MEMBER OF THE TOWN COUNCIL, THE TOWN STAFF, THE APPLICANT, OR ANY AFFECTED PARTY)**
 - A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A MODIFICATION TO AN APPROVED SITE PLAN TO ALLOW FOR REDEVELOPMENT OF A MOVIE THEATER INTO A COMMERCIAL BUILDING AND APPROVAL OF AN UNUSUAL USE FOR OUTDOOR DINING FOR THE SHOPPING CENTER LOCATED AT 18403 SOUTH DIXIE HIGHWAY; AND PROVIDING FOR AN EFFECTIVE DATE.**

- XI. QUASI-JUDICIAL HEARINGS**

- XII. PUBLIC HEARINGS**
 - A. RESOLUTIONS**

 - B. ORDINANCES**
 - 1. FIRST READING**
 - a. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IMPLEMENTING THE UTILITY TAX AUTHORIZED BY SECTION 166.231, ET. SEQ., FLORIDA STATUTES, TO LEVY AND IMPOSE A UTILITY TAX UPON THE PURCHASE OF ELECTRICITY, WATER, METERED GAS, BOTTLED GAS, COAL, AND FUEL OIL WITHIN THE TOWN OF CUTLER BAY; AUTHORIZING TRANSMITTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.**

 - b. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE ESTABLISHMENT OF THE TOWN'S LOCAL PLANNING AGENCY; DESIGNATING THE TOWN COUNCIL AS THE**

LOCAL PLANNING AGENCY; PROVIDING FOR POWERS AND DUTIES; PROVIDING FOR A RECORDING SECRETARY; PROVIDING STAFF FOR THE LOCAL PLANNING AGENCY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

c. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PERTAINING TO THE LOCAL COMMUNICATIONS SERVICES TAX RATE; PROVIDING FOR RECITALS; PROVIDING FOR ELECTION NOT TO REQUIRE AND COLLECT PERMIT FEES; ESTABLISHING THE LOCAL COMMUNICATIONS SERVICES TAX RATES; PROVIDING FOR NOTICE TO THE DEPARTMENT OF REVENUE; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING AN EFFECTIVE DATE.

d. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE MIAMI-DADE COUNTY CODE AS APPLICABLE TO THE TOWN PURSUANT TO SECTION 8.3 OF THE TOWN CHARTER TO SUBSTITUTE THE TOWN COUNCIL FOR COUNTY OFFICIALS, BOARDS, OR COMMITTEES, PROVIDING FOR ZONING REVIEW, PROVIDING FOR AUTHORITY OF THE TOWN COUNCIL, PROVIDING FOR AN APPEAL PROCESS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

2. SECOND READING:

a. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON THE ISSUANCE OF DEVELOPMENT ORDERS AND DEVELOPMENT PERMITS FOR ALL PROPERTIES ABUTTING OLD CUTLER ROAD FROM S.W. 184

STREET SOUTH TO THE TOWN LIMITS;
EXEMPTING CERTAIN DEVELOPMENT;
PROVIDING FOR WAIVERS; PROVIDING FOR
SEVERABILITY; PROVIDING PROCEDURES FOR
VESTED RIGHTS AND JUDICIAL REVIEW FOR THE
SPECIFIC MATTERS ADDRESSED HEREIN;
PROVIDING FOR A TERM; PROVIDING FOR A
REPEALER; PROVIDING FOR ORDINANCES IN
CONFLICT, SEVERABILITY, AND AN EFFECTIVE
DATE.

- b. AN ORDINANCE IF THE MAYOR AND THE TOWN
COUNCIL OF THE TOWN OF CUTLER BAY,
FLORIDA CREATING PROCEDURES FOR ZONING
WORKSHOPS; PROVIDING FOR ORDINANCES IN
CONFLICT, SEVERABILITY AND AN EFFECTIVE
DATE.

XIII. PUBLIC COMMENTS

XIV. MAYOR AND COUNCIL MEMBER COMMENTS

XV. OTHER BUSINESS

XVI. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

**TOWN OF CUTLER BAY
TOWN COUNCIL MEETING
MINUTES**

Wednesday, June 7, 2006

7:00 PM

South Dade Regional Library
10750 SW 211 Street, 2nd floor
Cutler Bay, Florida 33189

I. CALL TO ORDER/ROLL CALL OF MEMBERS: The meeting was called to order by the mayor at 7:35 PM. Present were the following:

Councilmember Peggy R. Bell
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Vice Mayor Edward P. MacDougall
Mayor Paul S. Vrooman

Interim Town Manager Steven Alexander
Interim Town Attorney Mitchell Bierman
Interim Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria

Mayor Vrooman led the pledge of allegiance.

II. INVOCATION: Mayor Vrooman asked all to join him in a moment of silence.

III. PROCLAMATIONS, AWARDS, PRESENTATIONS:

- A. The mayor, on behalf of the Town Council, presented a proclamation in recognition of Victoria Reynaldo, winner of the Whispering Pines essay contest, "How Are We Going to Be Different as a Town."

IV. APPROVAL OF MINUTES:

- A. Councilmember Meerbott made a motion approving the minutes of the meeting of May 25, 2006. The motion was seconded by Vice Mayor MacDougall and adopted by a unanimous 5-0 voice vote. The vote was as follows: Council Members Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

V. ADDITIONS, DELETIONS, AND DEFFERALS:

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE SECTION

ENTITLED, "NUISANCE VEGETATION ABATEMENT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Meerbott made a motion to defer the proposed ordinance to the July 5, 2006 council meeting. The motion was seconded by Vice Mayor Macdougall. All voted in favor. The proposed ordinance was deferred until the July 5, 2006 council meeting.

- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A MODIFICATION TO AN APPROVED SITE PLAN TO ALLOW FOR REDEVELOPMENT OF A MOVIE THEATER INTO A COMMERCIAL BUILDING AND APPROVAL OF AN UNUSUAL USE FOR OUTDOOR DINING FOR THE SHOPPING CENTER LOCATED AT 18403 SOUTH DIXIE HIGHWAY; AND PROVIDING FOR AN EFFECTIVE DATE.

Vice Mayor MacDougall made a motion to defer the proposed resolution to the July 5, 2006 council meeting. The motion was seconded by Council Member Bell and was approved by a 4 – 0 roll call vote. Council Member Meerbott left the meeting momentarily. The vote was as follows: Council Members Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman. The proposed resolution was deferred until the July 5, 2006 council meeting.

- C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THAT AN ELECTION BE HELD TO FILL THE REMAINING TERM OF OFFICE OF THE VICE-MAYOR; DESIGNATING THE QUALIFICATION PROCEDURES FOR THE ELECTION; AUTHORIZING THE TOWN CLERK TO NOTIFY THE SUPERVISOR OF ELECTION DATE AND QUALIFYING PERIOD AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Meerbott made a motion to approve the resolution. The motion was seconded by Vice Mayor MacDougall and adopted by a unanimous 5-0 voice vote. The vote was as follows: Council Members Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

VI. TOWN MANAGER'S REPORT:

The Town Manager gave a report on the significant changes in the Miami-Dade County interlocal agreements. He also advised that the new Cutler Bay reflectors for the police vehicles are almost ready.

VII. TOWN ATTORNEY'S REPORT:

Attorney Bierman introduced their newest addition to their team, Ms. Brooke Blum, to the Town Council.

VIII. BOARD AND COMMITTEE REPORTS: None at this time.

IX. CONSENT AGENDA

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING ADMINISTRATIVE ORDER NO. 06-2; AND PROVIDING FOR AN EFFECTIVE DATE.
- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO CONTRACTS; AUTHORIZING THE TOWN MANAGER TO ENTER INTO A CONSULTING AGREEMENT WITH INTERNATIONAL DATA CONSULTANTS, INC., FOR INFORMATION TECHNOLOGY RELATED SERVICES; PROVIDING AN EFFECTIVE DATE.
- C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO EMERGENCY MANAGEMENT; PROVIDING FOR A WAIVER OF COMPETITIVE BIDDING REQUIREMENTS; AUTHORIZING THE ACTING TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH A HURRICANE DEBRIS REMOVAL CONTRACTOR OR CONTRACTORS; PROVIDING AN EFFECTIVE DATE.
- D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO CONTRACTS; AUTHORIZING THE TOWN MANAGER TO ENTER INTO A VEHICLE LEASE-PURCHASE AGREEMENT FOR MOTOR VEHICLES AND RELATED EQUIPMENT FROM BLAKE CHEVROLET IN AN AMOUNT NOT TO EXCEED \$60,000; PROVIDING AN EFFECTIVE DATE.
- E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO CONTRACTS; WAIVING COMPETITIVE BIDDING AND AUTHORIZING THE TOWN MANAGER TO ENTER INTO A VEHICLE LEASE-PURCHASE AGREEMENT FOR MOTOR VEHICLE AND RELATED EQUIPMENT FROM MAROONE HONDA IN AN AMOUNT NOT TO EXCEED \$28,000; PROVIDING AN EFFECTIVE DATE.
- F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO OFFICE FURNITURE; AUTHORIZING THE TOWN MANAGER TO ENTER INTO A LEASE/PURCHASE AGREEMENT FOR THE TOWN HALL FURNISHINGS FROM J.C. WHITE QUALITY OFFICE FURNITURE, AND ITS FINANCE PARTNER FOR A COST NOT TO EXCEED \$75,000; PROVIDING AN EFFECTIVE DATE.

- G. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO OFFICE SPACE; AUTHORIZING THE ACTING VILLAGE MANAGER TO ENTER INTO A LEASE AGREEMENT FOR APPROXIMATELY 4,000 SQUARE FEET OF OFFICE SPACE; PROVIDING FOR WAIVER OF COMPETITIVE BIDDING REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE.
- H. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA SUPPORTING THE SOUTH LINK ALTERNATIVE ANALYSIS, CITIZENS ADVISORY COMMITTEE (CAC) RECOMMENDATION OF ALTERNATIVE 5 METRORAIL AND ALL OF THE INTERIM IMPROVEMENTS BETWEEN DADELAND AND FLORIDA CITY; AND PROVIDING FOR AN EFFECTIVE DATE.
- I. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AUTHORIZING THAT AN ELECTION BE HELD TO FILL THE REMAINING TERM OF OFFICE OF THE VICE-MAYOR; DESIGNATING THE QUALIFICATION PROCEDURES FOR THE ELECTION; AUTHORIZING THE TOWN CLERK TO NOTIFY THE SUPERVISOR OF ELECTIONS OF THE ELECTION DATE AND QUALIFYING PERIOD AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Bell made a motion to approve all items on the consent agenda. The motion was seconded by Council Member Sochin and adopted by unanimous 5-0 voice vote. The vote was as follows: Council Members Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

X. QUASI-JUDICIAL CONSENT AGENDA PUBLIC HEARING: None at this time.

XI. QUASI-JUDICIAL HEARINGS: None at this time.

XII. PUBLIC HEARINGS:

A. RESOLUTIONS: None at this time.

B. ORDINANCES: The clerk read the following ordinance, on first reading, by title:

- a. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON THE ISSUANCE OF DEVELOPMENT ORDERS AND DEVELOPMENT PERMITS FOR ALL PROPERTIES ABUTTING OLD CUTLER ROAD FROM S.W. 184 STREET SOUTH TO THE TOWN LIMITS; EXEMPTING CERTAIN DEVELOPMENT; PROVIDING FOR WAIVERS; PROVIDING FOR SEVERABILITY;

PROVIDING PROCEDURES FOR VESTED RIGHTS AND JUDICIAL REVIEW FOR THE SPECIFIC MATTERS ADDRESSED HEREIN; PROVIDING FOR A TERM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

Mayor Vrooman opened the public hearing. Tarin Nagel, 1180 Northwest 161 Avenue addressed the council.

Council Member Bell made a motion to approve the ordinance on first reading. The motion was seconded by Council Member Sochin and adopted by unanimous roll call vote. The vote was as follows: Council Members Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The clerk read the following ordinance, on first reading, by title:

- b. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING PROCEDURES FOR ZONING WORKSHOPS; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

The Town Attorney gave a brief explanation on the purpose of the ordinance.

Mayor Vrooman opened the public hearing. There were no speakers present.

Council Member Bell made a motion to approve the ordinance on first reading. The motion was seconded by Council Member Sochin and adopted by unanimous roll call vote. The vote was as follows: Council Members Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The clerk read the following ordinance, on second reading, by title:

- a. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33, "ZONING" ARTICLE VI, "SIGNS," DIVISION 2, "GENERAL PROVISIONS" OF THE TOWN'S CODE OF ORDINANCES, BY PROVIDING FOR THE PROHIBITION OF OFF-PREMISIES SIGNAGE WITHIN THE TOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Vrooman opened the public hearing. Ed Scheer, representing CVS Outdoor Advertising, addressed the Council.

Vice mayor MacDougall made a motion to approve the ordinance on second hearing. The motion was seconded by Council Member Bell and adopted by unanimous roll call vote. The

vote was as follows: Council Members Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- b. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AND ADOPTING THE INTERIM BUDGET FOR THE TOWN OF CUTLER BAY FOR FISCAL YEAR 2005-06; PROVIDING FOR CARRYOVER OF FUNDS; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The Town Manager gave a brief explanation on the interim budget.

Mayor Vrooman opened the public hearing. Diane Wright, 5861 Southwest 87 Street, representing Government Services Group, Inc. addressed the Council.

Council Member Meerbott made a motion to approve the ordinance on second reading. The motion was seconded by Council Member Bell and adopted by a unanimous roll call vote. The vote was as follows: Council Members Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

XIII. PUBLIC COMMENTS:

The following individuals spoke: Joy Cooper, 9365 Nassau Drive, Louise Lockwood, 9071 Richmond Drive.

XIV. MAYOR AND COUNCIL MEMBER COMMENTS:

The mayor reminded the public that the Village of Palmetto Bay will be hosting a Hurricane workshop at the Deering Estate on Saturday.

Member Meerbott encouraged the public to attend the Miami-Dade Metrolink June 17th meeting.

Member Sochin discussed his attendance along with the mayor to the grand opening of the Badcock store. He also reported that he attended Chuck Barentine's hurricane preparedness meeting. He also spoke about his attendance to the Florida League of Cities, Institute for Elected Municipal Officials.

XV. OTHER BUSINESS: None at this time.

XVI. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT:

The next council meeting will be held on July 5, 2006, at the South Dade Regional Library.

The meeting was officially adjourned at 9:12 P.M.

Respectfully submitted:

Erika Gonzalez-Santamaria
Town Clerk

Adopted by the Town Council on
this 5th day of July, 2006

Paul S. Vrooman, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

TOWN OF CUTLER BAY
TOWN COUNCIL SPECIAL MEETING
MINUTES
Thursday, June 15, 2006
7:00 PM
South Dade Regional Library
10750 SW 211 Street, 2nd floor
Cutler Bay, Florida 33189

I. CALL TO ORDER/ROLL CALL OF MEMBERS: The meeting was called to order by the mayor at 7:15 PM. Present were the following:

Councilmember Peggy R. Bell
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Vice Mayor Edward P. MacDougall
Mayor Paul S. Vrooman

Interim Town Manager Steven Alexander
Interim Town Attorney Mitchell Bierman
Town Clerk Erika Gonzalez-Santamaria

Mayor Vrooman led the pledge of allegiance.

II. INVOCATION: Mayor Vrooman asked all to join him in a moment of silence.

III. PROCLAMATIONS, AWARDS, PRESENTATIONS: None at this time.

IV. APPROVAL OF MINUTES: None at this time.

V. ADDITIONS, DELETIONS, AND DEFFERALS: None at this time.

VI. TOWN MANAGER'S REPORT:

Town Manager presented the new Cutler Bay police car reflectors to Council and to the public. He also introduced Merritt Stierheim and his firm who will be hosting the town's strategic planning meetings. He also informed the public that there will be five strategic planning meetings, which is to include a meeting for each seat district, a general meeting and a business meeting.

VII. TOWN ATTORNEY'S REPORT: None at this time.

VIII. BOARD AND COMMITTEE REPORTS: None at this time.

- IX. CONSENT AGENDA:** None at this time.
- X. QUASI-JUDICIAL CONSENT AGENDAPUBLIC HEARING:**
- XI. QUASI-JUDICIAL HEARINGS:** None at this time.
- XII. PUBLIC HEARINGS:**

- A. RESOLUTIONS**

- 1. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE “MASTER INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE TOWN OF CUTLER BAY FOR TRANSITION OF MUNICIPAL SERVICES”; AUTHORIZING THE MAYOR TO EXECUTE THE “MASTER INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE TOWN OF CUTLER BAY FOR AN EFFECTIVE DATE.

Council Member Meerbott made a motion to approve the resolution as amended authorizing the manager to adopt agreements and perform non-substantive changes to the manager’s discretion. The motion was seconded by Council Member Bell and approved by unanimous 5 - 0 voice vote. The vote was as follows: Council Members Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- 2. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE “INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE TOWN OF CUTLER BAYFOR LOCAL POLICE SERVICES”, AUTHORIZING THE MAYOR TO EXECUTE THE “INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE TOWN OF CUTLER BAY FOR LOCAL POLICE SERVICES”, AND PROVIDING AN EFFECTIVE DATE.

Council Member Sochin made a motion to approve the resolution as amended authorizing the manager to adopt agreements and perform non-substantive changes to the manager’s discretion. The motion was seconded by Vice Mayor MacDougall and approved by unanimous 5 – 0 voice vote. The vote was as follows: Council Members Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- 3. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE “AGREEMENT BY AND BETWEEN MIAMI-DADE COUNTY AND THE TOWN OF CUTLER BAY FOR SPECIALIZED POLICE SERVICES”; AUTHORIZING THE MAYOR TO EXECUTE THE “AGREEMENT BY AND BETWEEN MIAMI-DADE COUNTY AND

THE TOWN OF CUTLER BAY FOR SPECIALIZED POLICE SERVICES"; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Bell made a motion to approve the resolution as amended authorizing the manager to adopt agreements and perform non-substantive changes to the manager's discretion. The motion was seconded by Council Member Meerbott and approved by a unanimous 5 – 0 voice vote. The vote was as follows: Council Members Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

XI. PUBLIC COMMENTS: None at this time.

XIV. MAYOR AND COUNCIL MEMBER COMMENTS:

XV. OTHER BUSINESS: None at this time.

XVI. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT:

The next regular council meeting will be held on July 5, 2006, at the South Dade Regional Library at 7:00 P.M.

The meeting was officially adjourned at 8:05 P.M.

Respectfully submitted:

*Erika Gonzalez-Santamaria
Town Clerk*

*Adopted by the Town Council on
this 5th day of July, 2006*

Paul S. Vrooman, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

TAB V. A.

ORDINANCE NO. ____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE SECTION ENTITLED, "NUISANCE VEGETATION ABATEMENT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 8.03 of the Town Charter of the Town of Cutler Bay (the "Town"), there is presently in effect within the Town the provisions of the Code of Ordinances of Metropolitan Dade County (the "County Code") providing for the regulation of nuisances within the Town; and

WHEREAS, as a result of the recent hurricanes and severe weather events which have affected the Nation, State of Florida, and the Town of Cutler Bay ("Town"), it is recognized to be necessary to implement additional regulations to assure the protection of the public health, safety and welfare; and

WHEREAS, the Town Council finds that the adoption of this Ordinance is protective of the public health, safety and welfare; and

WHEREAS, preservation of uniform and continuance of electric and utility services is vital to the maintenance of order and the economic viability of the Town; and

WHEREAS, the damage to electric facilities caused by vegetation can be mitigated, over time, by a system of regulation of the type and location of vegetation which can be planted in proximity to electric facilities, and through the removal and/or pruning of vegetation which is likely to impact or impede the safe and efficient provision of electric service; and

WHEREAS, as a general rule, when vegetation which has been planted by a resident, or is growing naturally, is likely to impact or impede the safe and efficient provision of the respective utility's service, the utility company and its authorized agents are able to gain access to public and private property for the purpose of removing and/or pruning the offending vegetation;

and

WHEREAS, occasionally, the property owner(s), his/her/their tenant(s), or agent(s) preclude the right or ability of the utility company or its authorized agent to enter private property for the purpose of removing and/or pruning vegetation which is likely to impact or impede the safe and efficient provision of electric service; and

WHEREAS, in order to protect the health, safety, and welfare of its residents the Town desires to avoid the unnecessary interference with and disruption of utility services; and

WHEREAS, the Town deems it to be in the best interests of the Town and its citizens to select and locate the appropriate vegetation for landscaping in proximity to overhead power lines and to adhere to Florida Power & Light Company's (FPL's) "Right Tree-Right Place Guidelines"; and

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2 Nuisance Vegetation Abatement. The Section Entitled "Nuisance Vegetation Abatement" is hereby created as follows:

Nuisance Vegetation Abatement

A. Title; Applicability; To Constitute Minimum Standard.

This chapter shall be known as the "Nuisance Vegetation Abatement" and shall be applicable in the Town of Cutler Bay.

B. Declaration of Legislative Intent.

The Council finds that certain vegetation may endanger the health, safety and welfare of the Town of Cutler Bay by interfering with utility lines including power lines, power poles, and other electrical equipment used in the delivery of electricity, and further that refusal by property owners, agents, and tenants to allow the electric utility company or its authorized agents access to their property to remove and/or prune vegetation which is likely to impact or impede the safe and efficient provision of electric service to the citizens of this Town, must be abated.

C. Definitions

(1) *Line clearance or Line Clearing* shall mean maintaining, trimming, pruning, or removing all vegetation, including but not limited to all trees, shrubs or vines growing or existing in proximity to any above ground electric transmission line, electric service line, telephone line, cable line or other utility line.

(2) *Qualified line-clearance professional* shall mean an individual who through related training and on-the-job experience, is familiar with the equipment and hazards in line clearance and has demonstrated the ability to perform the specific techniques required to do so effectively and safely. Such professional need not currently be employed by a line-clearance contractor. In conducting the line clearing, the qualified line clearing professional must adhere to the standards set forth in the American National Standards Institute (ANSI) and be certified or licensed to do such work. Additionally, such professional shall be a certified or licensed arborist or shall be associated with a certified or licensed arborist.

(3) *Vegetation and Vegetative Matter* shall include, but is not limited to all types, maturity and varieties of trees, plants, shrubs, palms or components thereof, whether dead or alive.

D. Public Nuisance Declared.

(1) Any vegetation and/or any vegetative matter which is likely to impact or impede the safe and efficient provision of electric service pursuant to the National Electrical Safety Code is hereby declared a public nuisance. The guidelines set forth in the National Electrical Safety Code are incorporated herein by reference.

(2) Any vegetation and/or any vegetative matter located within (for Town to decide) _____ feet of any telephone line, cable line or other non-electrical utility line is hereby declared a public nuisance.

(3) It shall be the right and legal duty of every property owner and tenant of any property to abate any nuisance as described in (1) and (2) above by causing such nuisance to be remedied by a qualified line-clearance professional.

(4) Electric utility companies and their authorized agents shall have the right of ingress and egress at any time over private and public property pursuant to the applicable Rules set forth in the respective electric utility company's Tariff as filed with the Florida Public Service Commission in order to perform maintenance to the electrical facilities and remove and/or prune vegetation.

(5) No vegetation shall be planted where at mature height it may conflict with overhead electric facilities. Large trees (trees with a mature height of 30 feet or more) shall be planted no closer than a horizontal distance of 30 feet from any overhead electric facility. Medium size trees (trees with a mature height of 20 to 30 feet) shall be planted no closer than a horizontal distance of 20 feet from any overhead electric facility. Vegetation planted within 20 feet of any overhead electric power lines and facilities shall be of the size and species that at their mature height they

will not interfere with the overhead facilities. Any violation of this subsection is hereby declared a public nuisance.

(6) Palm trees must be planted at a distance from overhead electric facilities not less than the mature maximum frond length plus three feet. Any violation of this subsection is hereby declared a public nuisance.

(7) FPL's Right Tree - Right Place Guidelines shall be used as a guide to facilitate the selection of trees to be planted in proximity to electric power facilities; and nothing herein shall be construed to permit planting of exotic species of vegetation.

E. Notice to Remedy Condition.

If the Town Manager or designee finds and determines that a public nuisance as described and declared in Part D, above, hereof exists, he/she shall notify the record owner of the offending property in writing and demand that such owner cause the condition to be remedied. The notice shall be given by registered or certified mail, addressed to the owner or owners of the property described, as their names and addresses are shown upon the record of the County Tax Assessor, and shall be deemed complete and sufficient when so addressed and deposited in the United States mail with proper postage prepaid. In the event that such notice is returned by postal authorities the Director shall cause a copy of the notice to be served by a law enforcement officer upon the occupant of the property or upon any agent of the owner thereof. In the event that personal service upon the occupant of the property or upon any agent of the owner thereof cannot be performed after reasonable search by a law enforcement officer the notice shall be accomplished by physical posting on the said property.

F. Form of Notice.

The notice shall be in substantially the following form:

NOTICE OF PUBLIC NUISANCE

Name of owner _____

Address of owner _____

Our records indicate that you are the owner(s) of the following property in the Town of Cutler Bay, Florida:

(described property)

An inspection of this property discloses, and I have found and determined, that a public nuisance exists thereon so as to constitute a violation of the Town of Cutler Bay Nuisance Vegetation Ordinance in that there exists on the above-described property vegetation and/or any vegetative matter which is likely to impact or impede the safe and efficient provision of electric service pursuant to the National Electrical Safety Code and is located within (Town to determine) _____ feet of any above ground telephone line, cable line or other non-electrical utility line. You are hereby notified that unless the above-described vegetation and/or vegetative matter are removed and/or pruned within twenty (20) days from the date hereof, the Town of Cutler Bay will proceed to remove and/or prune said vegetation and/or vegetative matter and the cost of the work, including advertising costs and other expenses, will be imposed as a lien on the property if not otherwise paid within thirty (30) days after receipt of billing.

Town of Cutler Bay, Florida

By _____

G. Hearing.

Within twenty (10) days after the mailing of notice to the property owner, the property owner may make written request to the Town Manager for a hearing before him or one of his assistants to show that the vegetation and/or vegetative matter referred to in the notice is not necessary to be removed and/or pruned away from any above ground electric transmission line, electric service line, telephone line, cable line or other utility line. Notice of the hearing date, time, and place shall be given to the applicable utility company at least 10 days prior to the hearing. At the hearing the Town, property owner, and applicable utility company may introduce such evidence as is deemed necessary. The Town Manager or an assistant designated by him shall hold hearings at appropriate times and places, and the Town Manager shall establish rules and regulations for the review procedure. Following the review by the Town Manager or the assistant designated by him, the owner will be deemed to have exhausted his administrative remedies as against the Town of Cutler Bay only.

H. Vegetation and/or Vegetative Matter Pruned or Removed by Town; Lien

If within twenty (10) days after mailing of the notice no hearing has been requested and the vegetation and/or vegetative matter described in the notice have not been removed and/or pruned the Town Manager or designee shall have the vegetation and/or vegetative matter removed and/or pruned by the Town of Cutler Bay at the expense of the property owner. If a hearing has been held and has concluded adversely to the property owner, Town Manager or designee shall have the vegetation and/or vegetative matter removed and/or pruned by the Town of Cutler Bay at the expense of the property owner.

After removal and/or pruning of the vegetation and/or vegetative matter the Town Manager shall certify to the Town Clerk the expense incurred and shall include a copy of the notice above-described and a copy of the decision of the Town Manager, or his designated assistant, if a hearing was held, whereupon such expense shall become payable within thirty (30) days, after which a special assessment lien and charge will be made upon the property, which shall be payable with interest at the rate of six (6) percent per annum from the date of such certification until paid.

Such lien shall be enforceable in the same manner as a tax lien in favor of Town of Cutler Bay and may be satisfied at any time by payment thereof including accrued interest. Notice of such lien shall be filed in the Office of the Clerk of the Circuit Court and recorded among the public records of Dade County, Florida.

I. Duty of Town Clerk to Keep Records of Liens.

The Town Clerk shall keep complete records relating to the amount payable for liens above-described.

J. Review by Certiorari Where Town of Cutler Bay is Sole Defendant/Respondent

Any party aggrieved by the administrative decision may have such decision reviewed by the filing of a petition for writ of certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, for a review of the record upon which the decision is based, in accordance with the procedure and within the time provided by the Florida Appellate Rules for the review of the rulings of any commission or Board, which rules of practice and procedure are hereby adopted. For such purposes, the Town Manager shall make available for public inspection and copying the record of each such decision to be reviewed; provided, the Manager may make a

reasonable charge commensurate with the cost, in the event he is able to and does furnish copies of all or any portion of the record at the hearing. Prior to certifying a copy of any record or portion thereof, the Manager or his designee shall make all necessary corrections in order that the copy is a true and correct copy of the record, or those portions thereof requested, and shall make a charge of not more than twenty-five cents (\$0.25) per page, instrument or exhibit; provided the charges here authorized are not intended to repeal or amend any fee or schedule of fees otherwise established.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5 Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading on _____, 2006

PASSED AND ADOPTED on second reading on _____, 2006.

Attest: _____
ERIKA GONZALEZ-SANTAMARIA
Town Clerk

PAUL S. VROOMAN
Mayor

APPROVED AS TO FORM:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Vice Mayor Ed MacDougall _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

TAB X. A.

RESOLUTION NO. 06-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A MODIFICATION TO AN APPROVED SITE PLAN TO ALLOW FOR REDEVELOPMENT OF A MOVIE THEATER INTO A COMMERCIAL BUILDING AND APPROVAL OF AN UNUSUAL USE FOR OUTDOOR DINING FOR THE SHOPPING CENTER LOCATED AT 18403 SOUTH DIXIE HIGHWAY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Woolbright Pembroke Ltd (the "Applicant") has submitted an application to the Town of Cutler Bay (the "Town") for a modification of an approved site plan and approval of an unusual use for the shopping center located at 18403 South Dixie Highway (Application No. Z05-262); and

WHEREAS, the Applicant seeks to modify the approved site plan for the shopping center by replacing an existing movie theater with a commercial building, which will include retail and office uses and two proposed restaurants; and

WHEREAS, the Applicant also seeks approval of an unusual use for this shopping center to permit outdoor dining areas for the two proposed restaurants and an existing restaurant; and

WHEREAS, Town staff has reviewed the requirements of Sections 33-311(A)(7) and 33-311(A)(3) of the Town Code of Ordinances (the "Code") and has recommended approval of these requests with conditions; and

WHEREAS, public notice was provided in accordance with law; and

WHEREAS, the Town Council finds that this modification of the site plan for the shopping center and the unusual use are consistent with the provisions of the Town's Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Modification of Site Plan. The Town Council, pursuant to Section 33-311(A)(7) of the Town Code, hereby approves the request by the Applicant, subject to the conditions below, to replace an existing movie theater with a commercial building, which will include retail and office uses and two proposed restaurants.

Section 3. Approval of an Unusual Use for Outdoor Dining. The Town Council, pursuant to Section 33-311(A)(3) of the Town Code, hereby approves the request by the Applicant, subject to the conditions below, for an unusual use for outdoor dining.

Section 4. Conditions. The approvals granted by this Resolution are subject to the Applicant's compliance with the following conditions, to which the Applicant stipulated at the public hearing:

1. That the Applicant apply for and obtain a Certificate of Use from the Town for the outdoor dining, upon compliance with all terms and conditions, the same subject to cancellation upon violation of any of the conditions.
2. That the outdoor dining areas be arranged in a manner so as not to obstruct pedestrian and wheelchair access to the entrance of the premises.
3. That all conditions of Miami-Dade County Resolutions Nos. Z-231-83 and 5-ZAB-57-95 remain in full force and effect, except as herein modified.
4. That a revised Declaration of Restrictions be submitted to the Town within 90 days after public hearing approval of this application, unless a time extension is granted by the Town, for good cause shown.

Section 5. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this ____ day of _____, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ELIZABETH SEWELL
Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Vice Mayor Edward MacDougall _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____

TAB XII. 1. a.

ORDINANCE NO. 06-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IMPLEMENTING THE UTILITY TAX AUTHORIZED BY SECTION 166.231, ET. SEQ., FLORIDA STATUTES, TO LEVY AND IMPOSE A UTILITY TAX UPON THE PURCHASE OF ELECTRICITY, WATER, METERED GAS, BOTTLED GAS, COAL, AND FUEL OIL WITHIN THE TOWN OF CUTLER BAY; AUTHORIZING TRANSMITTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 8.8 of the Town Charter, on February 14, 2006, the Town Council adopted a transition emergency ordinance in relation to this matter; and

WHEREAS, this ordinance replaces the transition emergency ordinance; and

WHEREAS, pursuant to Section 8.4 of the Town of Cutler Bay (the "Town") Charter, until otherwise modified by the Town Council, all municipal taxes and fees imposed within the Town boundaries by Miami-Dade County (the "County") as the municipal government for unincorporated Miami-Dade County, which taxes and fees were in effect on the date of adoption of the Town Charter, shall continue at the same rate and on the same conditions as if those taxes and fees had been adopted and assessed by the Town; and

WHEREAS, the Town Council finds that the above-cited Charter provision is effective by operation of law to continue the levy and imposition of the utility tax (the "Utility Tax") provided by Section 29-36, et. seq. of the Miami-Dade County Code (the "County Code") as authorized by Section 166.231, et. seq., Fla. Stat., upon the purchase in the Town of electricity, water, metered gas, bottled gas, coal, and fuel oil (the "Utility Services"), without the necessity for adoption of an ordinance by the Town; and

WHEREAS, the Town Council has been advised that certain providers of Utility Services may have concerns regarding the application of Town Charter Section 8.4 pertaining to the imposition of the Utility Tax and may assert that the adoption of an enabling ordinance is necessary for the levy and imposition by the Town of such Utility Tax; and

WHEREAS, although the Town Council believes that no further action is necessary, it wishes to expedite the payment of Utility Taxes to the Town and avoid a lengthy technical debate with any Utility Service providers; and

WHEREAS, the Town Council finds that the enactment of this ordinance will protect the public health, safety and welfare of the residents and inhabitants of the Town and secure revenues which are due and owing to the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Utility Tax Ordinance Adopted. An ordinance to be known as the "Utility Tax Ordinance" is hereby adopted as an ordinance of the Town of Cutler Bay, Florida, to read as follows:

ARTICLE I. UTILITY TAX

Sec. 1.01. Definitions

For the purposes hereof, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Bottled Gas: All types and kinds of natural, liquefied petroleum and manufactured gas for lighting, heating, cooking, power or any other purpose delivered to any purchaser thereof within the incorporated area of the Town.

Town: Town of Cutler Bay, Florida.

Coal: All coal for lighting, heating, cooking, power, energy or any other purpose competing with any other utility or energy source taxed under this ordinance delivered to any purchaser thereof within the incorporated area of the Town.

Electricity: All electric current or energy for lighting, heating, cooking, power or any other purpose delivered to any purchaser thereof within the incorporated area of the Town.

Fuel Oil: All bunker C oil, number 1 and 2 fuel oil, and kerosene or any combination thereof capable of being used for lighting, heating, cooking, power or any other purpose and delivered to any purchaser thereof within the incorporated area of the Town.

Metered Gas: All types and kinds of natural and manufactured gas for lighting, heating, cooking, power or any other purpose delivered to any purchaser thereof within the incorporated area of the Town.

Purchase: Every act or transaction whereby possession of, utilization of, control over or title to Water, Electricity, Metered Gas, Bottled Gas, Coal, or Fuel Oil, and the duty and obligation to pay therefor become vested in the Purchaser within the incorporated area of the Town, but such term shall not pertain to nor include any such Purchase

act or transaction when undertaken or performed by an agency or instrumentality of the United States Government, the State, the County or a municipality as Purchaser.

Purchaser: Every person legally liable for the payment of Water, Electricity, Metered Gas, Bottled Gas, Coal or Fuel Oil delivery, unless such person making the Purchase is an agency or instrumentality of the United States Government, the State, the County, a municipality, or a house of public worship, which qualifies for exemption from the State sales tax under Section 212.08(7), Fla. Stat.

Seller: Every person delivering Water, Electricity, Metered Gas, Bottled Gas, Coal or Fuel Oil to any Purchaser thereof.

Water service: The water supply furnished to all consumers in the incorporated area of the Town for retail use and not for resale, except water delivered to a Purchaser in a bottle or other container.

Sec. 1.02. Rate and Amount of Excise Tax on Purchase of Public Utility Services; Collection of Tax.

Effective from and after November 8, 2005, there is hereby levied and imposed by the Town upon every purchase in the incorporated area of the Town of Water, Electricity, Metered Gas, Bottled Gas, Coal, or Fuel Oil, included in or reflected by any bill rendered by the Seller to the Purchaser an excise tax which shall be determined as follows:

- (1) When the Seller, in accordance with rules and regulations, renders a bill to the Purchaser to cover purchases made during the period of time to which the bill is applicable, the amount of excise tax shall be ten (10) percent of the total amount shown on any such bill due and payable on account of such purchases (not exceeding four cents (\$0.04) per gallon for purchases of fuel oil), exclusive of governmental charges, and adjustments caused by the increased cost of energy-producing fuels, provided such governmental charges, service fees, taxes and fuel adjustments are shown separately on any such bill.
- (2) In the use and application set out in this section, purchases of Water, Electricity, Metered Gas, Bottled Gas, Coal, Fuel Oil, shall be considered and treated as constituting and being distinct and unrelated classes of purchases, and in the

event that more than one (1) such class shall be shown upon the same bill, the amount of excise tax payable pursuant hereto shall be determined and computed for each such class separately.

- (3) The Seller is required and it shall be Seller's duty to render to each Purchaser bills covering all such purchases made, and the amount of such excise tax shall be entered and shown by the Seller as a separate item on each such bill and shall become due and payable to the Town whenever such bill becomes due and payable under the rules and regulations of the Seller. Each such bill shall include purchases applicable to but one (1) location, or to but one (1) family or business where more than one (1) family or business uses separate metered services at one (1) location in the incorporated areas of the Town.
- (4) The Purchaser is required and it shall be Purchaser's duty to pay such excise tax to the Seller, as agent for the Town, at the time of the payment of each such bill, and in the event that the Purchaser shall fail, neglect or refuse to pay such excise tax to the Seller when such bill becomes due and payable, the Seller is hereby empowered to discontinue forthwith to make any further sales or to render any further service to the Purchaser until the total amount, including such excise tax, shown upon such bill has been paid in full. The Seller is hereby authorized and required and it shall be Seller's duty to collect such excise tax from such Purchaser at the time of the payment of each such bill and to remit the same to the Town Manager's office or his designee in accordance with the provisions hereinafter stated, provided that the Seller shall have the right and privilege of assuming and paying such excise tax itself in lieu of collecting the same from the Purchaser; and that whenever the Seller shall fail or neglect to collect such excise tax from the Purchaser within one (1) year from the date of the bill on which such tax was or should have been imposed, the Seller shall be deemed to have assumed such excise tax itself and shall thereupon become liable for the payment of the amount thereof to the Town to the same extent as if such excise tax had been collected from the Purchaser, with further recourse to the Purchaser therefor.

- (5) This section shall be applicable to all bills for Water, Electricity, Metered Gas, Bottled Gas, Coal, or Fuel Oil; except that any bills for the purchase of sixteen (16) ounces or less of Bottled Gas in a container or less than one (1) gallon of Fuel Oil shall be exempt from taxation under this ordinance, and further in reference to those purchases enumerated in Section 166.231, Fla. Stat., this ordinance shall only apply to the extent permitted therein; the sale of Fuel Oil and Coal to a public or private utility; either for resale or for use as fuel in the generation of Electricity; or the sale of fuel used for the propulsion of land, water or air vehicles or as fuel for other engines, the use of which does not compete with those utilities or energy sources specified in Section 166.231, Fla. Stat. is exempt from taxation hereunder.

Sec. 1.03. Remittance of Tax to Town By Seller.

(a) Every Seller is hereby required to execute and file not later than the twentieth day of each month at the office of the Town Manager and/or his designee a certified statement on a form prescribed by the Town Manager and/or his designee, setting forth the amount of such excise tax to which the Town became entitled under the provisions hereof on account of bills paid by Purchasers during the preceding fiscal month, and, contemporaneously with the filing of such statements, shall pay the amount of such excise tax to the Town Manager and/or his designee.

(b) The Town Manager and/or his designee shall assess interest and penalties in accordance with this paragraph for failure of a Seller to pay any tax when due or to file any required return or statement, except that no penalty shall be assessed in the absence of willful neglect, willful negligence, or fraud. Interest shall be assessed at a rate of one percent (1%) per month of the delinquent tax from the date the tax was due until paid. Penalties shall be assessed at the rate of five percent (5%) per month of the delinquent tax, not to exceed a total penalty of 25%, except that in no event will the penalty for failure to file a return be less than fifteen dollars (\$15). In the case of a fraudulent return or statement or a willful intent to evade payment of the tax, the Seller making such fraudulent return or statement or willfully attempting to evade payment of the tax, shall be liable for a specific penalty of 100% of the tax. Interest and penalties shall be computed on the net tax due after application of any overpayments, and are subject to compromise by the Town Manager pursuant to Section 166.234(14), Fla. Stat.

(c) All collected tax, interest and penalties shall be deposited to the credit of

the general fund of the Town to be expended for Town purposes in accordance with law.

Sec. 1.04. Records To Be Kept.

Every Seller is hereby required to establish and maintain appropriate accounts and records showing the amount of such excise tax payable to the Town under the provisions hereof, and such accounts and records shall be open to inspection by the Town Manager or his duly authorized agent at all reasonable times. The Town Manager and/or his designee is hereby authorized and empowered to promulgate from time to time such rules and regulations with respect to the establishment and maintenance of such accounts and records as he or she may deem necessary to carry into effect the purpose and intent of the provisions hereof. Such rules and regulations shall not conflict with Section 166.234(1), Fla. Stat.

Sec. 1.05. Reports of Deliveries For Resale.

Every manufacturer, distributor, wholesaler or Seller who shall deliver Water, Electricity, Metered Gas, Bottled Gas, Coal, Fuel Oil, or Water Service to any Seller or other person having a place of business in the incorporated area of the Town, or licensed to do business therein, to be sold or resold to ultimate Purchasers, shall report to the Town Manager and/or his designee semi-annually, as of June 30th and December 31st, the names and addresses of such Sellers or other persons, and the quantities received by each of them during the preceding six (6) months, such reports to be filed not later than one month after the close of each semi-annual period.

Sec. 1.06. Recognition of Expense In Regulation of Rates; Taxable Telecommunication Services Collection Allowance; Travel Cost For Audit.

(a) All reasonable expense incurred by a Seller in making the collections and remittances and in fulfilling the duties prescribed herein is hereby declared to be and to constitute an operating expense and shall be accorded full recognition as such in the establishment of rates and charges for rendering Water, Electricity, Metered Gas, Bottled Gas, Coal, or Fuel Oil service in the Town.

(b) The Town may assess audit expenses, including travel, only as authorized by Section 166.234, Fla. Stat.

Sec. 1.07. Administration.

The tax imposed pursuant to this Article shall be administered in accordance with Section 166.234, Fla. Stat., to the extent applicable.

Sec. 1.08. Violations.

It shall be unlawful and a violation hereof for any Purchaser to evade the payment of the excise tax provided for herein or any part thereof, or to fail or neglect to pay such excise tax within thirty (30) days after the same has become due and payable; or for any Seller to fail or refuse to pay to the Town all amounts of excise tax payable to the Town by the Seller, or to fail or refuse to file the monthly return or statement or to set forth any erroneous or false information therein with intent to defraud the Town, or to refuse to permit the Town Manager or his or her duly authorized agent to examine the accounts and records to be kept as required hereby.

Section 2. Transmittal. The Town Manager is directed to file the required reports and notices with the appropriate state and local agencies, and affected utility companies. The Town Clerk is directed to provide a copy of this Ordinance to the Department of Revenue and to all affected utility companies by certified mail.

Section 3. Severability. The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 6. Effective Date. This ordinance shall be effective immediately upon adoption.

PASSED on first reading this _____ day of _____, 2006.

PASSED AND ADOPTED on second reading this _____ day of _____, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ERIKA GONZALEZ-SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____
Vice-Mayor Robert MacDougall _____
Council Member Timothy J. Meerbott _____
Council Member Ernest Sochin _____
Council Member Peggy Bell _____

TAB XII. 1. b.

ORDINANCE NO. 06-

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE ESTABLISHMENT OF THE TOWN'S LOCAL PLANNING AGENCY; DESIGNATING THE TOWN COUNCIL AS THE LOCAL PLANNING AGENCY; PROVIDING FOR POWERS AND DUTIES; PROVIDING FOR A RECORDING SECRETARY; PROVIDING STAFF FOR THE LOCAL PLANNING AGENCY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 8.8 of the Town Charter, on February 16, 2006, the Town Council adopted a transition emergency ordinance in relation to this matter; and

WHEREAS, this ordinance replaces the transition emergency ordinance; and

WHEREAS, recognizing the value of resident input on planning issues, the Town of Cutler Bay (the "Town") desires to establish a Local Planning Agency, as required by Section 163.3174, Florida Statutes; and

WHEREAS, the Local Planning Agency shall have the general responsibility for the conduct of the comprehensive planning program and the responsibility to hear, review, and make recommendations to the Town Council on proposed amendments to the Town's Land Development Regulations, Comprehensive Plan, and changes to the Official Zoning Map.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Local Planning Agency. The Local Planning Agency is hereby established.

Section 2. Town Council. The Town Council is hereby designated as the Town's Local Planning Agency. A member of the School Board of Miami-Dade County or a designee shall be an ex-officio member of the Local Planning Agency when any application for a land use plan amendment or rezoning that would increase residential density is considered by the Local Planning Agency.

Section 3. Powers and Duties. The Local Planning Agency shall have the powers and duties provided in Section 163.3174, Florida Statutes, including but not limited to the following:

- a. To hear, review, and make recommendations to the Town Council regarding the adoption or amendment of the Comprehensive Plan;
- b. To monitor and oversee the effectiveness and status of the Comprehensive Plan and recommend to the Town Council such changes in the Comprehensive Plan as may from time to time be required, including preparation of the periodic reports required by Section 163.3191, Florida Statutes;
- c. To review and make recommendations to the Town Council in regard to proposed Land Development Regulations and changes to the Official Zoning Map and make recommendations to the Town Council as to the consistency of the regulation or changes with the Comprehensive Plan;
- d. To make its special knowledge and expertise available upon written request and authorization of the Town Council to any official, department, board, commission and/or agency of the Town, county, state or federal government; and
- e. To adopt such rules of procedure necessary for the administration of their responsibilities.

Section 4. Recording Secretary. The Town Clerk or designee shall appoint a recording secretary to serve the Local Planning Agency. The secretary shall keep minutes of all proceedings of the Local Planning Agency. The minutes shall be a summary of all proceedings before the Local Planning Agency, attested to by the secretary, and shall include the vote of each member upon every question. The minutes shall be approved by a majority of the voting members of the Local Planning Agency. In addition, the secretary shall maintain all records of Local Planning Agency meetings, hearings, proceedings, and the correspondence of the Local Planning Agency.

Section 5. Staff. The Town Manager or designee shall appoint or assign such staff as may be necessary for the Local Planning Agency to conduct its business.

Section 6. Severability. If any section, clause, sentence, or phrase of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this ordinance.

Section 7. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 8. Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 9. Effective Date. This ordinance shall be effective immediately upon adoption.

PASSED on first reading this _____ day of _____, 2006.

PASSED AND ADOPTED on second reading this _____ day of _____, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ERIKA GONZALEZ-SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____
Vice-Mayor Robert MacDougall _____
Council Member Timothy J. Meerbott _____
Council Member Ernest Sochin _____
Council Member Peggy Bell _____

TAB XII. 1. c.

ORDINANCE NO. 06-

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PERTAINING TO THE LOCAL COMMUNICATIONS SERVICES TAX RATE; PROVIDING FOR RECITALS; PROVIDING FOR ELECTION NOT TO REQUIRE AND COLLECT PERMIT FEES; ESTABLISHING THE LOCAL COMMUNICATIONS SERVICES TAX RATES; PROVIDING FOR NOTICE TO THE DEPARTMENT OF REVENUE; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 8.8 of the Town Charter, on March 2, 2006, the Town Council adopted a transition emergency ordinance in relation to this matter; and

WHEREAS, this ordinance replaces the transition emergency ordinance; and

WHEREAS, section 202.19, Florida Statutes (2005), authorizes municipalities to impose a local communications services tax at a rate of up to 5.1% for municipalities that have not chosen to levy permit fees, and at a rate of up to 4.98% for municipalities that have chosen to levy permit fees; and

WHEREAS, the maximum rate does not include an optional add on of up to 0.12% for municipalities that choose not to levy permit fees pursuant to section 337.401, Florida Statutes, nor do the rates supersede conversion or emergency rates authorized by section 202.20, Florida Statutes, which may be in excess of these maximum rates; and

WHEREAS, a municipality may require and collect permit fees from any providers of communications services that use or occupy municipal roads or rights-of-way for the provision of communications services; and

WHEREAS, to ensure competitive neutrality among providers of communications services, a municipality that elects to exercise its authority to require and collect permit fees will have an automatic reduction in the rate of the local communications services tax for the municipality, as computed under section 202.20(1) and (2), Florida Statutes (2005), as amended, by a rate of 0.12%; and

WHEREAS, alternatively a municipality may elect not to require and collect permit fees from any provider of communications services that uses or occupies municipal roads or rights-of-way for the provision of communications services; and

WHEREAS, if the municipality elects not to require and collect permit fees, the total rate for the local communications services tax as computed under section 202.20(1) and (2), Florida Statutes (2005), as amended, for that municipality may be increased by ordinance by an amount not to exceed a rate of 0.12%; and

WHEREAS, the Town was created pursuant to the Constitution of the State of Florida and the Home Rule Charter of Miami-Dade County, on November 8, 2005, and therefore, Section 202.20(1)(a) and (b), Florida Statutes (2005), as amended, did not establish conversion rates for the Town that are higher than the maximum rate of 5.1%; and

WHEREAS, Section 337.401(3)(c)(1)(a), Florida Statutes (2005) provides substantial restrictions on permit fees that municipalities may charge communications providers, including a cap of \$100 per permit; and

WHEREAS, the Town has determined that it is in the best interests of the public and of the Town not to charge communications providers permit fees authorized by Section 337.401, Florida Statutes, (2005) effective October 1, 2005, and to benefit from the higher local communications tax rate.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Permit Fees. The Town elects not to require and collect permit fees from any provider of communications services that uses or occupies municipal roads or rights-of-way for the provision of communications services, as provided in Section 337.401(3)(c)(1), Florida Statutes (2005).

Section 3. Local Communications Services Tax Rate. The Town adopts the local communications tax rate as follows:

- a. The base tax rate shall be set at 5.1% and this tax rate shall take effect on January 1, 2007.
- b. Pursuant to Section 337.401(3)(c)(1)(b), Florida Statutes (2005), the Town elects to increase its total tax rate for the local communications services tax by an amount of 0.12%, and this election shall take effect January 1, 2007.
- c. The total local communications services tax rate shall be 5.22%.
- d. The total local communications service tax rate shall be effective January 1, 2007.

Section 4. Notice to the Department of Revenue. The Town Manager is directed to file the appropriate report(s) with the Department of Revenue and the Town Clerk is directed to provide a copy of this Ordinance to the Department of Revenue by certified mail postmarked on or before September 1, 2006, as provided in Section 202.21, Florida Statutes (2005).

Section 5. Repeal of Conflicting Provisions. All provisions of the Code of Miami-Dade County as made applicable to the Town by Section 8.3 of the Town Charter which are in conflict with this Ordinance are hereby repealed.

Section 6. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 7. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 8. Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 9. Effective Date. This ordinance shall be effective immediately upon adoption.

PASSED on first reading this _____ day of _____, 2006.

PASSED AND ADOPTED on second reading this _____ day of _____, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ERIKA GONZALEZ-SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Vice-Mayor Robert MacDougall _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____

TAB XII. 1. d.

ORDINANCE NO. 06-

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE MIAMI-DADE COUNTY CODE AS APPLICABLE TO THE TOWN PURSUANT TO SECTION 8.3 OF THE TOWN CHARTER TO SUBSTITUTE THE TOWN COUNCIL FOR COUNTY OFFICIALS, BOARDS, OR COMMITTEES, PROVIDING FOR ZONING REVIEW, PROVIDING FOR AUTHORITY OF THE TOWN COUNCIL, PROVIDING FOR AN APPEAL PROCESS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is necessary for the Town Council of the Town of Cutler Bay (the "Town") to initiate procedures for the assumption of regulatory jurisdiction, including zoning and planning matters; and

WHEREAS, pursuant to Section 8.8 of the Town Charter, on February 14, 2006, the Town Council adopted a transition emergency ordinance in relation to this matter; and

WHEREAS, this ordinance replaces the transition emergency ordinance; and

WHEREAS, the Town Council finds that the enactment of this ordinance is necessary to protect the public health, safety and welfare of the residents and inhabitants of the Town and to implement the jurisdiction of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE OF THE TOWN OF CUTLER BAY, FLORIDA AS FOLLOWS:

Section 1. The following changes are hereby made to the Town Code:

- (a) **County Staff; Provisions In Effect.** The Miami-Dade County Code, as made applicable to the Town pursuant to the provisions of Section 8.3 of the Town Charter, is amended to substitute the Town Council in the place and stead of County officials, boards or committees, including but not limited to the Board of County Commissioners, the Director of Planning, Development and Regulation the Community Zoning Appeals Board, and the Code Enforcement Board and/or Hearing Officer, so that any and all actions shall be taken by the Town Council. The County staff shall perform those functions for the Town as may be provided by agreement between the Town and

the County. Section 33-310 of the Miami-Dade County Code as applicable to the Town shall be repealed. Except as otherwise provided in this ordinance, the provisions of the Miami-Dade County Code, as made applicable to the Town to the extent required by Section 8.3 of the Town Charter, shall remain in full force and effect until otherwise modified or replaced by the Town Council.

- (b) Zoning Review and Approval; Standards; Authority To Grant Variances, etc.. In connection with Chapter 33 of the Miami-Dade County Code as applicable to the Town pursuant to Section 8.3 of the Town Charter and subsection (a), above, the Town Council may delegate to an individual(s), contractor, or board so designated, from time to time, by motion or resolution, the authority and responsibility to review and process all permit applications for zoning compliance, to make interpretations in connection with Chapter 33, and to show zoning approval by a stamp or mark with signature on all copies of applications and plans pursuant to agreement between Miami-Dade County, Florida, and the Town of Cutler Bay, or as otherwise may be subsequently provided. The standards and criteria set forth in Chapter 33 of the Miami-Dade County Code, and as otherwise provided in the codes, ordinances, resolutions and laws made applicable pursuant to Section 8.3 of the Town Charter, shall constitute the standards and criteria which shall govern performance of the duties delegated pursuant to this subsection and subsection (a), above. The authority of the Town Council to grant comprehensive plan amendments, district boundary changes, zoning variances, special exceptions, or to amend the provisions of the zoning codes shall not be delegated under this ordinance.
- (c) Record of Zoning Compliance Review Actions; Appeal. A list of zoning compliance review actions completed by the Town Council or the delegate of the Town Council shall be maintained in the Office of the Town Clerk. In the event that any aggrieved applicant or other aggrieved person provides written notice of an appeal of any action by a delegate of the Town Council pursuant to subsection (b) to the Town Clerk within seven days after such decision or interpretation is rendered, the Council shall at the next available meeting, review such action under the standards and criteria referenced in this Ordinance. Any and all land development decisions made by the Town Council, including but not limited to resolutions and ordinances, shall be reviewed in accordance with the procedure and within the time provided by the Florida Rules of Appellate Procedure for the review of the rulings of any commission or board; and such time shall

commence to run from the date the decision sought to be reviewed is transmitted to the Town Clerk.

Section 3. Severability. The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 6. Effective Date. This ordinance shall be effective immediately upon adoption.

PASSED on first reading this _____ day of _____, 2006.

PASSED AND ADOPTED on second reading this _____ day of _____, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ERIKA GONZALEZ-SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Vice-Mayor Robert MacDougall _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____

TAB XII. 2. a.

ORDINANCE NO. 2006- _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON THE ISSUANCE OF DEVELOPMENT ORDERS AND DEVELOPMENT PERMITS FOR ALL PROPERTIES ABUTTING OLD CUTLER ROAD FROM S.W. 184 STREET SOUTH TO THE TOWN LIMITS; EXEMPTING CERTAIN DEVELOPMENT; PROVIDING FOR WAIVERS; PROVIDING FOR SEVERABILITY; PROVIDING PROCEDURES FOR VESTED RIGHTS AND JUDICIAL REVIEW FOR THE SPECIFIC MATTERS ADDRESSED HEREIN; PROVIDING FOR A TERM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, in June of 2002, residents of the now incorporated Town of Cutler Bay (the "Town") participated in the Old Cutler Road Charrette Area Plan (the "Charrette"); and

WHEREAS, during this Charrette, residents of the Town envisioned architectural design guidelines, a civic district/town center, and a walkable pedestrian-friendly environment for Old Cutler Road; and

WHEREAS, at the Town Council meeting on May 4th 2006, the Town Council expressed concern that the current zoning scheme along Old Cutler Road may permit development which is incompatible with the residents' vision from the Charrette; and

WHEREAS, to ensure that the residents' vision would come to fruition, the Town Council directed Town staff to draft an ordinance for its consideration, declaring a building moratorium for properties abutting Old Cutler Road from S.W. 184th Street south to the Town limits (the "moratorium area") to be approved by the Town Council; and

WHEREAS, the Town Council has determined that this building moratorium should be in place for 120 days from the effective date of this Ordinance; and

WHEREAS, this Ordinance was heard and recommended by the Town Council, in its capacity as the Town's Local Planning Agency; and

WHEREAS, by resolution, the Town Council approved the Town Manager's Administrative Order No. 06-2 that was issued pursuant to Section 33-319 of the Town's Code of Ordinances (the "Code"), which further authorizes a building moratorium in the moratorium area; and

WHEREAS, it is the intent of the Town Council that this Ordinance be adopted together with the above referenced resolution to accomplish the same purpose in accordance with all applicable laws; and

WHEREAS, after due notice and hearing, the Town Council finds that this Ordinance is consistent with the Miami-Dade County Comprehensive Development Master Plan, which now functions as the Town's Comprehensive Plan, and the Town's Code.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. Building Moratorium Imposed. During the time that this Ordinance is in effect as specified in Section 7 below, there shall be a building moratorium on the issuance of development orders and development permits within the moratorium area. For purposes of this Ordinance, the terms "development orders" and "development permits" shall be defined as follows: building permits, variances, special exceptions, zoning district changes, minimum square footage requirement changes, unusual and new uses, or modifications or elimination of conditions, restrictions or limitations on these orders and permits. The following categories of development shall be exempt from this moratorium:

- Expansions, repairs, or renovations to existing single family homes.
- Any development that has had a development order or development permit approved by the Town.

Section 2. Waivers. Any property owner seeking a waiver under this Section 2 must file an application with the Town Council, for a determination within 60 days after the effective date of this Ordinance. The Town Council, after a public hearing, may grant a waiver to the moratorium provided above and permit development to proceed on a specific parcel where the Town Council determines, based upon substantial competent evidence, that the specific use or activity requested by the waiver application will not detrimentally affect the preparation and implementation of the proposed Town regulations, will be compatible with surrounding land uses, and will not impair the public health, safety or welfare. The public hearing shall be advertised at least seven days prior to the hearing in a local newspaper. The grant of waiver, if any, shall be by resolution. The applicant shall be responsible for the waiver application fee and any other standard fees and requirements for a public hearing.

Section 3. Determination of Vested Rights or Denial of All Economic Use.

(A) Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development of a parcel where the property owner can demonstrate by substantial competent evidence each of the following:

- (1) A governmental act of development approval was obtained prior to the effective date of this Ordinance; and
- (2) Upon which the property owner has detrimentally relied, in good faith, by making substantial expenditures; and

(3) That it would be highly inequitable to deny the property owner the right to complete the development.

(B) Nothing in this Ordinance shall be construed or applied to prevent development of a particular parcel where the property owner can demonstrate by substantial competent evidence that, because of the moratorium, no economic use can be made of the parcel.

(C) Any property owner claiming vested rights or denial of all use under this Section 3 must file an application with the Town Council for a determination within 30 days after the effective date of this Ordinance. The application shall be accompanied by an application fee of \$1,500.00 and contain a sworn statement as to the basis upon which the vested rights or denial of all use are asserted, together with documentation required by the Town and other documentary evidence supporting the claim. The Town Council shall hold a public hearing on the application and, based upon the competent substantial evidence submitted, shall make a determination as to whether the property owner has established vested rights or a lack of economic use for the parcel.

Section 4. Judicial Review. Judicial review of final decisions by the Council under Section 2 or Section 3 of this Ordinance shall be by the filing of a Petition for Certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial decisions of municipalities.

Section 5. Exhaustion of Administrative Remedies. No property owner claiming that this Ordinance, as applied, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court, unless he or she has first exhausted the applicable administrative remedies provided in Sections 2 and 3 of this Ordinance.

Section 6. Conflicts. All Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this ordinance are repealed to the extent of such conflict.

Section 7. Term. The building moratorium imposed by this Ordinance is temporary and shall be effective for a period of 120 days from the effective date of this Ordinance, unless dissolved earlier by the Town Council. Further, the building moratorium shall automatically dissolve upon the adoption of new land development regulations for the moratorium area. The building moratorium may be reasonably extended, if necessary, by Ordinance of the Town Council.

Section 8. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this _____ day of _____, 2006.

PASSED AND ADOPTED on second reading this _____ day of _____, 2006.

PAUL VROOMAN
Mayor

Attest: _____
ERIKA GONZALEZ SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Vice Mayor Edward MacDougall _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____

TAB XII. 2. b.

ORDINANCE NO. 06-__

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING PROCEDURES FOR ZONING WORKSHOPS; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, it is the intent of the Town Council of the Town of Cutler Bay (the "Town") that proposed developments within the Town be discussed at a publicly advertised zoning workshop prior to the public hearing on such developments; and

WHEREAS, at such workshops, the Town Council and the public will have the ability to ask questions and to provide feedback about the proposed developments in an open forum, and the applicant will have the opportunity to respond to such input prior to the public hearing; and

WHEREAS, the Town Council finds that adoption of these regulations is in the best interest and welfare of the citizens of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. Zoning Workshops.

A. **Intent.** It is the intent of the zoning workshop process to provide an open and public forum for members of the public, as well as the Town Council, to comment on proposed developments within the Town. It is further the intent that any communications between members of the Town Council and the applicant during a zoning workshop shall not be considered an ex parte communication, and shall not create a presumption of bias in relation to any future quasi-judicial decision on the applicant's application.

B. **Applicability.** A pre-application conference with the Town's planning and zoning staff shall be held prior to an application being presented at a zoning workshop. A zoning workshop shall be held no fewer than thirty (30) days prior to the application first being heard by the Town Council or local planning agency. A zoning workshop shall be required for the following types of applications:

1. Rezoning;
2. Site plan approval;
3. Site plan amendments that seek to develop additional square footage;
4. Variances;
5. Special exceptions; and
6. Unusual uses

C. Exemptions. Site plan approval for a single family house on one (1) single family lot, amendments to an approved site plan for a single family house on one (1) single family lot, and setback variances shall be exempt from the zoning workshop requirement.

D. Advertisement. An advertisement shall be published in a local newspaper at least 5 days prior to a zoning workshop. The advertisement shall state the date, time, and place of the zoning workshop. In addition, the advertisement shall provide a description and the location of the proposed development. The cost of publishing an advertisement for a zoning workshop shall be paid by the applicant.

E. Agenda. The zoning workshop agenda shall be set by the town manager and prepared by the town clerk. A zoning workshop shall not be held more than once per calendar month. However, the town manager, at his or her discretion, may schedule a second zoning workshop to be held during the same calendar month.

F. Meeting Procedure. A zoning workshop shall consist of two sessions which are described below:

1. First Session. The first session of a zoning workshop shall provide a forum for members of the public to learn about proposed developments within the Town. Developments may be presented to the public simultaneously, in several locations within the meeting site. During this session, members of the public are encouraged to ask questions and to provide feedback to the applicant about the proposed development. The applicant shall provide visual depictions, such as renderings, drawings, pictures, and the location of the proposed development. In addition, representatives of the applicant shall be available to answer questions that members of the public may have about the proposed development. The members of the Town Council shall not be present during the first session of the zoning workshop.

2. Second Session. The second session of a zoning workshop shall provide a forum for the Town Council to learn about the proposed developments discussed at the first half of the zoning workshop. Developments shall be presented sequentially, one at a time, for the Town Council's review and comment. The applicant shall again present visual depictions of the proposed development. In addition, the applicant shall be available to answer any questions that members of the Town Council may have about the proposed development.

Section 2. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 3. Repealer. All resolutions or ordinances or parts of resolutions or ordinances in conflict with the provisions of this Ordinance are repealed.

Section 4. Effective Date. This Ordinance shall be effective immediately upon adoption.

PASSED on first reading this _____ day of June, 2006.

PASSED AND ADOPTED on second reading this _____ day of July, 2006.

PAUL VROOMAN, MAYOR

Attest:

ERIKA GONZALEZ SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

Mitchell A. Bierman, Esq.
WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Vice Mayor Ed MacDougall _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____