



## TOWN OF CUTLER BAY

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

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

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

### TOWN COUNCIL MEETING AGENDA

Wednesday, May 16, 2007

7:00 PM

Cutler Ridge Park

10100 Southwest 200<sup>th</sup> Street

Cutler Bay, Florida 33189

**1. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE, MOMENT OF SILENCE**

**2. PROCLAMATIONS, AWARDS, PRESENTATIONS**

**3. APPROVAL OF MINUTES**

A. Regular Council Meeting – April 11, 2007

TAB 1

**4. REPORTS**

- A. TOWN MANAGER'S REPORT
- B. TOWN ATTORNEY'S REPORT
- C. BOARD AND COMMITTEE REPORTS

**5. CONSENT AGENDA**

ANY ITEMS SHALL BE REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION OR SEPARATE VOTE IF REQUESTED OR PULLED BY A COUNCIL MEMBER OR THE TOWN MANAGER.

A. A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA (THE "TOWN"); NOTIFYING THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA (THE "COUNTY") AND THE DIRECTOR OF THE MIAMI-

TAB 2

DADE COUNTY DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT (“DERM”) AS REQUIRED BY SECTION 24-61 OF THE MIAMI-DADE COUNTY CODE (THE “CODE”); THAT THE TOWN EXERCISES ITS OPTION TO EXEMPT THE TOWN FROM INCLUSION IN THE COUNTY’S STORMWATER UTILITY; COMMITTING TO ESTABLISH A STORMWATER UTILITY WITHIN THE MUNICIPAL BOUNDARIES OF THE TOWN IN ACCORDANCE WITH SECTIONS 403.0893 (1) (2) or (3), FLORIDA STATUTES; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AN INTERLOCAL AGREEMENT WITH THE COUNTY FOR THE COLLECTION OF THE TOWN’S STORMWATER UTILITY FEES; AUTHORIZING THE TOWN CLERK TO SEND COPIES OF THIS RESOLUTION TO THE APPROPRIATE OFFICIALS; AND PROVIDING FOR AN EFFECTIVE DATE.

**B.** A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN CO-PERMITTEES NAMED IN NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT NO. FLS000003; AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 3

**C.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR POLICE CONFISCATION FUND EXPENDITURES IN THE AMOUNT OF \$4,334.65 TO BE FUNDED BY PROCEEDS OF CONFISCATED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 4

**D.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING A TOWN EVENTS COMMITTEE; PROVIDING FOR AN APPOINTMENT PROCEDURE FOR MEMBERS OF THE TOWN EVENTS COMMITTEE; PROVIDING FOR DISSOLUTION OF THE COMMITTEE; PROVIDING FOR AN EFFECTIVE DATE.

TAB 5

**E.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REQUESTING THE INSTALLATION OF A TRAFFIC CONTROL SIGNAL AT THE INTERSECTION OF S.W. 211<sup>TH</sup> STREET AND EAST FRONTAGE ROAD ADJACENT TO THE NORTHBOUND ENTRANCE RAMP OF THE HOMESTEAD EXTENSION OF THE FLORIDA TURNPIKE;

TAB 6

PROVIDING FOR DISTRIBUTION OF THE RESOLUTION TO THE FLORIDA TURNPIKE AUTHORITY; AND PROVIDING FOR AN EFFECTIVE DATE.

- F. A RESOLUTION OF THE TOWN OF CUTLER BAY, FLORIDA, EXPRESSING SUPPORT OF THE HAITIAN IMMIGRANTS BASED ON THE "WET-FOOT/DRY-FOOT" POLICY AND URGING PRESIDENT GEORGE W. BUSH AND THE UNITED STATES CONGRESS TO RESCIND THE DISCRIMINATORY IMMIGRATION POLICIES AGAINST HAITIAN IMMIGRANTS AND CALLING FOR THE EQUAL TREATMENT OF ALL IMMIGRANTS; AND PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

TAB 7

**6. QUASI-JUDICIAL HEARINGS (PUBLIC HEARING REQUIRED)**

ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL BE SWORN-IN PRIOR TO GIVING TESTIMONY AND MAY BE SUBJECT TO CROSS EXAMINATION. ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL STATE THEIR NAME AND ADDRESS FOR THE RECORD.

**7. ORDINANCES FOR FIRST READING (PUBLIC HEARING NOT REQUIRED)**

- A. AN EMERGENCY ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING A SENIOR CITIZEN HOMESTEAD TAX EXEMPTION RELATING TO AD VALOREM TAXATION; PROVIDING FOR AN ADDITIONAL HOMESTEAD EXEMPTION FOR CERTAIN QUALIFYING LOW INCOME SENIOR CITIZENS TO BE APPLIED TO MILLAGE RATES LEVIED BY THE TOWN; PROVIDING FOR THE SUBMISSION OF AN ANNUAL APPLICATION AND SUPPORTING DOCUMENTATION TO THE MIAMI-DADE COUNTY PROPERTY APPRAISER; PROVIDING FOR WAIVER OF EXEMPTION; PROVIDING FOR AN ANNUAL INCREASE IN THE INCOME LIMITATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 8

- B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING A SENIOR CITIZEN HOMESTEAD TAX EXEMPTION RELATING TO AD VALOREM TAXATION; PROVIDING FOR AN ADDITIONAL HOMESTEAD EXEMPTION FOR CERTAIN QUALIFYING LOW INCOME SENIOR CITIZENS TO BE APPLIED TO MILLAGE RATES LEVIED BY THE TOWN; PROVIDING FOR THE SUBMISSION OF AN ANNUAL APPLICATION AND SUPPORTING DOCUMENTATION TO THE MIAMI-DADE COUNTY PROPERTY APPRAISER; PROVIDING FOR WAIVER OF EXEMPTION; PROVIDING FOR AN ANNUAL

TAB 9

INCREASE IN THE INCOME LIMITATION; 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, GRANTING THE REQUEST OF SIRE USA CORP. FOR A REZONING FROM AU (AGRICULTURAL) TO RU-1 (SINGLE-FAMILY RESIDENTIAL) FOR PROPERTY GENERALLY LOCATED SOUTH OF S.W. 198TH STREET, NORTH OF S.W. 199TH STREET, EAST OF S.W. 87TH AVENUE, AND WEST OF S.W. 85TH AVENUE, AS LEGALLY DESCRIBED IN EXHIBIT "A," CONSISTING OF APPROXIMATELY 41,885 SQ. FT.; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 10

**8. ORDINANCES FOR FIRST READING (PUBLIC HEARING REQUIRED)**

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA COMPREHENSIVELY UPDATING AND REVISING CHAPTER 33 "ZONING" ARTICLE IV "TOWERS, POLES AND MASTS" RELATING TO WIRELESS SUPPORTED SERVICE FACILITIES; AMENDING THE LIST OF THE PERMITTED USES IN THE RU-3M, RU-4, RU-4L, RU-4M ZONING DISTRICTS RELATING TO WIRELESS SUPPORTED SERVICE FACILITIES; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 11

**9. ORDINANCES FOR SECOND READING (PUBLIC HEARING REQUIRED)**

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 "ZONING" OF THE TOWN CODE OF ORDINANCES RELATED TO PARKING; PROVIDING THAT OFF-STREET PARKING SHALL BE PERMITTED ONLY ON SURFACED PARKING AREAS; PROVIDING FOR THE MAXIMUM AREA PERMITTED FOR OFF-STREET PARKING AREAS WITHIN CERTAIN ZONING DISTRICTS; PROVIDING FOR SURFACED PARKING AREA MATERIALS FOR OFF-STREET PARKING; CREATING SECTION 33-132.1 WHICH PROVIDES FOR A PROHIBITION AGAINST PARKING IN THE SWALE AREAS WITHIN RESIDENTIAL ZONING DISTRICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 12

**10. PUBLIC COMMENTS**

THE PRESIDING OFFICER SHALL HAVE THE DISCRETION TO LIMIT THE LENGTH OF PUBLIC COMMENTS IN THE INTEREST OF TIME IN ORDER TO ALLOW ALL PERSONS WHO WISH TO SPEAK AN OPPORTUNITY TO DO SO.

**11. MAYOR AND COUNCIL COMMENTS**

**12. OTHER BUSINESS**

**13. ADJOURNMENT**

- A. Regular Town Council Meeting  
Wednesday, June 20, 2007, 7:00 P.M.  
Cutler Ridge Park

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 1

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

Wednesday, April 11, 2007

7:00 PM

Cutler Ridge Park  
10100 Southwest 200<sup>th</sup> Street  
Cutler Bay, Florida 33189

**I. CALL TO ORDER/ROLL CALL OF MEMBERS:** The meeting was called to order by the mayor at 8:05 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

Town Manager Steven J. 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:** None at this time.

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

**IV. APPROVAL OF MINUTES:**

**A.** Councilmember Meerbott made a motion approving the minutes of the meeting of March 21, 2007. The motion was seconded by Councilmember Bell and adopted by a unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

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

**VI. TOWN MANAGER'S REPORT:**

The Town Manager informed Council that the Request for Proposals for Town Attorney Services has been advertised and the Cone of Silence is in effect until written recommendation by the Manager is presented at the next council meeting. He also mentioned that he, the Town Public Works Director and the Public Works Director for Miami-Dade County will be meeting this week to discuss the need to resolve certain issues before the Town takes over the roads. He stated that there is still one last detail to work out with the Parks Interlocal and is optimistic about having it on the next agenda. The Manager also reported that Town Staff is in the process of giving performance evaluations.

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

## **VIII. BOARD AND COMMITTEE REPORTS:**

Councilmember Bell discussed how grateful she is to the dedicated residents of the Parks Advisory Committee. Member Bell introduced Chairperson Louise Lockwood, who then proceeded to report on the progress of the committee and their accomplishments so far.

Vice Mayor MacDougall informed the Council that there was a need for transportation for the Town's elderly residents. The Vice Mayor introduced the members of the committee and finally the Chair of the Senior Transportation committee, Alfie Sergio, who later gave a detailed report on the committee's findings on the needs for transportation to Town senior citizens.

## **IX. CONSENT AGENDA:**

- A.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING AN AMOUNT FOR THE PERMIT FEE FOR THE STORAGE OF A SECOND BOAT PURSUANT TO ORDINANCE 07-\_\_\_; AND PROVIDING AN EFFECTIVE DATE.
- B.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ESTABLISHING PUBLIC PARTICIPATION PROCEDURES FOR CREATION OF THE COMPREHENSIVE PLAN; AND PROVIDING FOR AN EFFECTIVE DATE.
- C.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING THE TOWN COUNCIL AGENDA FORMAT; PROVIDING FOR AGENDA ITEMS REQUESTED BY THE TOWN COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.

The Town Attorney advised the Council that Items A and C should be considered after the results of the Ordinances that both those items refer to.

Councilmember Bell made a motion to approve the Consent Agenda as amended. The motion was seconded by Vice Mayor MacDougall and Resolutions 07-16 was adopted by unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

Resolution Item A was later withdrawn from consideration.

## **RESOLUTIONS FOR DISCUSSION**

- 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:**



1. **FIRST READING:** None at this time.
2. **SECOND READING:** 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 I, "IN GENERAL," SECTION 33-20(E), "BOAT STORAGE," OF THE TOWN CODE OF ORDINANCES, BY AMENDING THE LENGTH, WIDTH, AND HEIGHT OF BOATS THAT MAY BE PERMITTED TO BE STORED WITHIN CERTAIN ZONING DISTRICTS WITHIN THE TOWN; PROVIDING FOR THE STORAGE OF TWO BOATS WITHIN CERTAIN ZONING DISTRICTS WITHIN THE TOWN; PROVIDING FOR PERMITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

The Town Attorney gave a brief review of the ordinance.

The mayor opened the public hearing. 10187 Southwest 199 Street, Robert Stile, 10380 Southwest 200 Street, Fred Meyers 19500 Old Cutler Road, Gerald Klein, 9730 Cutler Ridge Drive, Daniel Hutton, 9741 Bel Aire Drive, Stephen Zarzecki, 9640 Martinique Drive, Gary Oakerson, 20210 Bel Aire Drive, Tom Condon, 19641 Holiday Road, Lester Marks, 19341 Holiday Road, Padraig Rousseau, 19791 Southwest 101 Court, Fred Degal, 8265 Southwest 184 Street, Tony Pluhar, 10455 Southwest 100 Street, Luis Tornes, 9811 Southwest 195 Street, Bill West, 18720 Southwest 84 Avenue, Bruce Ford, 18700 Southwest 84 Avenue, Carmen Betancourt, 18741 Southwest 87 Avenue, Mike Adams, 8740 Southwest 191 Street, Gary James, 8750 Southwest 191 Street Barbara Condon, 19641 Holiday Road, Louise Lockwood, 9071 Ridgeland Drive, Alfred Kennedy, 9334 Haitian Drive, Tom Horne, 20501 Marlin Road, Arthur Nanni, 18843 Southwest 92 Avenue, Tom Chesko, 19725 Southwest 99 Place, Diana Orme, 9440 Independence Road, Rose Cappetta, 10105 Southwest 200 Street, Marilyn Horne, 20501 Marlin Road, Sandra Wong, 19630 Southwest 87 Avenue, addressed Council.

Councilmember Sochin made a motion to direct the Town Attorney to redraft the Ordinance to include the recommendations made by Councilmembers. The motion was seconded by Councilmember Meerbott and was approved by a 4-1 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, and Mayor Vrooman voting Yes; Vice Mayor MacDougall voting No.

After much discussion, the following recommendations were offered by the Councilmembers:

Councilmember Bell made a recommendation to amend Section 2(e) to reduce the footage of the first boat from 33' to 31'.

Councilmember Sochin made a recommendation to amend the permitted zoning to include RU-1 in addition to the other permitted zoning districts.

Councilmember Meerbott made a motion to approve the Councilmembers recommendations to amend Section 2(e). The motion was seconded by Councilmember Bell and was approved by a 4-1 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, and Mayor Vrooman voting Yes; Vice Mayor MacDougall voting No.

Councilmember Meerbott made a motion to include exemptions to non-powered and non-motorized vessels. The motion was seconded by Councilmember Sochin and was approved by a 4-1 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, and Mayor Vrooman voting Yes; Vice Mayor MacDougall voting No.

Councilmember Bell made a recommendation to amend Section 2(e) to include a waiver for the applicant.

Councilmember Meerbott made a motion to include a waiver within the ordinance. The motion was seconded by Councilmember Bell and was approved by a 4-1 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, and Mayor Vrooman voting Yes; Vice Mayor MacDougall voting No.

The Mayor made a recommendation to amend Section 2(e) to include a visual buffer for both boats once a second boat is permitted for a particular property.

Councilmember Sochin made a motion to approve the Mayor's recommendations to amend Section 2(e). The motion was seconded by Councilmember Meerbott and was approved by a 4-1 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, and Mayor Vrooman voting Yes; Vice Mayor MacDougall voting No.

Councilmember Meerbott made a motion adopting the ordinance as amended on second reading. The motion was seconded by Councilmember Sochin and Ordinance 07-10 was approved by a 4-1 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, and Mayor Vrooman voting Yes; Vice Mayor MacDougall voting No.

- b.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, GRANTING ADMINISTRATIVE AUTHORITY TO THE TOWN MANAGER TO SET SERVICE OR USER CHARGES FOR MUNICIPAL SERVICES PURSUANT TO SECTION 4.3 ENTITLED "ORDINANCES" OF THE TOWN CHARTER; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

The Town Manager gave a brief review of the ordinance.

The mayor opened the public hearing. Charles Smith, 9730 Jamaica Drive, addressed Council.

Vice Mayor MacDougall recommended amending Section 2 of the ordinance to state the following:

- *provided that such services or user charges for municipal services shall be reviewed by the Town Council every three months.*

Councilmember Sochin made a motion adopting the ordinance with the Vice Mayor's amendment on second reading. The motion was seconded by Councilmember Sochin and Ordinance 07-11 was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- c. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 06-12 BY DELETING THE TOWN COUNCIL AGENDA FORMAT; PROVIDING FOR THE TOWN COUNCIL AGENDA FORMAT TO BE ADOPTED BY A RESOLUTION OF THE TOWN COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.

The Town Attorney gave a brief review of the ordinance.

The mayor opened the public hearing. Joy Cooper, 9665 Nassau Drive, addressed Council.

Councilmember Bell made a motion adopting the ordinance on second reading. The motion was seconded by Councilmember Sochin and Ordinance 07-12 was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- d. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE TOWN CODE BY AMENDING ORDINANCE 06-27 RELATED TO OCCUPATIONAL LICENSES TO CONFORM WITH RECENT REVISIONS TO FLORIDA STATUTE CHAPTER 205 BY CHANGING THE TERM OCCUPATIONAL LICENSE TO LOCAL BUSINESS TAX RECEIPT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

The Town Attorney gave a brief review of the ordinance.

The mayor opened the public hearing. There were no speakers.

Councilmember Sochin made a motion adopting the ordinance on second reading. The motion was seconded by Vice Mayor MacDougall and Ordinance 07-13 was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- e. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 "ZONING" SECTION 33-20. "ACCESSORY BUILDINGS; UTILITY SHEDS; SWIMMING POOLS; FALLOUT SHELTERS; BOAT STORAGE" OF THE TOWN CODE OF ORDINANCES TO PROVIDE THAT SWIMMING POOLS

SHALL BE COUNTED FOR PURPOSES OF LOT COVERAGE;  
AND PROVIDING FOR AN EFFECTIVE DATE.

The Town Attorney gave a brief review of the ordinance.

The mayor opened the public hearing. Mary Orellana, 9320 Jamaica Drive, Bruce Ford, 18700 Southwest 84 Avenue, Luis Tornes, 9811 Southwest 195 Street, and Charles Smith, 9730 Jamaica Drive, addressed Council.

Councilmember Sochin made a motion adopting the ordinance on second reading. The motion was seconded by Councilmember Bell and Ordinance 07-14 was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

**XIII. PUBLIC COMMENTS:** The following individuals spoke: Luis Tornes, 9811 Southwest 195 Street, Nelson Canon, 18314 Southwest 92 Court, Arthur Nanni, 18843 Southwest 92 Avenue, Louise Lockwood, 9071 Ridgeland Drive, George Powers, 19110 Franjo Road, Stephen Zarzecki, 9640 Martinique Drive, Mary Orellana 9320 Jamaica Drive, Beth Parets, 19301 Holiday Road, Charles Hawkins, 9960 Martinique Drive.

**XIV. MAYOR AND COUNCIL MEMBER COMMENTS:**

Vice Mayor made a motion to extend the meeting beyond 11:00 PM. Councilmember Sochin seconded the motion. All members voted unanimously in favor of the motion.

Councilmember Sochin mentioned that there should be more communication among the Town and its residents. He spoke about the endless efforts of the Council and their dedication to community events and activities. He also discussed that there must be consideration and respect among neighbors in terms of their properties.

Vice Mayor MacDougall discussed that Council should consider a form of sponsorship of a particular item by placing names next to ordinances and resolutions. He also spoke about the turnaround time for the agenda and how the Town can produce the agenda in a more rapid manner. He also felt that at the first Zoning Workshop, there is no communication among residents on proposed developments. The Vice Mayor indicated that there should be more interaction among residents and the Council when a Zoning Workshop is scheduled.

Mayor Vrooman felt that there should be more communication between the Town and the residents. He informed Council that the Town is working on areas of interest that public notices can be posted. He also requested that staff create a resolution for the northbound ramp to the Turnpike and 211<sup>th</sup> Street

Councilmember Sochin made a motion to have staff draft a Resolution in support of a traffic light at the 211<sup>th</sup> Street and northbound ramp to the Turnpike. The motion was seconded by Councilmember Meerbott. All members voted unanimously in favor of the motion.

**XV. OTHER BUSINESS:** None at this time.

**XVI. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT:**

The next council meeting will be held on May 16, 2007, at Cutler Ridge Park.

The meeting was officially adjourned at 11:15 P.M.

*Respectfully submitted:*

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*Erika Gonzalez-Santamaria, CMC  
Town Clerk*

*Adopted by the Town Council on  
this 16<sup>th</sup> day of May, 2007.*

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*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 2



## MEMORANDUM

To: Honorable Mayor & Town Council

From: Steven J. Alexander, Town Manager

Date: May 10, 2007

Re: Stormwater Utility Exemption from Miami-Dade County

### REQUEST

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA (THE "TOWN"); NOTIFYING THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA (THE "COUNTY") AND THE DIRECTOR OF THE MIAMI-DADE COUNTY DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT ("DERM") AS REQUIRED BY SECTION 24-61 OF THE MIAMI-DADE COUNTY CODE (THE "CODE"); THAT THE TOWN EXERCISES ITS OPTION TO EXEMPT THE TOWN FROM INCLUSION IN THE COUNTY'S STORMWATER UTILITY; COMMITTING TO ESTABLISH A STORMWATER UTILITY WITHIN THE MUNICIPAL BOUNDARIES OF THE TOWN IN ACCORDANCE WITH SECTIONS 403.0893 (1) (2) or (3), FLORIDA STATUTES; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AN INTERLOCAL AGREEMENT WITH THE COUNTY FOR THE COLLECTION OF THE TOWN'S STORMWATER UTILITY FEES; AUTHORIZING THE TOWN CLERK TO SEND COPIES OF THIS RESOLUTION TO THE APPROPRIATE OFFICIALS; AND PROVIDING FOR AN EFFECTIVE DATE.**

### RECOMMENDATION

It is recommended that the Town Council approve the proposed resolution exempting the Town of Cutler Bay from the inclusion in the County's Stormwater Utility and authorizing the manager to negotiate an inter-local agreement for the collection of the Town's Stormwater Utility Fees.

### BACKGROUND AND ANALYSIS

Town of Cutler Bay incorporated on November 8, 2005, since that time, the Town's stormwater infrastructure (pipes, inlets, outfalls, etc.) has been maintained and operated by the Miami-Dade County Stormwater Utility; therefore, all maintenance and capital improvements to the Town's stormwater infrastructure are the responsibility of the County's Stormwater Utility. To fund these activities, the County currently collects a stormwater utility fee of \$ 4.00 per month per Equivalent Residential Unit (ERU) from the Town residents and business owners.

In order for the Town of Cutler Bay to control the maintenance and operation of the stormwater infrastructure within the Town limits, the Town must opt out of the Miami-Dade County Stormwater Utility and create its own Stormwater Utility. To opt out of the County's Utility, the Town must adopt a resolution requesting that the Miami-Dade County Commission consider granting the Town exemption from County's Utility. If the Board of County Commissioners approves the request for exemption, they will adopt a resolution setting forth its approval. The County Commission (under its home rule charter) can restrict the authority of municipalities in certain areas, including stormwater management and can also attach conditions to their approval.

Once the Board of County Commissioners approves the Town request for exemption, the Town will need to create a Stormwater Utility (via Ordinance) and set a rate. Currently the Town's Consulting Engineers (Kimley-Horn & Assoc) are developing the Town's Stormwater Master Plan which, is being funded through a South Florida Water Management District Grant. Once of the components of the Town's Stormwater Master Plan will consist of a proposed ERU rate which, will be necessary to fund the capital and maintenance projects identified in the deficient flood prone areas that were studied.

The process of requesting an exemption from the Miami-Dade County Stormwater Utility, creating the Town's Stormwater Utility, and adopting an ERU rate is approximately 14-16 months. Recently incorporated municipalities (Miami-Lakes & Palmetto Bay) are good benchmarks for the amount of time required to establish a Town Stormwater Utility Fund.

Additionally, the development of the Town's Stormwater Master Plan is identified as one of the Public Works Department's strategic goals (Goal: 9.1) in the Town's adopted Strategic Plan.

Strategic Initiative: (Goal 9.1)

Work with the County and the South Florida Water Management District to develop and implement a Town Master Drainage plan that addresses enhancement, replacement, and maintenance issues including canal maintenance.

Town staff will expedite this process by working closely with County staff in the following Departments: Department of Environmental Resource Management (DERM), Water & Sewer Department (WASD), and County Manager's Office.



**RESOLUTION NO. 07-\_\_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA (THE “TOWN”); NOTIFYING THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA (THE “COUNTY”) AND THE DIRECTOR OF THE MIAMI-DADE COUNTY DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT (“DERM”) AS REQUIRED BY SECTION 24-61 OF THE MIAMI-DADE COUNTY CODE (THE “CODE”); THAT THE TOWN EXERCISES ITS OPTION TO EXEMPT THE TOWN FROM INCLUSION IN THE COUNTY’S STORMWATER UTILITY; COMMITTING TO ESTABLISH A STORMWATER UTILITY WITHIN THE MUNICIPAL BOUNDARIES OF THE TOWN IN ACCORDANCE WITH SECTIONS 403.0893 (1) (2) or (3), FLORIDA STATUTES; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AN INTERLOCAL AGREEMENT WITH THE COUNTY FOR THE COLLECTION OF THE TOWN’S STORMWATER UTILITY FEES; AUTHORIZING THE TOWN CLERK TO SEND COPIES OF THIS RESOLUTION TO THE APPROPRIATE OFFICIALS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town is currently part of the Miami-Dade County Stormwater Utility (the “Utility”); and

**WHEREAS**, pursuant to Section 24-61, et seq., of the County Code, the Town may opt out of the Utility upon committing to implement the provisions of Section 403.0893(1), (2) or (3), Florida Statutes, by creating a stormwater utility and adopting stormwater utility fees sufficient to plan, construct, operate and maintain a stormwater management system; and

**WHEREAS**, the Town’s engineers are developing a stormwater master plan and as part of the plan, the town council intends on establishing a stormwater utility within the municipal boundaries of the Town; and

**WHEREAS**, the Town Council desires to exercise its option to exempt the Town from the County’s Utility, as soon as possible.

**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. Notification.** The Town of Cutler Bay notifies the Board of County Commissioners of the County and the Director of DERM that it exercises its option to be exempted from the provisions of the County Stormwater Utility as provided in Section 24-61, et seq., of the County Code, as soon as possible.

**Section 3. Commitment.** The Town of Cutler Bay commits to implement the applicable provisions of Section 403.0893(1), (2) or (3), Florida Statutes, to create and fund a stormwater utility within the municipal boundaries of the Town.

**Section 4. Authorization.** The Town Manager is authorized to negotiate with the County an Interlocal Agreement for the collection of the Town's stormwater utility fees.

**Section 5. Clerk's Notification.** The Town Clerk is directed to file a certified copy of this Resolution with the Clerk of the Board of County Commissioners and the Director of DERM.

**Section 6. Effective Date.** This Resolution shall be effective immediately upon its adoption.

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
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

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman \_\_\_\_\_

Vice Mayor Edward P. MacDougall \_\_\_\_\_

Councilmember Peggy R. Bell \_\_\_\_\_

Councilmember Timothy J. Meerbott \_\_\_\_\_

Councilmember Ernest N. Sochin \_\_\_\_\_

TAB 3



Steven J. Alexander  
Town Manager

## MEMORANDUM

To: Honorable Mayor, & Town Council  
From: Steven J. Alexander, Town Manager  
Date: April 27, 2007  
Re: National Pollutant Discharge Elimination System (NPDES)

### RECOMMENDATION

It is recommended that the Town Council approve the Interlocal Agreement between Miami-Dade County and the Town of Cutler Bay. The purpose is to contract with Miami-Dade County to perform sampling; monitoring and analysis of the Town's stormwater runoff, as per the National Pollutant Discharge Elimination System (NPDES) permit number FLS000003. The term of the Interlocal Agreement is for a five (5) years period, and shall expire on November 2012.

### BACKGROUND AND ANALYSIS

The Interlocal agreement was established by Miami-Dade County to allow all of the municipalities in the County to be part of the NPDES permit naming the county and all of the participation municipalities. The permit was issued by the State of Florida, pursuant to Section 40.3.0885, Florida Statutes. The Department of Environmental Protection (DEP) implements the stormwater element of the federal NPDES as part of the Department's Wastewater Facilities and Activities Permitting program. The stormwater element of the federal NPDES program is mandated by the federal Clean Water Act.

The Federal Environmental Protection Agency requires all co-permittees to have a five year agreement with the host county (Miami-Dade). The annual permit fee includes the County's cost of monitoring the Town's outfalls and preparing the annual monitoring report, which is submitted to the State of Florida Department of Environmental Protection (DEP). The State of Florida then gathers all of the permits throughout the state and forwards the monitoring reports to the appropriate federal agency. The cost associated with the program will be paid by each co-permittee, based on the total number of outfalls in each of the municipality.

The Interlocal Agreement will authorize the co-permittees to discharge stormwater run-off into state owned waters (Biscayne Bay), in accordance with the approved Stormwater Management Programs, effluent limitations, monitoring requirements, and other provisions as set forth by federal guidelines.

The Miami-Dade county Department of Environmental Resource Management (DERM), will implement and monitor stormwater management programs within the municipal boundaries of each co-permittee. Each municipality will have to pay an annual monitoring fee, based on the number of outfalls. The Town of Cutler Bay has a total of 69 outfalls, which account for 1.5% of the total outfalls within the County.

The annual co-permittee cost for the Town totals: \$6,750. The annual permit fee will be paid by the Miami-Dade County Stormwater Utility, until the Town establishes its own utility.

**RESOLUTION NO. 07-\_\_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN CO-PERMITTEES NAMED IN NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT NO. FLS000003; AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Section 403.0885, Florida Statutes, a permit was issued to Miami-Dade County (the “county”) and its participating municipalities for participation in the National Pollutant Discharge Elimination System (“NPDES”); and

**WHEREAS**, the Town participation in the stormwater element of the NPDES program is required under the Clean Water Act; and

**WHEREAS**, participation in the NPDES program will allow the Town to discharge stormwater runoffs into state owned waters as part of its stormwater management program; and

**WHEREAS**, the Town Council finds that it is in the best interest of the Town to approve the agreement between the Town and the County for NPDES services.

**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 Agreement.** The Agreement between Miami-Dade County, other participation municipalities and the Town of Cutler Bay, attached as Exhibit “A,” together with such non-material changes as may be acceptable to the Town manager and approved as to form and legality by the Town Attorney, is approved.

**Section 3. Authorization of Town Officials.** The Town Manager and Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the Amendment.

**Section 4. Execution of Agreement.** The Mayor is authorized to execute the Agreement on behalf of the Town.

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

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
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 S. Vrooman \_\_\_\_\_

Vice Mayor Edward P. MacDougall \_\_\_\_\_

Councilmember Peggy R. Bell \_\_\_\_\_

Councilmember Timothy J. Meerbott \_\_\_\_\_

Councilmember Ernest N. Sochin \_\_\_\_\_



**INTERLOCAL AGREEMENT BETWEEN CO-PERMITTEES  
NAMED IN NATIONAL POLLUTANT DISCHARGE  
ELIMINATION SYSTEM PERMIT NO. FLS000003 AND  
MIAMI-DADE COUNTY PROVIDING FOR PERFORMANCE  
OF PROFESSIONAL SERVICES AND BETWEEN ALL CO-  
PERMITTEES PROVIDING FOR CONTROL OF POLLUTANT  
DISCHARGES BETWEEN SHARED MUNICIPAL SEPARATE  
STORM SEWER SYSTEMS**

This Interlocal Agreement ("Agreement") is made and entered into by and between all **CO-PERMITTEES** named in Permit No. FLS000003, Authorization to Discharge under the National Pollutant Discharge Elimination System. This Agreement provides for control of discharges from any and all municipal separate storm sewer systems that may be shared by any of the parties to this Agreement, as required by the State of Florida Department of Environmental Protection (hereinafter referred to as FDEP) pursuant to Section 403.0885, Florida Statutes, and Rule 62-624, Florida Administrative Code, and the Environmental Protection Agency (hereinafter referred to as the "EPA") National Pollutant Discharge Elimination System (hereinafter referred to as "NPDES") Permit Regulations for Storm Water Discharges Final Rule (hereinafter referred to as "NPDES Final Rule"). This Agreement further provides for the professional services required to accomplish the tasks set forth in the NPDES Final Rule and the NPDES MS4 Operating Permit that may be initiated and performed on behalf of both the **CO-PERMITTEES** and the **COUNTY**.

**Section I**  
**Definitions**

For purposes of this Agreement, the following terms shall apply:

**AGREEMENT** shall mean this document, including any written amendments thereto, and other written documents or parts thereof which are expressly incorporated herein by reference.

**CO-PERMITTEE or CO-PERMITTEES** shall mean the following municipalities and agencies named in NPDES Permit No. FLS000003 as Co-Permittees: Miami-Dade County, City of Aventura, Bal Harbour Village, Town of Bay Harbor Islands, City of Coral Gables, Town of Cutler Bay, City of Doral, Village of El Portal, Town of Golden Beach, City of Hialeah Gardens, City of Homestead, Indian Creek Village, Village of Key Biscayne, Town of Medley, City of Miami Beach, City of Miami Gardens, Town of Miami Lakes, Miami Shores Village, City of Miami Springs, City of North Bay Village, City of North Miami, City of North Miami Beach, City of Opa-locka, Village of Palmetto Bay, Village of Pinecrest, City of South Miami, City of Sunny Isles Beach, Town of Surfside, City of West Miami, Florida Department of Transportation (FDOT) District VI, Florida Department of Transportation (FDOT) Turnpike Enterprise, and the Miami-Dade County Expressway Authority (MDX).

**COUNTY** shall mean Miami-Dade County.

**FORCE MAJEURE** shall mean an act of God, epidemic, lightning, earthquake, fire, explosion, hurricane, flood or similar occurrence, strike, an act of a public enemy, or blockade, insurrection, riot, general arrest or

restraint of government and people, civil disturbance or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights or obligations under this Agreement.

**MS4** shall mean municipal separate storm sewer system, as set forth in 40C.F.R.122.26.

In all other instances, terms used in this Agreement shall have the definitions contained in the EPA NPDES Final Rule 40 CFR Parts 122, 123 and 124.

## **Section II** **Term of Agreement**

The term of this Agreement shall commence upon the final date of execution by all **CO-PERMITTEES**, and shall expire on November 16, 2012.

## **Section III** **Scope of Work**

The parties hereto agree that the EPA is requiring as part of the NPDES MS4 Operating Permit the sampling, monitoring, and analysis of a variety of storm sewer systems throughout Miami-Dade County. The parties hereby agree that the monitoring costs attributable to this operating permit shall be the joint responsibility of all parties hereto, and shall be based on a percentage rate obtained by dividing the number of outfalls which drain to United States bodies of water existing in the geographical boundaries of each **CO-PERMITTEE** by the total number of outfalls existing within the geographic boundaries of all **CO-PERMITTEES**.

Furthermore, 40 CFR 122.26(d)(2)(i)(D) requires control of pollutants through interlocal agreements, making each NPDES **CO-PERMITTEE** responsible for discharges from their MS4 to the MS4 of another NPDES **CO-PERMITTEE** or to the waters of the United States. This Agreement sets forth the agreement of the **CO-PERMITTEES** and the **COUNTY** and between all of the **CO-PERMITTEES** with respect to shared responsibilities in the identification and control of discharges from one MS4 to another.

## **Section IV** **COUNTY's Obligations**

1. **Compliance with NPDES MS4 Operating Permit** The **COUNTY** shall perform monitoring and sampling activities as required in Miami-Dade County's NPDES MS4 Operating Permit.
2. **Permits** The **COUNTY** shall obtain all applicable federal, state and local permits and approvals (with the exception of permits and approvals required by **CO-PERMITTEES**, if any, which shall be obtained by the respective **CO-PERMITTEE**), which are required to perform activities under the NPDES MS4 Operating Permit.
3. **Report** The **COUNTY** shall provide the **CO-PERMITTEES** with a report with the results of the monitoring and sampling activities required under the NPDES Operating Permit.

4. **Notice of COUNTY Meeting** The COUNTY shall provide the CO-PERMITTEES with oral or written notice of all regular meetings held by COUNTY staff for the purpose of reviewing the compliance status with the NPDES MS4 Operating Permit.

#### **Section V** **CO-PERMITTEES' Obligations**

1. **Prevention of Theft of COUNTY Equipment** The CO-PERMITTEES shall take reasonable steps to prevent theft or vandalism of COUNTY equipment located within the CO-PERMITTEE'S geographic boundary. The CO-PERMITTEES agree that such equipment may be placed within each CO-PERMITTEE'S geographic boundary for extended periods of time, as necessary to complete the sampling and monitoring tasks contemplated by this Agreement and the NPDES MS4 Operating Permit.
2. **Compensation** Not later than ten (10) days after the date of execution of this Agreement by all CO-PERMITTEES, each Co-Permittee shall pay to the COUNTY its proportional share of the payment due for monitoring activities set forth in this Agreement and as set forth in Attachment "A" herein. The annual cost, in accordance with the schedule of payments set forth in Attachment "A" herein, shall be due on the anniversary date of execution of this Agreement for each year the NPDES MS4 Operating Permit is in force and effect. Failure to pay the agreed-upon costs to COUNTY in accordance with this Agreement shall be deemed default by the CO-PERMITTEE that fails to pay pursuant to this Agreement.
3. **Access** The CO-PERMITTEES shall provide the COUNTY with reasonable access at all times as necessary to perform the sampling and monitoring required by this Agreement of any storm sewer systems which may be located within the CO-PERMITTEE'S geographic boundary.

#### **Section VI** **Indemnification**

The CO-PERMITTEE shall indemnify and hold harmless the COUNTY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the COUNTY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the CO-PERMITTEE or its employees, agents, servants, partners, principals or subcontractors. The CO-PERMITTEE shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the COUNTY, where applicable, including appellate proceedings, and shall pay all costs, judgements and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28 Fla Stat., subject to the provisions of that Statute whereby the CO-PERMITTEE shall not be held liable to pay a personal injury or property damage claim or judgement by any one person which exceeds the sum of \$100,000, or any claim or judgement or portions thereof, which, when totaled with all other claims or judgement paid by the CO-PERMITTEE arising out of the same incident or occurrence, exceed the sum of \$200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the CO-PERMITTEE.

The **COUNTY** shall indemnify and hold harmless the **CO-PERMITTEE** and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the **CO-PERMITTEE** or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the **COUNTY** or its employees, agents, servants, partners, principals or subcontractors. The **COUNTY** shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the **CO-PERMITTEE**, where applicable, including appellate proceedings, and shall pay all costs, judgements and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28 Fla Stat., subject to the provisions of that Statute whereby the **COUNTY** shall not be held liable to pay a personal injury or property damage claim or judgement by any one person which exceeds the sum of \$100,000, or any claim or judgement or portions thereof, which, when totaled with all other claims or judgement paid by the **COUNTY** arising out of the same incident or occurrence, exceed the sum of \$200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the **COUNTY**.

### Section VII County Event of Default

Without limitation, the failure by the **COUNTY** to substantially fulfill any of its material obligations in accordance with this Agreement, unless justified by Force Majeure, shall constitute a "**COUNTY** event of Default".

If a **COUNTY** event of default should occur, the **CO-PERMITTEE** shall have all of the following rights and remedies which it may exercise singly or in combination:

1. The right to declare that this Agreement together with all rights granted to **COUNTY** hereunder are terminated, effective upon such date as is designated by the **CO-PERMITTEE**;
2. Any and all rights provided under federal laws and the laws of the State of Florida.

### Section VIII Co-Permittee Event of Default

Without limitation, the failure by the **CO-PERMITTEE** to substantially fulfill any of its material obligations in accordance with this Agreement, unless justified by Force Majeure, shall constitute a "**CO-PERMITTEE** Event of Default".

If a **CO-PERMITTEE** Event of Default should occur, the **COUNTY** shall have all of the following rights and remedies which it may exercise singularly or in combination:

1. The right to declare that this Agreement together with all rights granted to **CO-PERMITTEE** hereunder are terminated, effective upon such date as is designated by the **COUNTY**;

2. Any and all rights provided under federal laws and the laws of the State of Florida.

## **Section IX** **General Provisions**

1. **Authorization to Represent the CO-PERMITTEE in NPDES MS4 Operating Permit** The CO-PERMITTEE hereby authorizes the COUNTY to act on its behalf only with respect to: monitoring and sampling portions of the NPDES MS4 Operating Permit; and compliance with all requirements of EPA and FDEP with respect thereto as conditions of the NPDES MS4 Operating Permit.
2. **Attendance at COUNTY Permit Review Meetings.** The CO-PERMITTEE may, but is not required to, attend any or all regular meetings held by COUNTY staff for the purpose of reviewing the status of the NPDES MS4 Operating Permit.
3. **Responsibility for Discharges** The CO-PERMITTEES shall each be responsible for the control, investigation of and remedial activities relating to discharges of pollutants from within their respective MS4 or boundaries to the municipal separate storm sewer system of another NPDES MS4 CO-PERMITTEE, pursuant to the requirements of 40CFR 122.26(d)(2)(i)(D).
4. **Identification of Discharges** Both the CO-PERMITTEE whose stormwater system generates a pollutant discharge that impacts another CO-PERMITTEE'S system and the impacted CO-PERMITTEE agree to cooperate by providing the staff and equipment necessary to identify the source of pollutant discharges emanating from the separate storm sewer system of one CO-PERMITTEE to the separate storm sewer system of another CO-PERMITTEE.
5. **Notification** When pollutant discharges to a shared separate storm sewer system are discovered, the CO-PERMITTEES, or COUNTY, or any of the foregoing, as applicable, which are the source of the discharge(s) agree to report said discharges to the other affected parties sharing the particular MS4. The COUNTY shall assist, as needed, in any investigation and identification of a source of the discharge. If the COUNTY discovers a discharge in the separate storm sewer system of a CO-PERMITTEE or the COUNTY, the COUNTY will investigate the source of the discharge and report its findings to the affected NPDES CO-PERMITTEES. When an investigation specifically identifies an NPDES CO-PERMITTEE as the source of a pollutant discharge, that CO-PERMITTEE shall be responsible for ceasing the discharge and remediating the effects of the discharge by restoring the affected MS4 in accordance with applicable standards.
6. **Dispute Resolution** when the parties sharing a MS4 cannot agree on the source of a discharge to their shared MS4, the State of Florida Department of Environmental Protection, Bureau of Watershed Management, shall be the final arbiter in determining jurisdiction and responsibility for cessation of discharge, remediation, and final resolution.
7. **Termination** Each party may terminate that particular party's participation in this Agreement without cause by providing sixty (60) days prior written notice of termination to the other parties to this Agreement. CO-PERMITTEES shall be entitled to reimbursement of monies paid to the COUNTY only in the event of termination for cause by the CO-PERMITTEE, or termination without cause by the COUNTY, and the CO-PERMITTEE shall then be entitled to such reimbursement only to the

extent that services providing information useful to the NPDES MS4 Permit have not been rendered by the COUNTY. Upon termination by any party, the NPDES MS4 Operating Permit status of that party shall be the sole responsibility of that party.

8. **Entire Agreement; Prior Agreements Superseded; Amendment to Agreement** This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by the parties hereto or their representatives.
9. **Headings** Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.
10. **Notices and Approval** Notices and approvals required or contemplated by this Agreement shall be written and personally served or mailed, registered or certified United States mail, with return receipt requested, addressed to the parties as follows:

To County:

Miami-Dade County Department of Environmental  
Resources Management  
701 NW 1 Court, Suite 400  
Miami, Florida 33136  
Attn: Department Director

To Co-Permittee: See Exhibit A – List of Co-Permittees’ Chief Executive Officers

11. **Performance by Parties** Except as otherwise provided in this Agreement, in the event of any dispute arising over the provisions of this Agreement, the parties shall proceed with the timely performance of their obligations during the pendency of any legal or other similar proceedings to resolve such dispute.
12. **Rights of Others** Nothing in the Agreement express or implied is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this Agreement.
13. **Time is of Essence** It is mutually agreed that time is of the essence in the performance of all terms and conditions to be met and performed pursuant to this Agreement.

14. **Governing Law** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the United States. The **COUNTY** and the **CO-PERMITTEE** agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.
15. **Severability** The invalidity of one or more of the phrases, sentences, clauses, or Sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement, provided the material purposes of this Agreement can be determined and effectuated.
16. **Waiver** There shall be no waiver of any right related to this Agreement unless in writing signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof . Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time, or of any other right under this Agreement.

**Section X**  
**Execution in Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, Miami-Dade County, Florida, has caused this Agreement to be executed in its name by the County Mayor or his designee, attested by the Clerk of the Board of County Commissioners and has caused the seal of the Board of County Commissioners to be hereto attached; and the Town of Cutler Bay, Florida has caused this Agreement to be executed in its name by the **Town Manager**, or his designee, attested by the Clerk of the **Town of Cutler Bay**, and has caused the seal of the Council to be hereto attached.

**TOWN OF CUTLER BAY**  
FLORIDA, BY ITS  
COUNCIL Attest:

By: \_\_\_\_\_  
Steven J. Alexander, Town Manager

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Erika Gonzalez-Santamaria, Town Clerk



**EXHIBIT A – LIST OF CONTACTS**

**MIAMI-DADE COUNTY AND CO-PERMITTEES**

**NPDES PERMIT NO. FLS 000003**

**LEAD PERMITTEE:**

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County: **Miami-Dade County**  
Department of Environmental Resources Management  
701 N.W. 1 Court, 4<sup>th</sup> Floor  
Miami, FL 33136

Primary Contact: Mr. Dorian K. Valdes, P.E.  
Assistant Director

Telephone: (305) 372-6795

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**NPDES CO-PERMITTEES**

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City: **City of Aventura**  
Address: 19200 Country Club Drive  
Aventura, FL 33180

CEO: Mr. Eric M. Soroka  
Title: City Manager

Telephone: (305) 466-8900

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City: **Bal Harbour Village**  
Address: 655 Ninety Sixth Street  
Bal Harbour, FL 33154

CEO: Mr. Alfred Treppeda  
Title: Village Manager

Telephone: (305) 866-4633

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City: **Bay Harbor Islands**  
Address: 9665 Bay Harbor Terrace  
Bay Harbor Islands, FL 33154

CEO: Mr. Greg Tindle  
Title: Town Manager

Telephone: (305) 866-6241

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City: **City of Coral Gables**  
Address: 405 Biltmore Way  
Coral Gables, FL 33134

CEO: Mr. David C. Brown  
Title: City Manager

Telephone: (305) 460-5201

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City: **Town of Cutler Bay**  
Address: 10720 Caribbean Boulevard, Suite 105  
Cutler Bay, FL 33189

CEO: Mr. Steven Alexander  
Title: Town Manager

Telephone: (305) 234-4262

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City: **City of Doral**  
Address: 8300 N.W. 53<sup>rd</sup> Street, Suite 100  
Doral, FL 33166

CEO: Mr. Sergio Purrinos  
Title: City Manager

Telephone: (305) 593-6725

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City: **Village of El Portal**  
Address: 500 N.E. 87<sup>th</sup> Street  
El Portal, FL 33138

CEO: Mr. Jason Walker  
Title: Village Manager

Telephone: (305) 795-7880

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City: **Town of Golden Beach**  
Address: One Golden Beach Drive  
Golden Beach, FL 33160

CEO: Mr. Alexander Diaz  
Title: Town Manager

Telephone: (305) 932-0744, Ext. 224

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City: **City of Hialeah Gardens**  
Address: 10001 N.W. 87<sup>th</sup> Avenue  
Hialeah Gardens, FL 33016

CEO: Hon. Yioiset de la Cruz  
Title: Mayor

Telephone: (305) 558-4114

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City: **City of Homestead**  
Address: 790 N. Homestead Blvd.  
Homestead, FL 33030

CEO: Mr. Curt Ivy  
Title: City Manager

Telephone: (305) 247-1801, Ext. 378

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City: **Indian Creek Village**  
Address: 9080 Bay Drive  
Indian Creek, FL 33154

CEO: Mr. C. Samuel Kissinger  
Title: Village Manager

Telephone: (305) 865-4121

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City: **Village of Key Biscayne**  
Address: 88 West McIntyre Street  
Key Biscayne, FL 33149

CEO: Ms. Jacqueline Menendez  
Title: Village Manager

Telephone: (305) 365-5514

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City: **Town of Medley**  
Address: 7331 N.W. 74 Street  
Medley, FL 33166

CEO: Hon. Ramon Rodriguez  
Title: Mayor

Telephone: (305) 887-9541

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City: **City of Miami Beach**  
Address: 1700 Convention Center Drive  
Miami Beach, FL 33139

CEO: Mr. Jorge Gonzalez  
Title: City Manager

Telephone: (305) 673-7620

---

City: **City of Miami Gardens**  
Address: 1515 N.W. 167th Street, Bldg. 5, Suite 200  
Miami Gardens, FL 33169

CEO: Dr. Danny O. Crew  
Title: City Manager

Telephone: (305) 653-3944

---

City: **Town of Miami Lakes**  
Address: 6853 Main Street  
Miami Lakes, FL 33014

CEO: Mr. Alex Rey

Title: Town Manager

Telephone: (305) 364-6100

---

City: **Miami Shores Village**  
Mailing Address: 10050 N.E. 2<sup>nd</sup> Avenue  
Miami Shores, FL 33138

CEO: Mr. Thomas Benton  
Title: Village Manager

Telephone: (305) 795-2207

---

City: **City of Miami Springs**  
Address: 201 Westward Drive  
Miami Springs, FL 33166

CEO: Mr. James R. Borgmann  
Title: City Manager

Telephone: (305) 805-5012

---

City: **City of North Bay Village**  
Address: 7903 East Drive  
North Bay Village, FL 33141

CEO: Ms. Jorge Forte  
Title: City Manager

Telephone: (305) 756-7171

---

City: **City of North Miami**  
Address: 776 N.E. 125 Street  
North Miami, FL 33161

CEO: Mr. Clarence Patterson  
Title: City Manager

Telephone: (305) 893-6511

---

City: **City of North Miami Beach**  
Address: 17011 N.E. 19<sup>th</sup> Avenue  
North Miami Beach, FL 33162

CEO: Mr. Gary Brown  
Title: City Manager

Telephone: (305) 948-2900

---

City: **City of Opa-locka**  
Address: 777 Sharazad Boulevard  
Opa-locka, FL 33054

CEO: Ms. Jannie Beverly  
Title: Interim City Manager

Telephone: (305) 953-2823

---

City: **Village of Palmetto Bay**  
Address: 8950 S.W. 152 Street  
Palmetto Bay, FL 33157

CEO: Mr. Charles D. Scurr  
Title: Village Manager

Telephone: (305) 238-7192

---

City: **Village of Pinecrest**  
Address: 12645 Pinecrest Parkway  
Pinecrest, FL 33156

CEO: Mr. Peter G. Lombardi  
Title: Village Manager

Telephone: (305) 234-2121

---

City: **City of South Miami**  
Address: 6130 Sunset Drive  
South Miami, FL 33143

CEO: Ms. Yvonne McKinley  
Title: City Manager

Telephone: (305) 668-2510

---

City: **City of Sunny Isles Beach**  
Address: 18070 Collins Avenue  
Sunny Isles Beach, FL 33160

CEO: Mr. John Szerlag  
Title: City Manager

Telephone: (305) 947-0606

---

City: **Town of Surfside**  
Address: 9293 Harding Avenue  
Surfside, FL 33154

CEO: Mr. W.D. Higginbotham  
Title: Town Manager

Telephone: (305) 861-4863

---

City: **City of West Miami**  
Address: 901 S.W. 62 Avenue  
West Miami, FL 33144

CEO: Ms. Yolanda Aguilar  
Title: City Manager

Telephone: (305) 266-1122

---

Agency: **Miami-Dade Expressway Authority**  
Address: 3790 N.W. 21<sup>st</sup> Street  
Miami, FL 33142

CEO: Mr. Javier Rodriguez, P.E.  
Title: Executive Director

Telephone: (305) 637-3277

---

State: **Florida Department of Transportation, District VI**  
Address: 1000 N.W. 111 Avenue  
Miami, FL 33172

CEO: Mr. John Martinez, P.E.  
Title: Secretary, District VI

Telephone: (305) 470-5246

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State: **Florida Department of Transportation, Turnpike Enterprise**  
Address: P.O. Box 9828  
Ft. Lauderdale, FL 33310-9828

CEO: Mr. James Ely  
Title: Executive Director, Turnpike Enterprise

Telephone: (954) 934-1213

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CEO = Chief Executive Officer



**ATTACHMENT "A"**

**ANNUAL MONITORING COSTS FOR MIAMI-DADE COUNTY AND  
CO-PERMITTEES**

<b>Municipality/Agency</b>	<b>Number of Outfalls</b>	<b>Percent of Total Outfalls</b>	<b>Dollar Contribution for NPDES Co-Permittees</b>
1 City of Aventura	138	3.2	\$14,400
2 Bal Harbour Village	11	0.3	1,350
3 Town of Bay Harbor Islands	57	1.3	5,850
4 City of Coral Gables	110	2.5	11,250
5 Town of Cutler Bay	69	1.5	6,750
6 City of Doral	262	6.0	27,000
7 Village of El Portal	9	0.2	900
8 Town of Golden Beach	40	0.9	4,050
9 City of Hialeah Gardens	5	0.1	450
10 City of Homestead	47	1.1	4,950
11 Indian Creek Village	16	0.4	1,800
12 Village of Key Biscayne	24	0.6	2,700
13 Town of Medley	1	0.1	450
14 City of Miami Beach	228	5.2	23,400
15 City of Miami Gardens	243	5.6	25,200
16 Town of Miami Lakes	229	5.3	23,850
17 Miami Shores Village	36	0.8	3,600
18 City of Miami Springs	4	0.1	450
19 City of North Bay Village	54	1.2	5,400
20 City of North Miami	165	3.8	17,100
21 City of North Miami Beach	230	5.3	23,850
22 City of Opa-locka	10	0.2	900
23 Village of Palmetto Bay	89	2.0	9,000
24 Village of Pinecrest	63	1.4	6,300
25 City of South Miami	12	0.3	1,350
26 City of Sunny Isles Beach	90	2.1	9,450
27 Town of Surfside	12	0.3	1,350
28 City of West Miami	5	0.1	450
29 FDOT District VI	590	13.5	60,750
30 FDOT Turnpike Enterprise	65	1.5	6,750
31 MDX	124	2.8	12,600
32 Unin. Miami-Dade County	1,323	30.3	136,350
<b>Totals</b>	<b>4,361</b>	<b>100.0</b>	<b>\$450,000</b> <sup>1</sup>

<sup>1</sup> Total Annual Cost of County and Co-Permittees' NPDES Requirements

TAB 4



Office of the Town Manager

Steven J. Alexander  
Town Manager

## MEMORANDUM

To: Honorable Mayor & Town Council  
From: Steven J. Alexander, Town Manager  
Date: May 11, 2007  
Re: Use of Law Enforcement Forfeiture Funds

### REQUEST

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE USE OF LAW ENFORCEMENT FORFEITURE FUNDS, AND PROVIDING FOR AN EFFECTIVE DATE.**

### BACKGROUND AND ANALYSIS

During fiscal year 2007, the Town of Cutler Bay received \$10,000 in forfeiture funds pursuant to a law enforcement action conducted within its boundaries. Pursuant to Florida Statute 932.7055, expenditure of these funds is limited to certain types of items and may only be expended upon request of the chief of police to the council accompanied by a written certification that the moneys will be used for an authorized purpose and only upon appropriation by the council of the municipality.

Police Commander Pichardo has requested to use some of the forfeiture monies on specialized rifles. Per Commander Pichardo:

*The Town of Cutler Bay's Policing Unit would like to purchase 5 assault style .223 caliber rifles for the Unit's Incident Containment Team. In light of the recent domestic attacks within our nation, police departments are arming their special response teams and uniform patrol officers with these special weapons. Most major incidents that have occurred, involved suspects armed with AK-47 style assault weapons. The first arriving units were unable to assist, because they were under equipped.*

*Town police personnel have already been trained and certified in the use and care of these rifles. The weapons have been tested and approved by the Miami-Dade Police Department's Firearms staff. The funding for these weapons should be borne from the Forfeiture funds that our personnel obtained through drug and currency seizures that were deposited in the LETF account that you have established.*

The specialized rifles described above would qualify as an allowed expenditure of forfeiture funds under F.S. 932.7055.

**RECOMMENDATION**

We recommend that the Council authorize the expenditure of forfeiture funds for the rifle purchase described above.

RESOLUTION NO. 07-\_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR POLICE CONFISCATION FUND EXPENDITURES IN THE AMOUNT OF \$4,334.65 TO BE FUNDED BY PROCEEDS OF CONFISCATED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statute Section 932.7055, Florida Statutes, defines the purposes and procedures to be utilized for the appropriation and expenditure of the Police Confiscation Fund; and

**WHEREAS**, Police Commander of the Town of Cutler Bay (the "Town") has determined that such needs exist as required by and in compliance with Section 932.7055, Florida Statutes; and

**WHEREAS**, such funds are available in the Police Confiscation Fund.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:**

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

**Section 2.** **Confiscation Fund Expenditures.** Based on the attached certificate of the Police Commander, the Police Confiscation Fund expenditures which are set forth in Exhibit A, are hereby approved.

**Section 3.** **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
PAUL S. VROOMAN  
Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
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.L.  
Interim Town Attorney

Moved by:  
Seconded by:

FINAL VOTE AT ADOPTION:

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

**AFFIDAVIT**

I, Richard Pichardo, Police Commander of the Town of Cutler Bay, do hereby certify that the attached proposed request for expenditures from the Town of Cutler Bay Police Confiscation Fund, complies with provisions of Section 932.7055, Florida Statutes.

Dated: \_\_\_\_\_, 2007.

\_\_\_\_\_  
RICHARD PICHARDO, Police Commander

\_\_\_\_\_  
Mitchell A. Bierman, Interim Town Attorney





TAB 5

**RESOLUTION NO. 07-\_\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING A TOWN EVENTS COMMITTEE; PROVIDING FOR AN APPOINTMENT PROCEDURE FOR MEMBERS OF THE TOWN EVENTS COMMITTEE; PROVIDING FOR DISSOLUTION OF THE COMMITTEE; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Cutler Bay (the "Town") is desirous of providing recreational, cultural and educational programs and events throughout the Town; and

**WHEREAS**, the programs and events should endeavor to meet the needs of all of its citizens; and

**WHEREAS**, the Town Council deems it beneficial to establish a Town Events Committee to advise the Town Council as to the desires of the community and to provide a forum to address the proposed and future events and community programming within the Town; and

**WHEREAS**, Councilmember Peggy R. Bell has volunteered to serve as the Council liaison to the Town Events Committee, as she has particular interest in the planning of community events for the Town.

**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.** **Creation.** The Town Council hereby creates a citizen committee, to be known as the Town Events Committee (the "Committee") to make recommendations to the Town Council regarding year round events and activities within the Town. Councilmember Peggy R. Bell is hereby appointed Council liaison to the Committee and shall report to the Council as to the Committee's activities on a regular basis. The Council liaison shall not be considered a member of the Committee, nor shall the liaison have any voting power in relation to the Committee but shall have the right to participate at all meetings. At the first meeting, the Committee shall select a Chair, Vice Chair and Secretary. It shall be the duty of the Chairperson, or his/her designee, to provide a written report to the Council within two months following the first Committee meeting. The first report shall contain a plan of action for the next year and a financial recommendation as to how the recommended events and activities will be funded. Notices and Minutes of all meetings shall be provided in writing to the Town Clerk.

**Section 3.** **Appointments.** The Committee shall consist initially of five (5) citizens of the Town who shall be chosen by each Councilmember, one (1) committee member per Councilmember, from a list of persons who volunteer by advising the Town Manager or Councilmember of their interest in serving on said Committee. Additionally, the Councilmembers shall collectively select two (2) committee members at large by majority vote. The members shall serve a one year term.

**Section 4.** **Dissolution.** The Committee shall be dissolved at such time as the Council accepts its recommendations and/or twelve (12) months from the adoption date of this Resolution.

**Section 5.** **Effective Date.** This Resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
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

Moved by:  
Seconded by:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman \_\_\_\_\_

Vice Mayor Edward P. MacDougall \_\_\_\_\_

Councilmember Peggy R. Bell \_\_\_\_\_

Councilmember Timothy J. Meerbott \_\_\_\_\_

Councilmember Ernest N. Sochin \_\_\_\_\_

TAB 6

RESOLUTION NO. 07-\_\_\_\_

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REQUESTING THE INSTALLATION OF A TRAFFIC CONTROL SIGNAL AT THE INTERSECTION OF S.W. 211<sup>TH</sup> STREET AND EAST FRONTAGE ROAD ADJACENT TO THE NORTHBOUND ENTRANCE RAMP OF THE HOMESTEAD EXTENSION OF THE FLORIDA TURNPIKE; PROVIDING FOR DISTRIBUTION OF THE RESOLUTION TO THE FLORIDA TURNPIKE AUTHORITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Cutler Bay (the "Town") has determined that significant traffic congestion exists at the intersection of S.W. 211<sup>th</sup> Street and East Frontage Road adjacent to the northbound entrance ramp to the Florida Turnpike (the "Intersection"); and

WHEREAS, the Town believes that placement of a traffic control light at the Intersection would alleviate peak hour traffic congestion, increase traffic mobility and provide a safe intersection crossing.

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

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

**Section 2. Traffic Control Signal.** The Town hereby requests that the Florida Turnpike Authority conduct a Traffic Study and appropriate the necessary funding to install a traffic control signal at the Intersection.

**Section 3. Distribution.** The Town Clerk is hereby instructed to distribute this Resolution to the appropriate departments in the Florida Turnpike Authority.

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

PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
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

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

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

TAB 7





## Office of the Mayor and Town Council

---

Paul S. Vrooman  
*Mayor*

Edward P. MacDougall  
*Vice Mayor*

Timothy J. Meerbott  
*Councilmember - Seat 1*

Ernest N. Sochin  
*Councilmember - Seat 2*

Peggy R. Bell  
*Councilmember - Seat 3*

---

## MEMORANDUM

To: Mayor and Town Council, Town of Cutler Bay

From: Councilman Ernie Sochin

cc: Steven J. Alexander, Town Manager  
Mitchell A. Bierman, Town Attorney

Date: May 1, 2007

Ref.: Resolution Expressing Support of the Haitian Immigrants Based on the "Wet-Foot/Dry-Foot" Policy

---

I wish to put forth this resolution on behalf of the Town of Cutler Bay in support of a similar resolution by The City of North Miami. I truly believe that the Haitian community deserves our support based on the totally unjust treatment of their immigrants trying to escape from one of the most oppressive countries in the Caribbean basin and the unbalanced treatment of others with similar goals.

RESOLUTION NO. 07-\_\_\_\_\_

**A RESOLUTION OF THE TOWN OF CUTLER BAY, FLORIDA, EXPRESSING SUPPORT OF THE HAITIAN IMMIGRANTS BASED ON THE “WET-FOOT/DRY-FOOT” POLICY AND URGING PRESIDENT GEORGE W. BUSH AND THE UNITED STATES CONGRESS TO RESCIND THE DISCRIMINATORY IMMIGRATION POLICIES AGAINST HAITIAN IMMIGRANTS AND CALLING FOR THE EQUAL TREATMENT OF ALL IMMIGRANTS; AND PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.**

**WHEREAS**, the Town of Cutler Bay, Florida (“Town”) is home to a vibrant and involved immigrant community; and

**WHEREAS**, the immigrants who reside in the Town are concerned about the welfare and safety of immigrants in the United States; and

**WHEREAS**, the United States immigration laws provide for disparate treatment against Haitian immigrants; and

**WHEREAS**, certain nationals are granted credible fear interviews and often paroled into the community once they touch dry land, while Haitian migrants are incarcerated indefinitely and denied due process; and

**WHEREAS**, the current immigration policy is unfair, discriminatory and inhumane; and

**WHEREAS**, the Mayor and City Council call upon the Bush Administration and Members of Congress to issue the necessary directives providing for equal treatment and due process for all immigrants, including Haitian nationals, and the immediate release of the unjustly incarcerated Haitian migrants; and

**WHEREAS**, the Mayor and City Council of the City of North Miami wish to support the application of the “wet-foot/dry-foot” immigration policy to Haitian migrants.

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

**Section 1. Recitals Adopted.** That the recitals set forth above are hereby adopted and confirmed.

**Section 2. Support for Equal Treatment of Immigrants.** The Mayor and City Council supports the application of the “wet-foot/dry foot” immigration policy to Haitian migrants and strongly encourage President George W. Bush and Members of Congress to issue the necessary directives providing for due process for all immigrants and the immediate release of the incarcerated Haitian migrants.

**Section 3. Direction to the Clerk.** The City Clerk is directed to forward a certified copy of this Resolution to the United States President, all Members of Congress of the United

States, Florida Governor Charlie Crist and all members of the Legislature of the State of Florida, all Mayors of Miami-Dade County and to the local communications media.

**Section 4. Severability.** That the provisions of this Resolution are declared to be severable and if any section, sentence, clause or phrase of this Resolution 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 Resolution but they shall remain in effect, it being the legislative intent that this Resolution shall stand notwithstanding the invalidity of any part.

**Section 5. Effective Date.** This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this \_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
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

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

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



# City of North Miami

776 Northeast 125th Street, P.O. Box 619085, North Miami, Florida 33261-9085

City Hall: (305) 893-6511  
ext. 2105

City Fax: (305) 892-9899  
email: msterilnorthmiamifl.gov

**Marie Earlande Steril**  
Councilwoman

April 13, 2007

Councilman Ernest N. Sochin  
**Town of Cutler Bay**  
10720 Caribbean Blvd Suite 105  
Cutler Bay, Florida 33189

**Re: Request for Support on Equal Treatment of All Immigrants**

Dear Councilman Sochin:

The City of North Miami and its Council members adopted Resolution R-2007-64 on April 10, 2007 supporting the application of the "wet-foot/dry-foot" immigration policy, to rescind discrimination against Haitian immigrants, and to request equal treatment and due process for all immigrants.

The City of North Miami recognizes that certain nationals are granted credible fear interviews and often paroled into the community once they touch dry land, while Haitian migrants are incarcerated indefinitely and denied due process. The immigration policy currently upheld is unfair, discriminatory and inhumane. We are asking for your immediate collaboration in adopting a similar resolution to urge President George W. Bush and the United States Congress to do likewise.

I encourage you to join me in this effort. Should you need further information, please contact me at (305) 893-6511, extension 12105.

Sincerely,

MARIE ERLANDE STERIL  
Councilwoman

MES:cse

Enclosure

c/enc: Clarence Patterson, City Manager  
V. Lynn Whitfield, City Attorney

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, EXPRESSING SUPPORT OF THE HAITIAN IMMIGRANTS BASED ON THE "WET-FOOT/DRY-FOOT" POLICY AND URGING PRESIDENT GEORGE W. BUSH AND THE UNITED STATES CONGRESS TO RESCIND THE DISCRIMINATORY IMMIGRATION POLICIES AGAINST HAITIAN IMMIGRANTS AND CALLING FOR THE EQUAL TREATMENT OF ALL IMMIGRANTS; AND PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

WHEREAS, the City of North Miami, Florida (City) is home to a vibrant and involved immigrant community; and

WHEREAS, the immigrants who reside in the City are concerned about the welfare and safety of immigrants in the United States; and

WHEREAS, the City of North Miami is a municipality governed by a legislative body which include immigrants; and

WHEREAS, the United States immigration laws provide for disparate treatment against Haitian immigrants; and

WHEREAS, certain nationals are granted credible fear interviews and often paroled into the community once they touch dry land, while Haitian migrants are incarcerated indefinitely and denied due process; and

WHEREAS, this current immigration policy is unfair, discriminatory and inhumane; and

WHEREAS, the Mayor and City Council call upon the Bush Administration and Members of Congress to issue the necessary directives providing for equal treatment and due process for all immigrants, including Haitian nationals, and the immediate release of the unjustly incarcerated Haitian migrants; and

WHEREAS, the Mayor and City Council of the City of North Miami wish to support the application of the "wet-foot/dry-foot" immigration policy to Haitian migrants.


NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

**Section 1. Support for Equal Treatment of Immigrants.** The Mayor and City Council supports the application of the "wet-foot/dry foot" immigration policy to Haitian migrants and strongly encourage President George W. Bush and Members of Congress to issue the necessary directives providing for due process for all immigrants and the immediate release of the incarcerated Haitian migrants.

**Section 2. Direction to the City Clerk.** The City Clerk is directed to forward a certified copy of this Resolution to the United States President, all Members of Congress of the United States, Florida Governor Charlie Crist and all members of the Legislature of the State of Florida, all Mayors of Miami-Dade County and to the local communications media.

**Section 3. Effective Date.** This Resolution shall take effect immediately upon adoption.

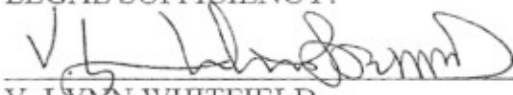
PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, this 10 day of April, 2007.

  
\_\_\_\_\_  
KEVIN A. BURNS  
MAYOR

ATTEST:

*puts for*  
  
\_\_\_\_\_  
FRANK WOLLAND  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
V. LYNN WHITFIELD  
CITY ATTORNEY

SPONSORED BY: COUNCILWOMAN MARIE ERLANDE STERIL

TAB 8

**EMERGENCY ORDINANCE NO. 07-\_\_\_\_\_**

**AN EMERGENCY ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING A SENIOR CITIZEN HOMESTEAD TAX EXEMPTION RELATING TO AD VALOREM TAXATION; PROVIDING FOR AN ADDITIONAL HOMESTEAD EXEMPTION FOR CERTAIN QUALIFYING LOW INCOME SENIOR CITIZENS TO BE APPLIED TO MILLAGE RATES LEVIED BY THE TOWN; PROVIDING FOR THE SUBMISSION OF AN ANNUAL APPLICATION AND SUPPORTING DOCUMENTATION TO THE MIAMI-DADE COUNTY PROPERTY APPRAISER; PROVIDING FOR WAIVER OF EXEMPTION; PROVIDING FOR AN ANNUAL INCREASE IN THE INCOME LIMITATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on November 7, 2006, the voters approved an amendment to the Florida Constitution providing for city and county governments to have the option of increasing the amount of homestead tax exemption to certain qualifying senior citizens; and

**WHEREAS**, the Mayor and Town Council of the Town of Cutler Bay, Florida, (the "Town") desire to authorize and implement the increased homestead exemption for qualifying senior citizens in accordance with the provisions of Section 196.075 of the Florida Statutes, as created by the 2007 session of the Florida Legislature through its enactment of HB 333; and

**WHEREAS**, HB 333 provides that the Town may adopt this ordinance as an emergency ordinance; and

**WHEREAS**, it is necessary to enact this ordinance on an emergency basis due to the time constraints imposed by HB 333 and the property of persons who would benefit from this exemption would be adversely affected by any delay inasmuch as they could be deemed ineligible for the exemption for 2007 if the instant Ordinance is not adopted and transmitted to the Miami Dade County Property Appraiser prior to June 1, 2007; and

**WHEREAS**, Section 4.4 of the Town Charter provides a process whereby ordinances may be adopted on an emergency basis.

**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. Emergency Declared.** Pursuant to Town Charter Section 4.4, an emergency hereby exists for the adoption of this ordinance, as described in the recitals set forth above which are hereby incorporated herein.

**Section 3. Senior Citizen Homestead Tax Exemption.** That the Town Code is hereby amended by creating a “Senior Citizen Homestead Tax Exemption”, to read as follows:

## **SENIOR CITIZEN HOMESTEAD TAX EXEMPTION**

### **Sec. 1. Definitions.**

For the purpose of this Article, the terms “Household” and “Household Income” shall have the same meanings as ascribed to them in Section 196.075, Florida Statutes, as may be amended from time to time.

### **Sec. 2. Additional Homestead Exemption.**

In accordance with Section 6(f), Article VII of the Florida Constitution and Section 196.075, Florida Statutes, any person 65 years of age or over who has legal or equitable title to real estate located within the Town and maintains thereon his/her permanent residence which qualifies for and receives a homestead exemption pursuant to Section 6(a), Article VII of the Florida Constitution and whose household income does not exceed the greater of \$20,000 or the income limitation amount as adjusted pursuant to Section 196.075(3), Florida Statutes, as described below, shall be entitled to make application for an additional homestead exemption of \$50,000 (the “Additional Exemption”) The Additional Exemption, if granted, shall be applicable to all ad valorem tax millage rates levied by the Town and shall apply only to ad valorem taxes levied by the Town.

### **Sec. 3. Application Process.**

Every person claiming the Additional Exemption pursuant to this Article must file an application (the “Application”) and supporting documentation (the “Documentation”) with the Miami- Dade County Property Appraiser (“Property Appraiser”) not later than March 1 of each year for which the Additional Exemption is claimed, unless otherwise provided by law. The Application shall include a sworn Statement of Household Income for all members of the Household and shall be filed on a form prescribed by the Florida Department of Revenue. On or before June 1 of each year every applicant must file supporting Documentation with the Property Appraiser, unless otherwise provided by law. The Documentation shall include copies of all federal income tax returns, wage and earnings statements, any requests for extension of time to file a return and any other documentation as required by the Property Appraiser, including documentation necessary to verify the income received by all of the members of the Household for the prior year.

**Sec. 4. Failure to file.**

Failure to file the Application and sworn statement by March 1 of any given year, as required by law, or failure to file the required supporting Documentation by June 1 of any given year, shall constitute a waiver of the Additional Exemption privilege for that year.

**Sec. 5. Availability.**

The Additional Exemption shall be available commencing with the year 2007 tax roll, and the Property Appraiser may begin accepting Applications and sworn statements for the year 2007 tax roll as soon as the appropriate forms are available from the Department of Revenue. In the event that the Miami- Dade County Property Appraiser determines that the Additional Exemption is not available for the year 2007 tax roll, then the Additional Exemption shall be available commencing with the year 2008 tax roll.

**Sec. 6. Annual increase in limitation.**

Pursuant to Sec. 196.075 (3), Florida Statutes, commencing January 1, 2001 and each January 1 thereafter, the \$20,000 annual income limitation described above shall be adjusted by the percentage of change in the average cost of living index for the calendar year immediately prior to that year. "Index" shall be the average of the monthly consumer-price index figures for the stated period, for the United States as a whole, issued by the United States Department of Labor.

**Section 4. Copy to the Property Appraiser.** The Town Clerk shall, prior to June 1, 2007, deliver a copy of this Ordinance to the Miami Dade County Property Appraiser, as requested by the Property Appraiser's letter of April 10, 2007.

**Section 5. 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 6. 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 7. Conflicts.** Any and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

**Section 8. Effective Date.** This Ordinance shall be effective immediately upon adoption.

PASSED AND ADOPTED as an Emergency Ordinance on this \_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
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

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

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

TAB 9



## MEMORANDUM

To: Honorable Mayor & Town Council  
From: Steven J. Alexander, Town Manager  
Date: May 10, 2007  
Re: Approval of additional senior homestead exemption

### REQUEST

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN INCREASE IN THE HOMESTEAD EXEMPTION FOR LOW INCOME SENIORS UP TO A MAXIMUM OF \$50,000, AUTHORIZING THE TOWN MANAGER TO TAKE ALL STEPS NECESSARY TO COMPLY WITH THE PROVISIONS OF THE LAW, AND PROVIDING FOR AN EFFECTIVE DATE.**

### RECOMMENDATION

We recommend that the attached resolution be adopted, and that the Town of Cutler Bay provide a maximum homestead exemption for low income seniors, as defined, in the amount of \$50,000.

### BACKGROUND AND ANALYSIS

The 2007 Legislature enacted Chapter 2007-4, Laws of Florida, effective April 9, 2007, and retroactive to January 1, 2007 (see HB 333). This law implements HJR 353, the joint resolution, approved by the voters in the November 2006 general election, which created an amendment to section 6 of Article VII of the State Constitution, relating to the optional additional homestead exemption for persons 65 and older.

In summary, this new law increases the additional exemption for low income seniors that cities and counties may grant from a maximum of \$25,000 to a maximum of \$50,000. Under current law, counties and municipalities must deliver a copy of the ordinance providing for the additional senior exemption to the property appraiser no later than December 1 prior to the year the ordinance will take effect. For the 2007 tax roll only, a county or municipality that has adopted the exemption for the 2007 tax year may increase the exemption by delivering a copy of the adopted ordinance to the property appraiser by June 1, 2007. While the new legislation specifically addresses increases to the optional

senior homestead exemption, we understand from the Town Attorney staff that the County Property Appraiser is accepting adopting ordinances by June 1<sup>st</sup> as well.

Pursuant to the new legislation, the additional homestead exemption would apply for any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, who has attained the age 65, and whose household income does not exceed \$20,000.

Based on preliminary calculations by County staff using 2006 data, the impact on Cutler Bay of enacting this provision would be approximately \$28,000 of reduced property tax revenue.

ORDINANCE NO. 07-\_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING A SENIOR CITIZEN HOMESTEAD TAX EXEMPTION RELATING TO AD VALOREM TAXATION; PROVIDING FOR AN ADDITIONAL HOMESTEAD EXEMPTION FOR CERTAIN QUALIFYING LOW INCOME SENIOR CITIZENS TO BE APPLIED TO MILLAGE RATES LEVIED BY THE TOWN; PROVIDING FOR THE SUBMISSION OF AN ANNUAL APPLICATION AND SUPPORTING DOCUMENTATION TO THE MIAMI-DADE COUNTY PROPERTY APPRAISER; PROVIDING FOR WAIVER OF EXEMPTION; PROVIDING FOR AN ANNUAL INCREASE IN THE INCOME LIMITATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on November 7, 2006, the voters approved an amendment to the Florida Constitution providing for city and county governments to have the option of increasing the amount of homestead tax exemption to certain qualifying senior citizens; and

**WHEREAS**, the Mayor and Town Council of the Town of Cutler Bay, Florida (the "Town") desire to authorize and implement the increased homestead exemption for qualifying senior citizens in accordance with the provisions of Section 196.075 of the Florida Statutes, as created by the 2007 session of the Florida Legislature through its enactment of HB 333; and

**WHEREAS**, pursuant to Section 4.4 of the Town Charter the Town adopted an emergency ordinance creating the Senior Homestead Tax Exemption; and

**WHEREAS**, pursuant to Section 4.4 of the Town Charter this ordinance reenacts the previously adopted emergency ordinance related to the same subject under regular procedures.

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

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

**Section 2. Senior Citizen Homestead Tax Exemption.** That the Town Code is hereby amended by creating a "Senior Citizen Homestead Tax Exemption", to read as follows:

**SENIOR CITIZEN HOMESTEAD TAX EXEMPTION**

**Sec. 1. Definitions.**

For the purpose of this Article, the terms "Household" and "Household Income" shall have the same meanings as ascribed to them in Section 196.075, Florida Statutes, as may be amended from time to time.

**Sec. 2. Additional Homestead Exemption.**

In accordance with Section 6(f), Article VII of the Florida Constitution and Section 196.075, Florida Statutes, any person 65 years of age or over who has legal or equitable title to real estate located within the Town and maintains thereon his/her permanent residence which qualifies for and receives a homestead exemption pursuant to Section 6(a), Article VII of the Florida Constitution and whose household income does not exceed the greater of \$20,000 or the income limitation amount as adjusted pursuant to Section 196.075(3), Florida Statutes, as described below, shall be entitled to make application for an additional homestead exemption of \$50,000 (the "Additional Exemption") The Additional Exemption, if granted, shall be applicable to all ad valorem tax millage rates levied by the Town and shall apply only to ad valorem taxes levied by the Town.

**Sec. 3. Application Process.**

Every person claiming the Additional Exemption pursuant to this Article must file an application (the "Application") and supporting documentation (the "Documentation") with the Miami- Dade County Property Appraiser ("Property Appraiser") not later than March 1 of each year for which the Additional Exemption is claimed, unless otherwise provided by law. The Application shall include a sworn Statement of Household Income for all members of the Household and shall be filed on a form prescribed by the Florida Department of Revenue. On or before June 1 of each year every applicant must file supporting Documentation with the Property Appraiser, unless otherwise provided by law. The Documentation shall include copies of all federal income tax returns, wage and earnings statements, any requests for extension of time to file a return and any other documentation as required by the Property Appraiser, including documentation necessary to verify the income received by all of the members of the Household for the prior year.

**Sec. 4. Failure to file.**

Failure to file the Application and sworn statement by March 1 of any given year, as required by law, or failure to file the required supporting Documentation by June 1 of any given year, shall constitute a waiver of the Additional Exemption privilege for that year.

**Sec. 5. Availability.**

The Additional Exemption shall be available commencing with the year 2007 tax roll, and the Property Appraiser may begin accepting Applications and sworn statements for the year 2007 tax roll as soon as the appropriate forms are available from the Department of Revenue. In the event that the Miami- Dade County Property Appraiser determines that the Additional Exemption is not available for the year 2007 tax roll, then the Additional Exemption shall be available commencing with the year 2008 tax roll.

**Sec. 6. Annual increase in limitation.**

Pursuant to Sec. 196.075 (3), Florida Statutes, commencing January 1, 2001 and each January 1 thereafter, the \$20,000 annual income limitation described above shall be adjusted by the percentage of change in the average cost of living index for the calendar year immediately prior to that year. "Index" shall be the average of the monthly consumer-price index figures for the stated period, for the United States as a whole, issued by the United States Department of Labor.



**Section 3. Copy to the Property Appraiser.** The Town Clerk shall deliver a copy of this Ordinance to the Miami Dade County Property Appraiser.

**Section 4. 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 5. 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 6. Conflicts.** Any and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

**Section 7. Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this \_\_\_\_ day of \_\_\_\_\_, 2007.

PASSED AND ADOPTED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
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

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman \_\_\_\_\_

Vice Mayor Edward P. MacDougall \_\_\_\_\_

Councilmember Peggy R. Bell \_\_\_\_\_

Councilmember Timothy J. Meerbott \_\_\_\_\_

Councilmember Ernest N. Sochin \_\_\_\_\_

TAB 10



## Planning & Zoning Department

R. Don O'Donniley, AICP  
Planning Director

# MEMORANDUM

To: Steven Alexander, Town Manager

From: Don O'Donniley, AICP, Planning Director

Date: May 10, 2007

Re: SIRE USA Corporation  
Rezoning of Property from AU (Agriculture) to RU-1 (Single Family Residential)  
Located West of SW 85<sup>th</sup> Avenue between SW 198<sup>th</sup> and SW 199<sup>th</sup> Streets

Application No.: 07-04

## REQUEST

Rezoning of property from AU (Agricultural) to RU-1 (Single Family Residential)

### **Parcel Information and Legal Description:**

The request encompasses what is now six legally platted parcels totaling approximately 41,885 square feet and bounded by SW 198<sup>th</sup> Street to the north, theoretical SW 85<sup>th</sup> Avenue to the east, SW 199<sup>th</sup> Street to the south and the east property line of Saint Timothy Lutheran Church.

Or as further described:

Lots 10, 11, 12, 22, 23 and 24 of Block 1, of "Silver Pines" according to the plat thereof as recorded in Plat Book 25 at Page 45 of the Public Records of Miami-Dade County, Florida.

## **BACKGROUND AND ANALYSIS:**

### **Background**

SIRE USE Corporation filed a request for a District Boundary Change (Rezoning) from AU to RU-1 for the subject parcels on March 1, 2007.

The surrounding properties are zoned RU-1, except to the west on the rest of the block which is zoned AU and is St. Timothy Lutheran Church facility. Single family homes have been developed on parcels to the northeast, east and southeast. The property to the south is currently undeveloped while the property to the north is currently an FPL transmission facility and which is heavily buffered with vegetation.

### **Analysis**

**1. Consistency with the Comprehensive Development Master Plan**

The Adopted 2005 and 2015 Land Use Plan designates the subject properties as **Low Density Residential**. This density range is typically characterized by detached single family residential units. Clustering, and a variety of housing types may, however, be authorized. The residential densities allowed in this category shall range from a minimum of 2.5 to a maximum of 6.0 dwelling units per gross acre.

This application is **consistent** with the Town Comprehensive Development Master Plan and the Land Use designation of the surrounding properties.

**2. Zoning**

The following Sections of the Town Zoning Code are relevant to this request.

**Chapter 33 Zoning Code of the Town of Cutler Bay**

**Article XIV. RU-1, SINGLE-FAMILY RESIDENTIAL DISTRICT**

**Section 199. Uses permitted.**

No land, body of water and/or structure shall be used or permitted to be used and no structure shall be hereafter erected, constructed, moved, reconstructed, structurally altered or maintained for any purpose in a RU-1 District which is designed, arranged or intended to be used or occupied for any purpose other than the following, unless otherwise specifically provided herein:

- (1) Every use as a one-family residence, including every customary use not inconsistent therewith, including a private garage.

\* \* \*

Note: Other provisions of this zoning district would not change but the request is consistent with the RU-1 Single-Family District

**Section 41. Setbacks--Application of tables.**

The minimum lot area and dimensions of sites and setbacks shown by tables in this article shall apply to the districts indicated.

Front building lines for all structures shall be set back from the nearest highway right-of-way according to sections on official right-of-way plan and minimum widths and tables in this article. The setback from all side and rear property lines shall be not less than ten (10) percent of the average width of the lot, provided such setback is not less than five (5) feet, but in no case shall such setback requirements exceed seven and one-half (7 1/2) feet, except where greater distance is required for a specified district by tables in this article and for corner lots.

**Section 49. Table of minimum widths, area of lots; maximum lot coverage, and minimum building sizes.**

The minimum width and area of lots, the maximum lot coverage, and minimum building sizes shall be in effect for the districts enumerated in the following table:

TABLE INSET:

<i>District</i>	<i>Families</i>	<i>Min. Width</i>	<i>Min. Lot Area (Sq. Ft.)</i>	<i>Max. Lot Coverage (% of Lot Area)</i>	<i>Min. Bldg. Size (Cu. Ft.)</i>
RU-1	1	New sub.-75'	7,500	35% for subdivisions platted on or before March 8, 2002; 40% for subdivisions platted after March 8, 2002	8,500

Section 50. Table of setback lines in residential and estate districts.

The minimum setback distances and spacing requirements in residential and estate districts shall be as follows:

TABLE INSET:

<i>District/Families</i>	<i>Front (Ft.)</i>	<i>Rear (Ft.)</i>	<i>Between Buildings (Ft.)</i>	<i>Interior Side (Ft.)</i>	<i>Side Street (Ft.)</i>
RU-1: One	25 for subdivisions platted on or before March 8, 2002; for subdivisions platted after March 8, 2002, 15 for 50% of the lineal footage of the width of the house and 25 for balance; except 20 for attached garages	25 for subdivisions platted on or before March 8, 2002; for subdivisions platted after March 8, 2002, 15 for 50% of the lineal footage of the width of the house and 25 for balance	--	10% lot width min.--5' max.--7 1/2'	15

Section 311. Town of Cutler Bay Town Council – Authority and Duties

[The following summarizes the intent of this Section as it relates to factors in considering a rezoning]

The Town Council shall take into consideration, among other things, the extent to which:

(1) The development permitted by the application, if granted, conforms to the Comprehensive Development Master Plan for the Town of Cutler Bay, Florida; is consistent with applicable area or neighborhood studies or plans, and would serve a public benefit warranting the granting of the application at the time it is considered;

***The application is consistent with the CDMP.***

(2) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the environmental and natural resources of the Town of Cutler Bay, including consideration of the means and estimated cost necessary to minimize the adverse impacts; the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the natural and human environment; and whether any irreversible or irretrievable commitment of natural resources will occur as a result of the proposed development;

***The approval of this request will not have an adverse impact on the environmental and natural resources of the Town.***

(3) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the economy of the Town of Cutler Bay;

***The approval of this request will not have an adverse impact on the economy of the Town.***

(4) The development permitted by the application, if granted, will efficiently use or unduly burden water, sewer, solid waste disposal, recreation, education or other necessary public facilities which have been constructed or planned and budgeted for construction;

***The approval of this request will not have an adverse impact on the necessary public facilities.***

(5) The development permitted by the application, if granted, will efficiently use or unduly burden or affect public transportation facilities, including mass transit, roads, streets and highways which have been constructed or planned and budgeted for construction, and if the development is or will be accessible by public or private roads, streets or highways.

***The approval of this request will not have an adverse impact on the necessary public transportation facilities.***

This request is **consistent** with the current zoning of the surrounding properties.

At the time of application for site development the applicant shall be required to adhere to the minimum lot size requirements, unless a variance from the Town Code is requested and approved. Currently, based on the parcel size of 41,885 square feet, approximately 5 dwelling units would be allowed.

### **3. Environmental Resources Management**

Potable Water Supply and Wastewater Disposal:

Public water and sanitary sewers can be made available to the subject property. Therefore, connection of the proposed development to said systems shall be required in accordance with Code requirements.

Existing public water and sewer facilities and services meet the Level of Service (LOS) standards set forth in the Comprehensive Development Master Plan. Furthermore, the proposed development order, if approved, will not result in a reduction in the LOS standards subject to compliance with the conditions required by DERM for this proposed development order.

Notwithstanding the foregoing, in light of the fact that the County's sanitary sewer system has limited sewer collection, transmission, and treatment capacity, no new sewer service connections can be permitted, unless there is adequate capacity to handle additional flows. Consequently, final development orders for this site may not be granted if adequate capacity in the system is not available.

Stormwater Management:

A Surface Water Management Individual Permit from DERM shall be required for the construction and operation of the required surface water management system. This permit shall be obtained prior to site development, final plat or public works approval of paving and drainage plans. The applicant shall contact DERM (305-372-6789) for further information regarding permitting procedures and requirements.

All stormwater shall be retained on site utilizing properly designed seepage or infiltration drainage structures. Drainage must be provided for the 5-year/1-day storm event with full on-site retention

of the 25-year/3-day storm. Pollution Control devices shall be required at all drainage inlet structures.

Site grading and development shall comply with the requirements of Chapter 11C of the Code.

Any proposed development shall comply with County and Federal flood criteria requirements. The proposed development order, if approved, will not result in a reduction in LOS standards for flood protection set forth in the CDMP subject to compliance with the conditions required by DERM for this proposed development order.

Wetlands:

Although the subject property is located within a designated wetland basin, the subject property does not contain jurisdictional wetlands as defined by Chapter 24-5 of the Code. Therefore a Class IV Wetland Permit will not be required.

The applicant is advised that permits from the Army Corps of Engineers (305-526-7181), the Florida Department of Environmental Protection (561-681-6600) and the South Florida Water Management District (800-432-2045) may be required for the proposed project. It is the applicant's responsibility to contact these agencies.

Tree Preservation:

The subject property contains tree resources; Section 24-49 of the Code requires the preservation of tree resources. A Town tree removal permit is required prior to the removal or relocations of any trees. A tree survey showing all the tree resources on-site will be required prior to reviewing the tree removal permit application. The applicant is advised to contact DERM staff for permitting procedures and requirements prior to development of site and landscaping plans.

Concurrency Review Summary:

A concurrency review for this application has been completed and it has been determined that the same meets all applicable LOS standards for an initial development order, as specified in the adopted CDMP for potable water supply, wastewater disposal and flood protection. Therefore, the application has been approved for concurrency subject to any comments and conditions contained herein.

This concurrency approval does not constitute a final concurrency statement and is valid only for this initial development order as provided for in the adopted methodology for concurrency review. Additionally, this approval does not constitute any assurance that the LOS standards would be met by any subsequent development order applications concerning the subject property.

In summary, the application meets the minimum requirements of Chapter 24 of the Code.

#### **4. Public Works**

Public Works has no objection to this application.

This land requires platting in accordance with Chapter 28 of the Miami-Dade County Code. The road dedications and improvements will be accomplished thru the recording of a plat.

The application meets the traffic concurrency criteria for an initial development order. It will generate approximately 3 vehicle trips in the PM daily peak hour period. The traffic distribution of these trips to the adjacent roadways reveals that the addition of these trips does not exceed the acceptable level of service of the following roadways:

<u>Station</u>	<u>Location</u>	<u>LOS</u>	<u>LOS</u>
----------------	-----------------	------------	------------



		<u>(Present)</u>	<u>(w/ Appl.)</u>
9174	SW 87 Ave. s/o SW 184 St.	E	E
9592	Old Cutler Rd. sw/o SW 184 St.	F	F
9594	Old Cutler Rd. sw/o Franjo Rd.	F	F
9114	Caribbean Blvd. e/o HEFT	F	F

This request constitutes an Initial Development Order only, and one or more traffic concurrency determinations will subsequently be required before development will be permitted.

## **5. Schools**

Policy 1.6 of the Educational Element of the Town's Comprehensive Development Master Plan states that: "School Board comments shall be sought and considered on comprehensive plan amendments and other land use decisions which could impact the school district, as provided for in Chapter 236.193(2) F.S."

Also, pursuant to the state-mandated and School Board approved Interlocal Agreement, local government, the development community and the School Board are to collaborate on the options to address the impact of proposed residential development on public schools where the proposed development would result in an increase in the schools' FISH percent utilization (permanent and relocatable), in excess of 115%. This figure is to be considered only as a review threshold and shall not be construed to obligate the governing agency to deny a development.

Additionally, at its April 13, 2005 meeting the Board approved School District criteria that would allow District staff to make recommendations on residential zoning applications that impact public schools beyond the 115% of FISH capacity threshold (Review Criteria).

In accordance with the Review Criteria established by the Board, the School District would request that the applicant continue to meet to mitigate the impacts of the proposed rezoning.

### **RECOMMENDATION:**

**Approval, subject to the impact requirements of the Miami-Dade County School Board.**

### **CONDITIONS:**

None

### **Attachments**

ORDINANCE NO. 07-\_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, GRANTING THE REQUEST OF SIRE USA CORP. FOR A REZONING FROM AU (AGRICULTURAL) TO RU-1 (SINGLE-FAMILY RESIDENTIAL) FOR PROPERTY GENERALLY LOCATED SOUTH OF S.W. 198TH STREET, NORTH OF S.W. 199TH STREET, EAST OF S.W. 87TH AVENUE, AND WEST OF S.W. 85TH AVENUE, AS LEGALLY DESCRIBED IN EXHIBIT "A," CONSISTING OF APPROXIMATELY 41,885 SQ. FT.; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Chapter 33 "Zoning," of the Town Code of Ordinances (the "Town Code"), Sire USA Corp. (the "Applicant") has applied to the Town of Cutler Bay (the "Town"), for approval of a rezoning from AU (Agricultural) to RU-1 (Single-Family residential), for the properties legally described in Exhibit "A" (the "Property") (Application 07-04); and

**WHEREAS**, staff recommended approval of the requested rezoning in its report, dated May 9<sup>th</sup>, 2007; and

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

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

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

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

**Section 1. Findings.** The foregoing Whereas clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

**Section 2. Approval of Rezoning.** Pursuant to Chapter 33 "Zoning" of the Town Code, the Property, legally described in Exhibit "A," is hereby rezoned from AU (Agricultural) to RU-1 (Single-Family Residential).

**Section 3. Recording.** The Town, or the Applicant if so requested by the Town Clerk, shall record this Ordinance at the Applicant's sole expense in the Public Records of Miami-Dade County, Florida.

**Section 4. Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

PASSED AND ADOPTED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
Town Clerk

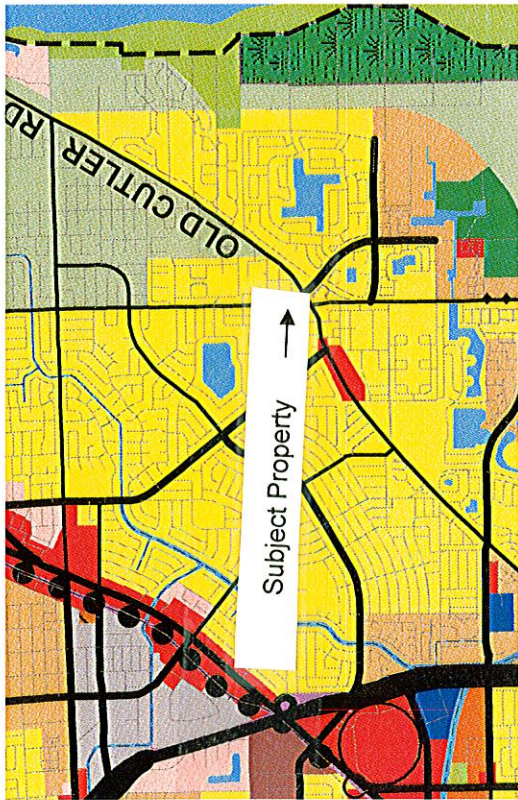
APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE  
SOLE USE OF THE TOWN OF CUTLER BAY:

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

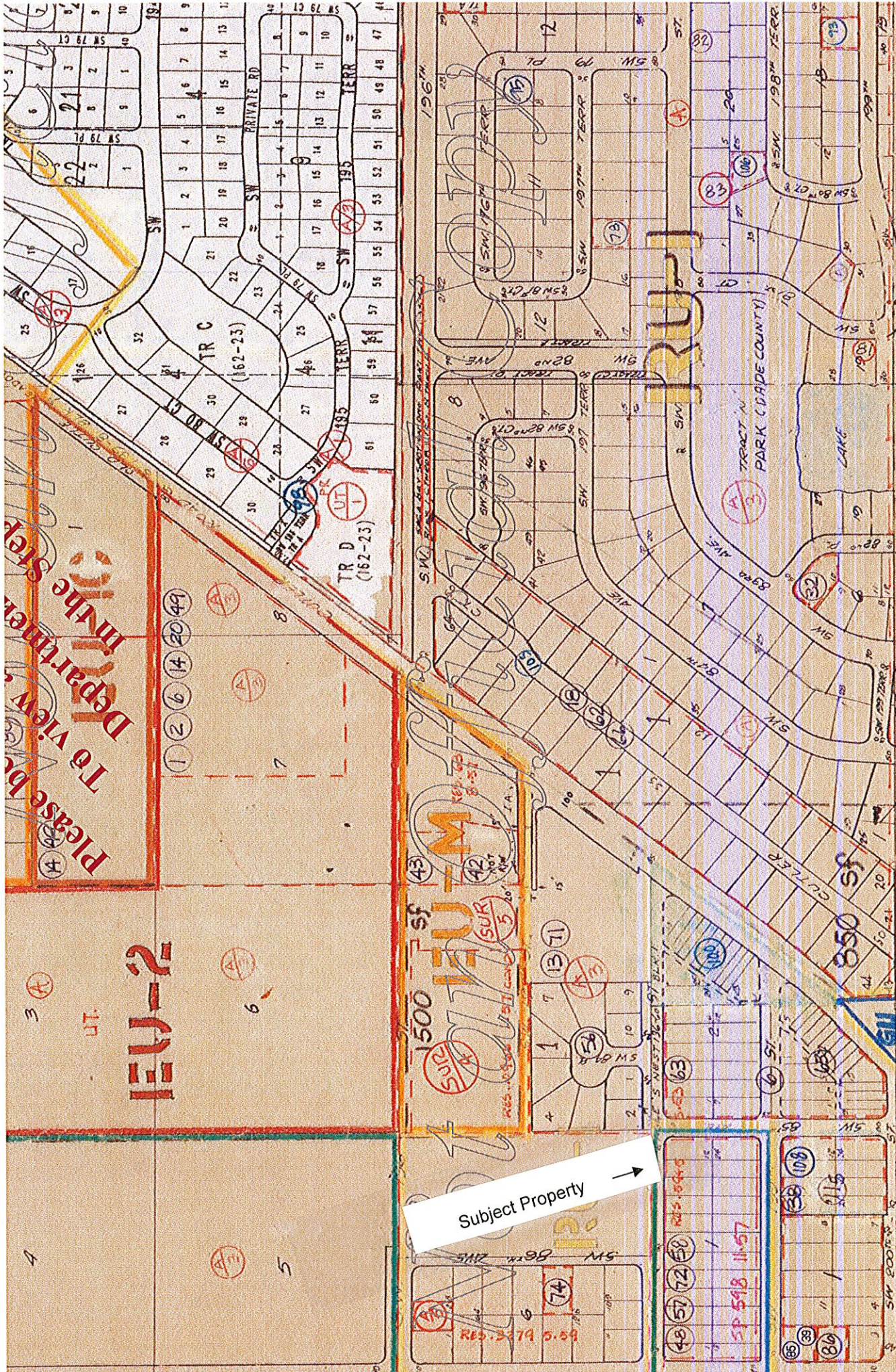
Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

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







Please bring this to view at the Department of Public Safety

**EU-2**

Subject Property →

UT

1 2 6 14 20 49

1500 SF

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SP 598 11-57

RES. 3279 5-59

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**Hearing Number:** 07-04

**Applicant Name:** SIRE USA Corporation

**Location:** West of SW 85<sup>th</sup> Avenue between SW 198<sup>th</sup> and 199<sup>th</sup> Streets

**Size of property:** +/- 41,885 square feet

**Request:** Rezoning from AU (Agricultural) to RU-1 (Single Family Residential)

**Hearing Location:** Cutler Ridge Park, 10100 SW 200<sup>th</sup> Street

**Hearing Date:** May 16, 2007

**Hearing Time:** 7:00 p.m.

Plans are on file with the Town and may be examined at Town Hall. These plans may be modified at the public hearing.

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TAB 11



Mitchell A. Bierman  
*Interim Town Attorney*

Chad S. Friedman  
*Interim Town Attorney*

## MEMORANDUM

To: The Honorable Mayor and Town Council

Cc: Steven J. Alexander, Town Manager  
R. Don O'Donniley, Planning Director

From: Mitchell Bierman, Interim Town Attorney  
Scott A. Robin, Interim Town Attorney

Date: May 10, 2007

Re: Cutler Bay Wireless Telecommunications Facilities Ordinance

The Town of Cutler Bay proposes a Wireless Telecommunications Facilities Ordinance ("Ordinance") and amends the Town Code to establish general guidelines for the placement of telecommunication towers and antennas in the Town to minimize their potential adverse impacts on the community. The Ordinance requires compliance with local, state and federal regulations including the Florida Building Code. Additionally, the Ordinance provides definitions, application and co-location requirements. The Ordinance is discussed in detail below.

- **Applicability** – While the Ordinance will apply to all future towers and antennas, it subjects pre-existing towers and antennas to specific requirements set forth in the Ordinance. Additionally, all pending applications are subject to any and all requirements under the Ordinance.
- **Definitions** - The Ordinance contains definitions to maintain consistency with current law and technology. The definitions include terms that provide enhanced understanding of the technology, construction, and public safety involved in the telecommunications industry.
- **Application Requirements** – The Ordinance sets forth an application process for the construction, installation, or placement of any Wireless Communications Facilities, including towers, antennas and equipment shelters within the Town. It enhances the ability of the providers of Telecommunications Services to provide such services to the community through an efficient and timely Application process. Such Application requirements include, but are not limited to, whether a proposed facility is a principal or accessory use, lot size, inventory of existing sites, engineering report, and certification that the proposed facility will not interfere with Public Safety Telecommunications.

- **Fees** – The Ordinance requires an Application for placement of a tower and antenna in the Town be accompanied by a non-refundable filing fee for processing.
- **Review Process** – The Planning Director or his/her designee is responsible for reviewing Applications for consistency with the Town’s comprehensive plan, land development regulations including this Ordinance, and compatibility of the proposed tower or antenna with the surrounding neighborhood. The Town must also hold a workshop for site plan approval. Upon review, the Planning Director must issue a recommendation to the Town Council. The Council considers such recommendation as well as additional factors presented by the Applicant or Town staff. The Council has the authority to approve or deny any Application that incorporates the factual basis for the Council’s decision.
- **Development Standards** – The Ordinance sets forth the placement and size restrictions for towers, antennas mounted on towers, structures or rooftops, utility or light poles, and equipment cabinets. The Ordinance also provides collocation incentives; hierarchy of siting alternatives and preferred zoning districts; public safety telecommunications interference standards; aesthetics to limit adverse impact on adjacent properties; lighting; setbacks; separation; height; noise; modifications or reconstruction of existing tower and antennas; signs; security fencing; licenses; parking; and outdoor storage requirements.
- **Removal of Abandoned Towers and Antennas** – The Ordinance attempts to minimize potential damage to property from towers and antennas by requiring any antenna or tower that is not operated for a continuous period of twelve (12) months to be considered abandoned. If an owner fails to remove any and all equipment, the Town may remove the equipment at the owner’s expense.
- **Protection of the Town and Residents** – The Town shall not enter into any lease agreement with a provider for use of Town-owned property unless the Town obtains indemnification and insurance from such provider. The Ordinance releases the Town from and against all liability and responsibility in or arising out of the construction, operation or repair of towers and antennas. An operator and its contractor or subcontractors engaged in work on the operator’s behalf, shall maintain comprehensive general liability.
- **Security Fund** – The Ordinance provides for a Security fund requiring providers establish a cash security fund or provide the Town with an irrevocable letter of credit in the same amount to secure the payment of removing an antenna or tower that has been determined to be abandoned or is not in compliance with the Ordinance. The amount to be provided for each tower is \$25,000; the amount for each antenna is \$5,000.

**ORDINANCE NO. 07-\_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA COMPREHENSIVELY UPDATING AND REVISING CHAPTER 33 "ZONING" ARTICLE IV "TOWERS, POLES AND MASTS" RELATING TO WIRELESS SUPPORTED SERVICE FACILITIES; AMENDING THE LIST OF THE PERMITTED USES IN THE RU-3M, RU-4, RU-4L, RU-4M ZONING DISTRICTS RELATING TO WIRELESS SUPPORTED SERVICE FACILITIES; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Congress of the United States adopted the Telecommunications Act of 1996, providing federal regulation of wireless communications, a technology of wireless voice, video and data communications systems rapidly becoming available, requiring land use facilities that impact planning and zoning concerns of the Mayor and Town Council of the Town of Cutler Bay ("Town") and throughout the United States; and

**WHEREAS**, the Town finds that it is in the public interest to permit the siting of wireless telecommunications towers and antennas within its municipal boundaries; and

**WHEREAS**, the Town has received and expects to receive additional requests from telecommunications service providers to site wireless telecommunications towers and antennas within the municipal boundaries and is authorized by federal, state, and local law to regulate the siting of such telecommunications towers and antennas; and

**WHEREAS**, it is the intent of the Town to provide reasonable accommodation to, and to promote and encourage fair and reasonable competition among telecommunications service providers or providers of functionally equivalent services on a neutral and non-discriminatory basis; and

**WHEREAS**, the purpose and intent of this Ordinance is to establish appropriate locations in priority order of use, and, further, to develop the requirements and standards to permit the siting of wireless telecommunications towers and antennas within the municipal boundaries, with due consideration to the Town's zoning map, existing land uses and environmentally sensitive areas, including hurricane preparedness areas; and

**WHEREAS**, it is the intent of this Ordinance to encourage collocation among wireless telecommunications service providers and to enhance the ability of the providers to provide such services to the Town through an efficient and timely application process pursuant to Section 365.172, Florida Statutes, as amended; and

**WHEREAS**, any antenna and related equipment to service the antenna that is being collocated on an existing above-ground structure is not subject to land development regulation

pursuant to Section 163.3202, Florida Statutes, provided the height of the existing structure is not increased; and

**WHEREAS**, through these regulated standards, it is the intent of the Town to protect and promote the health, safety and general welfare of its citizens and residents, the traveling public and others in such manner that will minimize both the number of telecommunications towers and antennas and the adverse visual impact and other potential damage by these facilities by encouraging collocation and shared use of new and pre-existing telecommunications facilities, through incentives, careful design, engineering siting, landscape screening and innovative camouflaging techniques; and

**WHEREAS**, the Town Council, in its capacity as the local planning agency, has reviewed this Ordinance and recommends approval; and

**WHEREAS**, the Town finds that these changes are consistent with the Miami-Dade County's Comprehensive Development Master Plan, which now functions as the Town's Comprehensive Plan; and

**WHEREAS**, the Town finds it is in the best interest of the Town to amend the wireless provisions and procedures contained in the Miami-Dade County Code as made applicable to the Town by Section 8.3 of the Town Charter.

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

**Section 1.** Findings. The foregoing WHEREAS clauses are hereby adopted and incorporated herein as if fully set forth in this Section.

**Section 2.** Repeal of Sections 33-63.2 and 33-63.3 of the Town Code of Ordinances. Sections 33-63.2 "Wireless supported service facilities" and 33-63.3 "Co-location" of the Town Code of Ordinances are hereby repealed in their entirety as follows:

**~~Sec. 33-63.2 Wireless supported service facilities.~~**

~~(a) Permitted Districts and Criteria for Antennas.—~~

~~(1) Permitted Districts. Antennas used as part of a Wireless Supported Service Facility which are mounted on existing Structures shall be permitted in the following zoning districts subject to the criteria outlined below.—~~

~~(A) In hotels, motels, and apartment hotels in an RU-4A district; in all RU-5, RU-5A, OPD, in all business and industrial districts.—~~

~~(B) On multi-family residential buildings in an RU-4L, RU-4M, RU-4 and RU-4A district.—~~

~~(C) In any district on any structure lawfully being used for any of the following purposes, where the site is located at the intersection of section line roads, a transition area, or abutting a major roadway as depicted on the Land Use Plan Map of the Comprehensive Development Master Plan, or section center: public or private/nonpublic educational facilities on a site of 10 or more gross acres, hospitals, race tracks, stadiums, or public or private utilities.—~~

~~(2) *Criteria.* Antennas may be located on existing Structures with a height of thirty (30) feet or greater, so long as the Antennas do not extend (i) more than thirteen (13) feet above the highest point of the roof of a building as measured in accordance with the provisions of Section 33-1(17) or (ii) the highest point on the Structure as measured from the average elevation of the finished building site to the top of the structure.~~

~~(A) Except for Cylinder Type Antennas, Antennas shall be screened from view or wall mounted and shall not exceed nine (9) Sectors.~~

~~(B) Where wall mounted, Antennas shall not extend above the wall where located and shall be painted to match the supporting Structure. Wall mounted Antennas shall be limited to one (1) Sector per building elevation.~~

~~(C) Wall mounted Antennas not exceeding the height of the wall where located and painted to match the supporting Structure will be allowed on rooftop elevator bulkheads, rooftop enclosures for mechanical equipment, and rooftop Accessory Wireless Equipment Buildings in addition to (b)(2)(i), above, but shall be limited to one (1) Sector per elevation on the particular rooftop structure where they are placed.~~

~~(D) Where roof mounted:~~

~~1. Requests to install roof mounted Antennas shall be accompanied by a line of sight analysis for each building elevation. The line of sight analysis shall be as provided for in the sketches shown below as Figures 33-63.2(b)(2)iii and iv. In conducting such analysis, the width of the right-of-way shall be equal to the width of the right-of-way fronting the particular elevation.~~

**Figure 33-63.2(b)(2)iii**

**Figure 33-63.2(b)(2)iv**

~~2. Any Antennas or portion thereof above the line of sight will require screening. All required screening used in conjunction with such rooftop installations shall be architecturally compatible and harmonious in color and materials with the supporting structures and any existing or approved screening on the structure. Screening materials at corners shall be the same length and height on all corners.~~

**Section 3. Creation of the Town Wireless Telecommunications Facilities Ordinance.** The Town's Wireless Telecommunications Facilities Ordinance is hereby created as follows:

### **SECTION 33-63.2. INTENT.**

The regulations and requirements establish general guidelines for the siting of wireless telecommunications towers and antennas and are intended to accomplish the following purposes:

(a) protect and promote the public health, safety and general welfare of the residents of the Town;

(b) minimize residential areas and land uses from potential adverse impacts of towers and antennas;

(c) encourage the location of towers in non-residential areas and to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;

(d) minimize the total number of towers throughout the community by strongly encouraging the collocation of antennas on new and Pre-Existing Tower sites as a primary option rather than construction of additional single-use telecommunications towers;

(e) encourage users of telecommunications towers and antennas to configure them in a way that minimizes the adverse visual impact of the telecommunications towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques;

(f) minimize potential damage to property from telecommunications towers and telecommunications facilities by requiring such structures be soundly designed, constructed, modified and maintained; and

(g) enhance the ability of the providers of telecommunications services to provide such services to the community through an efficient and timely application process. In furtherance of these goals, the Town shall at all times give due consideration to the Town's master telecommunications plan, comprehensive plan, zoning map, existing land uses, and environmentally sensitive areas, including hurricane preparedness areas, in approving sites for the location of telecommunications towers and antennas.

### **SECTION 33-63.3. GENERAL RULES OF INTERPRETATION AND DEFINITIONS.**

(a) *Interpretation.* In the absence of definitions, the standard dictionary meaning shall be utilized. In any event, the planning director shall have the right to interpret the terms contained in this subdivision. In construing the meaning of the subdivision, the following rules shall apply:

- (1) Words used in the present tense also include the future tense.
- (2) Words used in the singular number also include the plural and vice-versa.
- (3) The word "shall" is mandatory. The word "may" is permissible.
- (4) The word "development" shall refer also to "project" and the area in which a project takes place.
- (5) The words "used" or "occupied" shall be construed to include arranged, designed, constructed, altered, converted, rented, leased or intended to be used, intended to be occupied.
- (6) The word "lot" shall refer also to plot, parcel, tract and premises.
- (7) The word "building" shall refer also to structure, mobile home, dwelling and residence.
- (8) The words "area" and "district" may indicate and include the meaning "zone."
- (9) Except where specified, the provisions of this article shall be construed to mean the minimum standards, requirements and regulations adopted in pursuit of the purposes of this subdivision.

(b) *Definitions.* As used in this Ordinance, the following words, terms and phrases, when used in this subdivision shall have the meanings set forth below, and for the purpose of this Ordinance shall control over any other definitions contained in the Town's Code of Ordinances. Words not defined shall be given their common and ordinary meaning.

**“Accessory Use”** means a secondary use including a use that is not related to, incidental to, subordinate to and subservient to the main use of the property on which an antenna and/or telecommunications tower is sited.

**“Alternative Tower Structure”** means a design mounting structure that camouflages or conceals the presence of an antenna or telecommunications tower, for example, flag poles, man made trees, clock towers, bell steeples, light poles, utility poles and similar alternative designs. An antenna mounted on a utility pole shall be subject to all requirements as stated in this Ordinance.

**“Antenna”** means a transmitting and/or receiving device mounted on a telecommunications tower, building or structure and used in wireless telecommunications services that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies, wireless communications signals and other communications signals including directional antennas such as panel and microwave dish antennas, and omni-directional antennas such as whips, but excluding radar antennas, amateur radio antennas and satellite earth stations.

**“Applicant”** means any party submitting an Application within the meaning of this Ordinance.

**“Application”** means any proposal, submission or request to construct, operate, or maintain a telecommunications tower, equipment facility, wireless communications facility, or Antenna within the Town or seeks any other relief from the Town pursuant to this Ordinance.

**“Array”** means a group of up to twelve (12) Antennas that are either (i) mounted or side mounted on the rooftop of a building or rooftop structure(s); or (ii) directly or indirectly mounted on a telecommunications tower.

**“Backhaul network”** means the lines that connect personal wireless service facilities to one (1) or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

**“Broadcasting Facility”** means any telecommunications tower or Antenna built primarily for the purpose of broadcasting AM, FM or television signals.

**“Building Code”** means the Florida Building Code, as amended, the National Electrical Code, as amended, the National Electrical Safety Code, as amended, FCC regulations, as amended, and any other applicable federal, state, and local building code.



**"Building-Permit Review"** means a review for compliance with building constructions standards adopted by the Town and does not include a review for compliance with land development regulations.

**"Camouflaged Facility"** means a facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure in a manner that makes it not readily identifiable as a wireless communications facility. A camouflaged facility may or may not have a secondary function (e.g., bell tower, spire, flag pole, etc.). This term shall be synonymous with "stealth facility."

**"Carrier"** means a company licensed by the Federal Communications Council (FCC) that provides wireless services. A tower builder or owner is not a carrier unless licensed to provide personal wireless services.

**"Town"** means Cutler Bay, Florida, an incorporated municipality of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

**"Collocation"** means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent Antenna. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the Antennas.

**"Commercial Mobile Radio Services"** means, per Section 704 of the Telecommunications Act of 1996, any of several technologies using radio signals at various frequencies to send and receive voice, data and video.

**"County"** means Miami-Dade County, Florida, a chartered county of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

**"Equipment Facility"** means a room, cabinet, shelter, pedestal, build-out of an existing structure, building, or similar structure used to house ancillary equipment for a telecommunications tower or Antenna. Each such cabinet, shelter, or building shall be considered a separate equipment facility.

**"Essential Services"** means those services provided by the Town and other governmental entities that directly relate to the health and safety of its residents, including fire, police and rescue.

**"Existing Structure"** means a structure that exists at the time an Application for permission to place an Antenna on a structure is filed with the Town. The term includes any structure that can structurally support the attachment of an Antenna in compliance with applicable codes.

**"Extraordinary Conditions"** means subsequent to a hurricane, flood, or other natural hazard or subsequent to a defective finding on a previous inspection.

**“FAA”** means the Federal Aviation Administration.

**“FCC”** means the Federal Communications Commission.

**“Geographic Search Area”** means that initial circular area which has a radius of no less than one (1) mile designated by a wireless provider or operator for a new tower. The geographic search area shall be determined based upon engineering considerations including grids, frequency coordination and levels of service consistent with good engineering practices.

**“Guyed Tower”** means a telecommunications tower that is supported, in whole or in part, by guy wires and ground anchors.

**“Height”** means the distance measured from the ground level to the highest point of a telecommunications tower or other structure. For the purposes of measuring Height, the base pad and all Antennas or other attachments mounted on a structure shall be included in the measurements to determine overall Height.

**“Interference”** means the impairment of transmission or reception of any desired communications or radio frequencies within the Town. This term embraces electrical interference in all of its forms, including, without limitation, co-channel interference, interference from intermodulation products, and blanketing inference.

**“Historic Building, Structure, Site, Object, or District”** means any building, structure, site, object, or district that has been officially designated as a historic building, historic structure, historic site, historic object, or historic district through a federal, state or local designation program.

**“Land Development Regulations”** means any ordinance enacted by the Town for the regulation of any aspect of development, including an ordinance governing zoning, subdivisions, landscaping, tree protection, or signs, the Town’s comprehensive plan, or any other ordinance concerning any aspect of the development of land.

**“Lattice Tower”** means a telecommunications tower that is constructed to be self-supporting by lattice type supports and without the use of guy wires or other supports.

**“Microcell Facility”** A telecommunications facility consisting of an Antenna (as defined below) and related equipment which is located either on a telecommunications tower or affixed to a structure in some fashion for the provision of wireless services.

**“Microwave Dish Antenna”** means a dish-like Antenna used to link telecommunications sites together by wireless transmission and/or receipt of voice or data.

**“Monopole Tower”** means a telecommunications tower consisting of a single pole or spire self-supported on a permanent foundation, constructed without guy wires, ground anchors, or other supports.

**“Non-Use Variance”** means a grant of relief from the requirements of this Ordinance pursuant to the Town Code or a non-use variance permit.

**“Personal Wireless Services”** means Commercial Mobile Radio Services, unlicensed wireless services, and common Carrier wireless exchange access services, as defined under federal law, 47 U.S.C. §332(c)(7)(C), or as this definition may be amended from time to time, and includes but is not limited to, cellular, personal communication services, specialized mobile radio, enhanced specialized mobile radio, and paging service. Personal Wireless Services shall not be considered as Essential Services, public safety telecommunications, public utilities or private utilities.

**“Planning Director”** means the person and/or department designated by the Town responsible for the administration and enforcement of this Ordinance including, but not limited to, review and approval of an application as provided in this Ordinance.

**“Pre-Existing Tower”** means a telecommunications tower for which a building permit has been properly issued prior to the effective date of this Ordinance, including permitted telecommunications towers that have not yet been constructed so long as such approval is current and not expired.

**“Preferred Zoning Districts”** means the zoning districts within this Ordinance in which the Town provides a preference for the installation of Wireless Communications Facilities.

**“Pole”** means any utility, electricity, telephone, power or light pole, other than any pole owned by the Town.

**“Public Safety Telecommunications”** means any and all wireless communications to and from police, fire, and other emergency services operating within the Town.

**“Public Rights-of-Way” or “ROW”** means a public right-of-way, public utility easement, highway, street, bridge, tunnel, pier, waterway, dock, wharf, court, lane, path, or alley or any other property for which the Town is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface to the extent the Town holds a property interest therein. “Public Rights-of-Way” shall not include private property. “Public Rights-of-Way” shall not include any real or personal property except as described above and shall not include Town buildings, fixtures, Poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the Public Rights-of-Way.

**“Roofline”** The overall ridge line of the structure which does not include cupolas, elevator towers, clock towers or other features that are permitted to exceed the maximum Height of the buildings

**“Rooftop”** means the exterior surface on the top of a building or structure.

**“Search Area”** means the geographic area, in which a wireless communications facility

must be located in order to provide FCC required coverage, as certified through an affidavit by a Radio Frequency engineer as to radio frequency waves or other such appropriate technical expert.

**“Self-Support Tower”** means a tapered structure broad at the base and more narrow at the top consisting of cross-members and diagonal bracing and without guyed support, also known as Lattice Towers.

**“Setbacks”** means the required distance from the telecommunications tower or Equipment Facility to the property line of the parcel on which the wireless communications facility is located.

**“Service Provider”** means any person or business entity wishing to locate a telecommunications tower or Antenna within the Town limits to provide Personal Wireless Services.

**“State of the Art”** means existing technology where the level of facilities, technical performance, capacity, equipment, components and Personal Wireless Service is equal to that developed and demonstrated to be as technologically advanced and generally available for comparable service areas in South Florida.

**“Stealth Facility or Tower” or “Stealth”** means any wireless communications facility or tower that is designed to blend into the surrounding environment. Examples of such facilities would include, but are not limited to, architecturally screened roof mounted Antenna, building-mounted Antenna painted to match the Existing Structure, Antenna integrated into architectural elements, Alternative Tower Structures or other similar structures.

**“Telecommunications Act”** means the Telecommunications Act of 1996, Pub. L No. 104-104, codified at 47 U.S.C., and as may be amended from time to time.

**“Telecommunications Services”** means the offering of telecommunication (or the transmission, between or among points, specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received), for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Personal wireless communication services shall not be considered as Essential Services, public utilities or private utilities.

**“Telecommunications Tower” or “Tower”** means any structure, and support thereto, designed and constructed primarily for the purpose of supporting one or more Antennas intended for transmitting or receiving Personal Wireless Services, telephone, radio and similar communication purposes, including Alternative Tower Structure, Lattice, Stealth, Monopole, and Guyed Towers. The term includes radio and television transmission telecommunications towers, microwave telecommunications towers, common-Carrier telecommunications towers, and cellular telephone telecommunications towers, among others. Poles are only a support structure and are not a telecommunications tower.

**“Whip Antenna”** means a cylindrical Antenna that transmits signals in 360 degrees.

**“Wireless Communications Facility”** means any equipment or facility used to provide Personal Wireless Service and may include, but is not limited to, Antennas, Towers, Equipment Facility, cabling, Antenna brackets, and other such equipment. Placing a Wireless Communications Facility on an Existing Structure does not cause the Existing Structure to become a Wireless Communications Facility. It also means Personal Wireless Services facilities, as defined under federal law, 47 U.S.C. §332(c)(7)(C), as this definition may be amended from time to time, and includes, but is not limited to, Antennas and radio-transmitting Telecommunications Towers, and associated facilities used to transmit telecommunications signals. Poles are only a support structure and are not a Wireless Communications Facility. An open video system is not a Wireless Communications Facility to the extent that it provides video services; a cable system is not a Wireless Communications Facility to the extent that it provides cable service.

#### **SECTION 33-63.4. APPLICABILITY.**

A. All new Wireless Communications Facilities and reconstruction or modifications to existing Wireless Communications Facilities in the Town shall be subject to the regulations in this Ordinance to the full extent permitted under applicable state and federal law.

B. Pre-existing Telecommunications Towers or Antennas shall not be required to meet the requirements of this Ordinance, other than the specific requirements set forth herein.

C. Broadcasting Facilities/Amateur Radio Station Operators/Receive Only Antennas. This Ordinance shall not govern any Broadcasting Facility or a Wireless Communications Facility owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only Antennas.

D. Pending Applications. This Ordinance shall apply to Applications for Wireless Communications Facilities, Telecommunications Towers, and Antennas as defined herein unless prohibited by applicable law.

E. Not Essential Services. The providing of Personal Wireless Services and the siting and construction of Wireless Communications Facilities shall be regulated and permitted pursuant to this Ordinance and shall not be regulated or permitted as Essential Services or Public Safety Telecommunications as defined herein.

F. Except for matters herein specifically reserved to the Town Council, the Planning Director shall be the principal Town official responsible for the administration of this Ordinance. The Planning Director may delegate any or all of the duties hereunder unless prohibited by applicable law.

G. AM Array. For purposes of implementing this Ordinance, an AM Array, consisting of one or more Tower units and supporting ground system which functions as one AM broadcasting Antenna, shall be considered one Tower. Measurements for Setbacks and

separation distances shall be measured from the outer perimeter of the Towers included in the AM Array. Additional Tower units may be added within the perimeter of the AM Array by right.

H. The Town may create an Application form as may be amended from time to time, for a person to apply for the construction, installation, or placement of a Wireless Communications Facility, Telecommunications Tower, or Antenna within the Town consistent with the terms of this Ordinance. The Town may create a different Application form for Collocation Applications.

### **SECTION 33-63.5. APPLICATION REQUIREMENTS FOR WIRELESS COMMUNICATIONS FACILITIES.**

A. Unless exempted from these requirements as set forth below, or as otherwise required by state or federal law, permits shall be required for the installation of Wireless Communications Facilities, including Telecommunications Towers and Antennas, by Application submitted to the Planning Director.

B. The following information must be included in all Applications, including Applications for installations of Telecommunications Towers and Antennas but excluding Collocation Applications.

- (1) Current survey of the property.
- (2) Description of the Telecommunications Services currently provided and/or to be provided in the future by the Applicant over its Wireless Communications Facilities.
- (3) Location of the proposed facilities.
- (4) Identify the location of all overhead and underground public utility; telecommunication, cable, water, sewer, drainage and other facilities.
- (5) Identify the trees, structures, improvements, facilities and obstructions, if any, that Applicant proposes to temporarily or permanently remove or relocate.
- (6) Identify all applicable FCC licenses and approvals.
- (7) Statement that Applicant shall notify all other telecommunication providers of the permit Application at time Application is accepted by the Planning Director.
- (8) Any Application submitted to the Town for construction or installation of a Telecommunication Tower or Wireless Communications Facility shall demonstrate that the proposed structure conforms with the State of the Art or, alternatively, that State of the Art technology is unsuitable for the site involved. Costs of State of the Art technology

that exceed new Tower development shall not be presumed to render the technology unsuitable.

(9) Antennas and Towers may be considered a Principal Use on a vacant lot. In the event that there is an existing Principal Use on a lot, they may be considered as an Accessory Use. A different existing use of an Existing Structure on the same lot shall not preclude the installation of an Antenna or Telecommunications Tower on such lot.

(10) Lot Size. For purposes of determining whether the installation of a Telecommunications Tower or Antenna complies with the zoning provisions, including, but not limited to, Setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the Antenna or Telecommunications Tower may be located on leased parcels within such lot.

(11) An Inventory of Existing Sites. Each Applicant shall provide the Town with an inventory of its Pre-existing Telecommunications Towers and Antennas, and the Pre-existing sites of any other Telecommunications Towers, Antennas and Wireless Communications Facilities within a three (3) mile radius of the Town.

(12) For Applications for new Telecommunications Towers, the Applicant must provide information to demonstrate, pursuant to the procedures listed within this subsection, that no Pre-existing Tower Existing Structure, or State of the Art technology that does not require the use of new Telecommunications Towers or new structures, can accommodate or be modified to accommodate the Applicant's proposed Telecommunications Tower. Evidence submitted to demonstrate that no Pre-Existing Tower, Existing Structure or State of the Art technology is suitable may consist of an affidavit from an engineer licensed to practice in the State of Florida or by an engineer exempt from such requirement under Florida law, and with experience with radio frequency and Wireless Communications Facilities, determining or demonstrating the following:

(a) that Pre-Existing Towers or Existing Structures located within the Geographic Search Area do not have the capacity to provide reasonable technical service consistent with the Applicant's technical system, including but not limited to, applicable FCC requirements.

(b) that Pre-Existing Towers or Existing Structures are not of sufficient Height to meet applicable FCC requirements, or engineering requirements of the Applicant.

(c) that Pre-Existing Towers or Existing Structures do not have sufficient structural strength to support Applicant's proposed Antenna and related equipment.

(d) that the Applicant's proposed Antenna would cause electromagnetic/radio frequency Interference with Antennas on Pre-Existing

Towers, Antennas or Existing Structures, or the Antenna on the Pre-Existing Towers or structures would cause Interference with the Applicant's proposed Antenna.

(e) that the Applicant's proposed Antenna on a Pre-Existing Tower or Existing Structure would cause Interference with Public Safety Telecommunications.

(f) that the Applicant made diligent efforts but was unable to obtain permission to install or collocate the Applicant's Wireless Communications Facilities on Pre-Existing Towers or usable Antenna support located within a one (1) mile radius from the proposed site.

(g) that there are other limiting factors that render Pre-Existing Towers and Existing Structures unsuitable.

(13) The Engineering Report.

(14) If applicable, a copy of the executed lease agreement of the property where the Wireless Communications Facility and/or Tower will be located.

(15) Additional information that the Town may request consistent with this Ordinance and applicable law to process the Application. In the event the Town requests any additional information, the time in which an Application is processed shall be tolled pending receipt and further evaluation.

(16) Consultant Fee. The Town shall have the right to retain independent technical consultants and experts that it deems necessary to properly evaluate Applications for individual Towers. The consultant fee shall be based upon the hourly rate of the independent technical consultant or expert the Town deems necessary to properly evaluate Applications for Tower. The special fee shall be applied to those Applications requiring special review or evaluation. The special fee shall be reimbursed by the Applicant to the Town.

(17) To the extent not prohibited by applicable law, any Application for a Wireless Communications Facility shall also include:

(a) A certification from an engineer licensed to practice in the State of Florida or by an engineer exempt from such requirement under Florida law, and with experience with radio frequency and Wireless Communications Facilities that the proposed facility including reception and transmission functions, is not expected to interfere with or obstruct transmission to and from existing Public Safety Telecommunications facilities;

(b) A remedial action plan, subject to the Town's approval, that includes, but is not limited to, procedures to rectify any Interference or obstruction with



Public Safety Telecommunications, its plans to make all necessary repairs and/or accommodations to alleviate the Interference or obstruction, and a period of compliance.

(18) If the Applicant seeks relief from any regulation contained herein, the Applicant must provide the nature of the specific relief sought and the engineering justification to demonstrate that without such relief, applicability of the regulation would have the effect of prohibiting the provision of Personal Wireless Services.

C. Engineering Report. The Engineering Report shall be from an engineer licensed to practice in the State of Florida or by an engineer exempt from such requirement under Florida law, and with experience with radio frequency and Wireless Communications Facilities, and shall include:

(1) A site development plan of the entire subject property drawn to scale, including, without limitation:

(a) a tax parcel number, legal description of the parent tract and leased parcel, total acres, and Section/Township/Range of the subject property;

(b) the lease parcel fully dimensioned, including property lines, Setbacks, roads on or adjacent to the subject property, easements;

(c) outline of all existing buildings, including purpose (i.e. residential buildings, garages, accessory structures, etc.) on subject property;

(d) all existing vegetation, by mass or individually by diameter, measured for feet from the ground of each stand-alone tree on the subject property;

(e) proposed/existing security barrier, indicating type and extent as well as point of controlled entry;

(f) proposed/existing access easements, utility easements, and parking for the Telecommunications Tower;

(g) all proposed changes to the subject property, including grading, vegetation removal, temporary or permanent roads and driveways, storm water management facilities and any other construction or development attendant to the Telecommunications Tower;

(h) scaled elevation drawing of proposed Telecommunications Tower, including location of all mounts, Antennas, Equipment Facilities, fencing and landscaping;

(i) if applicable, on-site and adjacent land uses.

(2) If applicable, a narrative of why the proposed Telecommunications Tower cannot comply with the requirements of the Engineering Report.

(3) The type of Telecommunications Tower and specifics of design including, if appropriate, the following:

(a) equipment brochures for the proposed Tower such as manufacturer's specifications or trade journal reprints. These shall be provided for the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any;

(b) materials of the proposed Tower specified by generic type and specific treatment (i.e., anodized aluminum, stained wood, painted fiberglass, etc.). These shall be provided for the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any;

(c) colors of the proposed Tower represented by a color board showing actual colors proposed. Colors shall be provided for the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any;

(d) dimensions of the Tower specified for all three directions: Height, width and breadth. These shall be provided for the Antennas, mounts, Equipment Facilities and security barrier, if any; and

(e) a visual impact analysis, with a minimum of two (2) photo digitalization or photographic superimpositions of the Tower within the subject property. The photo digitalization or photographic superimpositions shall be provided for all attachments, including: the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any for the total Height, width and breadth, as well as at a distance of 250 feet and 500 feet from all properties within that range, or at other points agreed upon in a pre-Application conference.

(4) Current wind-loading capacity and a projection of wind-loading capacity using different types of Antennas as contemplated by the Applicant. No Telecommunications Tower shall be permitted to exceed its wind loading capacity as provided for by the Florida Building Code.

(5) An affidavit from an engineer licensed to practice in the State of Florida or by an engineer exempt from such requirement under Florida law, and with experience with radio frequency and Wireless Communications Facilities stating that the proposed Telecommunications Tower, including reception and transmission functions, will not interfere with the visual and customary transmission or reception of radio, television or similar services as well as other wireless services enjoyed by adjacent residential and non-residential properties.

(6) An affidavit from an engineer licensed to practice in the State of Florida or by an engineer exempt from such requirement under Florida law, and with experience with radio frequency and Wireless Communications Facilities stating confirming compliance with all applicable Building Codes, associated regulations and safety standards. For all Towers attached to Existing Structures, the statement shall include certification that the structure can support the load superimposed from the Telecommunications Tower.

**SECTION 33-63.6. APPLICATION REQUIREMENTS FOR COLLOCATIONS.**

A. The following information must be included in all Collocation Applications.

(1) An engineering report, from an engineer licensed to practice in the State of Florida or by an engineer exempt from such requirement under Florida law, and with experience with radio frequency and Wireless Communications Facilities, that shall include:

(a) A statement of compliance with this Ordinance and all applicable Building Codes, associated regulations and safety standards as provided herein. The statement shall include certification that the Existing Structure can support the load superimposed from the Antenna(s).

(b) The type of Antenna and specifics of design including, if appropriate, the following:

(1) equipment brochures for the proposed Antenna such as manufacturer's specifications or trade journal reprints. These shall be provided for the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any;

(2) materials of the proposed Antenna specified by generic type and specific treatment (i.e., anodized aluminum, stained wood, painted fiberglass, etc.). These shall be provided for the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any;

(3) colors of the proposed Antenna represented by a color board showing actual colors proposed. Colors shall be provided for the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any;

(4) dimensions of the proposed Antenna specified for all three directions: Height, width and breadth. These shall be provided for the Antennas, mounts, Equipment Facilities and security barrier, if any; and

(5) a visual impact analysis, with a minimum of two (2) photo digitalization or photographic superimpositions of the Pre-Existing Tower and proposed Antenna within the subject property. The photo digitalization or photographic superimpositions shall be provided for all attachments, including: the Antennas, mounts, Equipment Facilities, cables as well as cable runs, and security barrier, if any for the total Height, width and breadth, as well as at a distance of 250 feet and 500 feet from all properties within that range, or at other points agreed upon in a pre-Application conference.]

(c) Current wind-loading capacity and a projection of wind-loading capacity using different types of Antennas as contemplated by the Applicant. No Telecommunications Tower shall be permitted to exceed its wind loading capacity as provided for by the Florida Building Code.

(d) A certification that the proposed Antenna, including reception and transmission functions, is not expected to interfere with or obstruct transmission to and from existing Public Safety Telecommunications facilities or any other Telecommunications Services;

(e) A description of the geographical service area requirements; and

(f) If necessary, a remedial action plan, subject to the Town's approval, that includes, but is not limited to, procedures to rectify any Interference or obstruction with Public Safety Telecommunications, its plans to make all necessary repairs and/or accommodations to alleviate the Interference or obstruction, and a period of compliance.

(2) An Inventory of Existing Sites. Each Applicant shall provide the Town with an inventory of its Pre-existing Telecommunications Towers and Antennas, and the Pre-existing sites of any other Telecommunications Towers, Antennas and Wireless Communications Facilities within a three (3) mile radius of the Town.

(3) A copy of the executed lease agreement of the Tower where the Wireless Communications Facility and/or Antenna will be collocated; and

(4) Additional information that the Town may request consistent with this Ordinance and applicable law to process the Application. In the event the Town requests any additional information, the time in which an Application is processed shall be tolled pending receipt and further evaluation.

### **SECTION 33-63.7. INSTALLATIONS ON MUNICIPAL PROPERTY.**

A. Applications for a Wireless Communications Facility on property owned, leased or otherwise controlled by the Town, except for Public Rights-of Way, shall require a Lease Agreement approved by the Town Council and executed by the Town and the owner of the

proposed Wireless Communications Facility. The Town may require, as a condition of entering into a Lease Agreement, the dedication of space on the facility for Public Safety Telecommunications purposes, as well as property improvement on the leased space. Any dedications and improvements shall be negotiated prior to execution of the lease.

(1) No lease granted pursuant to this Ordinance shall convey the exclusive right, privilege, permit or franchise to occupy or to use the public lands of the Town for delivery of Personal Wireless Services or any other purpose.

(2) No lease granted pursuant to this Ordinance shall convey any right, title or interest in the public lands other than a leasehold interest, and shall be deemed only to allow the use of the public lands for the limited purposes and term stated in the lease. No lease shall be construed as a conveyance of a title interest in the property.

(3) Any and all Collocations or placements of Antennas on a Wireless Communications Facility that is located on property owned, leased or otherwise controlled by the Town, except for Public Rights-of-Way, shall require a separate lease agreement with the Town as well as full compliance with the requirements of this ordinance for such Collocations and placements of Antennas.

(4) Pursuant to applicable law, the Town may contract with a third party to administer Town-owned property for purposes of developing Town-owned sites, consistent with the terms of this Ordinance. Except as specifically provided herein, the terms of this Ordinance, and the requirements established thereby, shall be applicable to all Telecommunication Towers or Personal Wireless Service facilities to be developed or Collocated on Town-owned sites.

(5) Town-owned property is exempt from the minimum distance separation and Height requirements set forth herein.

**SECTION 33-63.8. APPLICATION FEES AND PROCESS.**

**A. Filing Fee.**

(1) All Applications shall be accompanied by the applicable non-refundable filing fee. The applicable filing fee shall be submitted to the development review committee with the Application. The following table lists the applicable Application and inspection fees:

<u>Type of Application</u>	<u>Fee</u>
Telecommunications Tower	\$8,000
Antenna Collocation	\$4,000
Antenna-not-Located-on-Telecommunications-Tower	\$4,000
Modification of a Wireless Communications Facility	\$4,000
Non-Use Variances	\$4,000
Cooperation	\$4,000
Inspection	\$1,000

The Town Council may amend the amount of the filing fees from time to time by Resolution. The annual inspection fee of one thousand dollars (\$1,000.00) is due the Town at the time of inspection.

(2) Cost Recovery. The purpose of the filing fee is to defray the Town's costs in processing the Application. All reasonable expenses incurred by the Town in considering and processing the Application, including, but not limited to, consulting and legal costs, shall be off-set from the filing fee. If, however, the expenses exceed the amount of the filing fee, to the extent not prohibited by applicable law, the Applicant shall pay the difference within thirty (30) days of the date it receives notice of such additional expenses. If the additional fees are not received by the Town within thirty (30) days of the date of notice, the Town shall notify such Applicant and the Applicant shall pay an additional late fee at the rate of eighteen (18%) percent per annum of the amount unpaid or underpaid, provided, however, that such rate does not exceed the maximum amount allowed under the applicable law. In such case, the rate will be the maximum allowed by law. If the Town does not receive said fee in total within sixty (60) days of the date of notice, the Town shall notify the Applicant in writing and may revoke any approval.

B. Applicants regulated by this Ordinance may request a pre-Application conference with the Town. Such request shall be submitted with a non-refundable fee of Five Hundred Dollars (\$500.00) to reimburse the Town for the cost and fees incurred by the conference.

C. Unless otherwise authorized by state or federal law, no person shall construct, install or maintain a Wireless Communications Facility within the Town without the Town's approval pursuant to this Ordinance.

D. The Planning Director shall review the Application for consistency with the Town's Comprehensive Master Development Plan, Land Development Regulations including this Ordinance, and compatibility of the proposed Wireless Communications Facility with the surrounding neighborhood. For Applications that are not subject to the Town Council's approval pursuant to this Ordinance, the Planning Director shall issue a written decision either granting or denying an Application. The Planning Director shall not grant an Application for a proposed Wireless Communications Facility that will interfere with any Public Safety Telecommunications, or is otherwise not in compliance with this Ordinance. In the event the Planning Director denies an Application, the Planning Director shall set forth the reasons for denial in writing.

E. An Applicant shall attend a zoning workshop for site plan approval and to address any deficiencies contained in Applications regardless of whether or not such Applicant is subject to the Town Council's approval pursuant to this Ordinance and subject to applicable law.

F. Notification of completeness. The Planning Director shall notify the Applicant within twenty (20) business days after the date the Application is submitted as to whether the Application is, for administrative purposes only, properly completed and has been properly submitted in accordance with the requirements set forth above. However, such determination

shall not be deemed as an approval of the Application. Such notification shall indicate with specificity any deficiencies which, if cured, could make the Application properly completed.

G. For Applications that are subject to the Town Council's approval pursuant to this Ordinance, the Planning Director shall issue a recommendation in writing to the Town Council. In the event that the Planning Director determines that a proposed Wireless Communications Facility subject to the Town Council's approval pursuant to this Ordinance will interfere with any Public Safety Telecommunications, or is otherwise not in compliance with this Ordinance, the Planning Director shall recommend that the Town Council deny the Application and shall set forth the reasons for denial in writing.

H. The Town Council shall consider any part of the Application, the Planning Director's recommendation, and any additional evidence presented by the Applicant, Town staff and the public. If the Applicant wishes to have a court reporter record the Council meeting, the Applicant may do so at the Applicant's expense and shall furnished a copy of the transcript to the Town within two weeks of the Council meeting, at the Applicant's expense.

I. The Town Council's decision either approving or denying an Application shall be by resolution. Any decision of the Town Council to deny an Application shall authorize the Planning Director to set forth in writing the Town Council's reasons for the denial. It is the intent of this Section to establish a procedure for compliance with the "written decision" and "substantial evidence" requirements of the Telecommunications Act, 47 U.S.C.§332(c)(7)(B)(iii).

(1) The Town Council's written reasons for denial of an Application may include, but are not limited to, compatibility with the surrounding neighborhood or lack thereof, compliance or non-compliance with this Ordinance or any other provision of the Town Code, or any lawful reason.

(2) The Town Council's written reasons shall incorporate by reference the complete Application, minutes of public hearings, and any recommendations and findings by the Planning Director and/or the Town Council.

(3) If an Application is denied because the proposed facility does not meet the requirements of this Ordinance, the Applicant may file an Application for a Non-Use Variance.

J. The Town shall grant or deny each properly completed Application for a Collocation based on the Application's compliance with this Ordinance, Town Code, state law, or federal law, as amended. This timeframe shall not apply to an Application for Collocation on Town owned property.

K. The Town shall grant or deny each properly completed Application for any other Wireless Communications Facility based on the Application's compliance with this Ordinance and any other applicable law, including but not limited to the Town Code. This timeframe shall not apply to an Application for Wireless Communications Facilities on Town-owned property.

L. An Application is deemed submitted or resubmitted on the date the Application is received by the Town. If the Town does not notify the Applicant in writing that the Application is not completed in compliance with the Town's regulations within 20 business days after the date the Application is initially submitted or additional information resubmitted, the Application is deemed, for administrative purposes only, to be properly completed and properly submitted. However, the determination shall not be deemed as an approval of the Application. If the Application is not completed in compliance with the Town's regulations, the Town shall so notify the Applicant in writing indicating with specificity any deficiencies in the required documents or deficiencies in the content of the required documents which, if cured, make the Application properly completed. Upon resubmission of information to cure the stated deficiencies, the Town shall notify the Applicant, in writing, within the normal timeframes of review, but in no case longer than 20 business days after the additional information is submitted, of any remaining deficiencies that must be cured. However, if Applicant does not cure the Application deficiencies within 20 business days after receiving the notice of deficiencies, the Application shall be considered withdrawn or closed.

M. The timeframes specified in his section may be extended because the Town's procedures generally applicable to all other similar types of Applications require action by the Town Council and/or Development Review Committee and such action has not taken place within the specified timeframes. Under such circumstances, the Town Council shall either grant or deny the Application at its next regularly scheduled meeting.

N. The Town may request, but not require, a waiver of the timeframes by the Applicant, except that, with respect to a specific Application the Town may require a one-time waiver in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the Town.

O. The Town may enter into an entry and testing agreement with the Wireless Communications Facility owner, Applicant and/or operator, in a form approved by the Town Attorney, without approval of the Town Council.

P. Extension and waiver. Where action by the Town Council or any other Town agency is required on an Application for a permit taken pursuant to this section, the Planning Director may by letter to the Applicant extend the timeframe for a decision until the next available scheduled date of the Council or agency as to whether to grant or deny an Application for a permit taken pursuant to this Ordinance. Notwithstanding the foregoing, the Applicant may voluntarily agree to waive the timeframes set forth above.

Q. Emergency extension. The Town may declare a one time waiver of the time frames set forth for Application decisions in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities in the Town.

R. Appeal.

(1) If an Application is denied by the building official or Planning Director for noncompliance with the requirements of this Ordinance then the Applicant may appeal



this decision to the Town Council within 30 days after receiving the written decision. The Town Council, after a public hearing, shall make the final decision by resolution.

(2) If a permit is denied, or conditions imposed, then the Town Council shall consider the action taken upon review of the following factors:

(a) The technical and practical necessity for the installation of the Telecommunication Tower or Wireless Communications Facility.

(b) Alternative measures or modifications that could be made to preserve the character of the neighborhood and to prevent aesthetic blight if installation were permitted.

(3) If Application is denied by the Planning Director for reasons other than non-compliance with this Ordinance, excluding Florida Building Code, then the Applicant may appeal the decision directly to the Town Council, which shall make the final decision within forty-five (45) days of the denial, by resolution.

(4) If the Town Council ultimately denies the Application, the Town Council's resolution ordering the denial shall incorporate the Application, the minutes of public meetings, along with written findings by Town staff, the planning and zoning board, and/or the Town Council explaining the basis for the denial.

S. Nonconforming towers. Any Telecommunication Towers in existence in the Town upon the effective date of this Ordinance that are nonconforming with the terms and provisions of this section shall have five (5) years from the effective date of this Ordinance to bring said Tower into compliance, or upon the change of ownership of the leasehold interest upon which the Tower is located, whichever shall occur first.

T. Regardless of whether a permit is required for the installation of the Telecommunication Tower or Wireless Communications Facility, separate building permits for structural or electrical work, pouring concrete or other work may be required as provided in the Florida Building Code, as amended.

### **SECTION 33-63.9. COLLOCATION.**

A. It is the intent of the Town to encourage Collocation of Antennas on Existing Structures and Pre-Existing Towers. Except as provided herein, all Towers shall have the capacity to permit multiple users. At a minimum, Monopole Towers shall be able to accommodate two (2) users and, at a minimum, Lattice or Guyed Towers shall be able to accommodate three (3) users.

B Collocation Incentive. To encourage such Collocation, the Planning Director may approve an Application submitted to Collocate Antennas on an Existing Structure, Pre-Existing Tower, or a Stealth Facility, consistent with this Ordinance. The specific Collocation Applications indicated in the sub-sections below shall be subject to approval or denial by the

Planning Director. All other Applications shall be subject to approval or denial by the Town Council.

C. Exemptions for Collocation. Any Antenna and related equipment to service the Antenna that is being Collocated on an above ground Existing Structure is not subject to Land Development Regulations of the Town Code if the following criteria are met:

- (1) The Existing Structure already contains an established Antenna and related equipment;
- (2) The Existing Structure is not non-conforming and may pursuant to Florida law be expanded; and
- (3) The Height of the structure containing the Antenna and related equipment would not be increased by the addition of Antenna and related equipment.

Notwithstanding the exemption provided for in this section, construction of the Antenna and related equipment is subject to review by the Planning Director and any other Town department or agency for compliance with the Town's design standards; and life safety codes, including but not limited to Building Codes; conditions or requirements in any existing permits, agreements, or approvals. Moreover, this section shall not relieve the permit holder for or owner of the Existing Structure or property of compliance with any applicable condition or requirement of a permit, agreement, or Land Development Regulation, including but not limited to any aesthetic requirements, or law.

D. Collocation Applications Requiring only Planning Director Approval.

(1) Collocations on Towers, including nonconforming Towers are subject to only Building-Permit Review, which may include a review for compliance with this section, if they meet the following requirements:

- (a) The Collocation does not increase the Height;
- (b) The Collocation does not increase the ground space area, commonly known as the compound, approved in the site plan for Equipment Facilities and ancillary facilities, except as allowed under this Ordinance; and
- (c) The Collocation consists of Antennas, Equipment Facilities, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial Antennas placed on the Tower and to its accompanying Equipment Facilities and ancillary facilities and, if applicable, applied to the Tower supporting the Antennas. Such regulations may include the design and aesthetic requirements, but not procedural requirements, other than those authorized by this section, of the applicable Land Development Regulations in effect at the time the initial Antennas placement was approved.

(2) Such Collocations are not subject to any design or placement requirements of Land Development Regulations in effect at the time of the Collocation that are more restrictive than those in effect at the time of the initial Antennas placement approval, to any other portion of the Land Development Regulations, or to public hearing review. Such Collocation Applications are not subject to the Town Council's approval and shall be decided by the Planning Director.

E. Other Collocation Applications Requiring only Planning Director Approval.

(1) Except for a Historic Building, Structure, Site, Object, or District, the following Tower Collocation Applications on all other Existing Structures shall also be subject to no more than a Planning Director review if they meet the following requirements:

(a) The Collocation does not increase the Height;

(b) The Collocation does not increase the ground space area, otherwise known as the compound, if any, approved in the site plan for equipment enclosures and ancillary facilities;

(c) The Collocation consists of Antennas, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure, but not prohibitions or restrictions on the placement of additional Collocations on the Existing Structure or procedural requirements, other than those authorized by this section of the Ordinance at the time of the Collocation Application; and

(d) The Collocation consists of Antennas, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable restrictions or conditions, if any, that do not conflict with sub-section (c) and were applied to the initial Antennas placed on the structure and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the structure supporting the Antennas.

F. If only a portion of the Collocation does not meet the requirements of any of the above sub-sections, such as an increase in the Height or a proposal to expand the ground space approved in the site plan for the equipment enclosure, where all other portions of the Collocation meet the requirements of this subsection, that portion of the Collocation only may be reviewed by the Town Council. A Collocation proposal under this subsection that increases the ground space area, otherwise known as the compound, approved in the original site plan for Equipment Facilities and ancillary facilities by 400 or more square feet or 50 percent or more of the original compound size, shall, however, be reviewed as if it were a new Wireless Communications Facility.

G. The replacement of or modification to a Wireless Communications Facility, except a Tower, that results in a Wireless Communications Facility not readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, and the replacement or modification of equipment that is not visible from surrounding properties, all as reasonably determined by the Town, shall be deemed an Application for Collocation.

H. The owner of the Pre-Existing Tower on which the proposed Antennas are to be collocated shall remain responsible for compliance with any applicable condition or requirement of a permit or agreement, or any applicable condition or requirement of the Land Development Regulations to which the Pre-Existing Tower must comply, including any aesthetic requirements, provided the condition or requirement is not inconsistent with this section.

**SECTION 33-63.10. INTERFERENCE WITH PUBLIC SAFETY TELECOMMUNICATIONS.**

A. To the extent not inconsistent with applicable federal law, all providers of Personal Wireless Services and all owners and/or operators of Wireless Communications Facilities, Towers, and Antennas shall comply with the following:

(1) Any Wireless Communications Facility, Tower, or Antenna that causes Interference with the operations of Public Safety Telecommunications services, shall, after receiving notice, rectify the Interference immediately or, to the extent not inconsistent with applicable law, cease transmitting signals (go off the air) at once.

(2) In the event that the Wireless Communications Facility, Tower, or Antenna interferes with Public Safety Telecommunications, it shall be the responsibility of the owner and/or operator that creates the Interference to make all necessary repairs and/or accommodations to alleviate the problem at its expense. The Town shall be held harmless in this occurrence.

(3) In the event that a provider of Personal Wireless Services and/or an owner and/or operator of Wireless Communications Facility, Tower, and/or Antenna interferes with Public Safety Telecommunications, once it ceases transmission of signals (goes off the air) and rectifies the Interference, it may not continue to resume providing Personal Wireless Services until it receives approval from the Town.

(4) To the extent not inconsistent with applicable law, if a provider of Personal Wireless Services or the owner or operator of a Wireless Communications Facility, Tower or Antenna refuses to stop the Interference or to cease transmitting signals as required herein, the Town may file a complaint with the FCC for resolution and/or seek an injunction against it pursuant to Florida Statute § 843.025 that makes it unlawful for any person to deprive a law enforcement officer of his or her radio or to otherwise deprive the officer of the means to summon assistance, or pursue any other remedy authorized by applicable law. Any person who is found to have violated this Section shall be punished as provided by applicable law.

**SECTION 33-63.11. DEVELOPMENT, ZONING, BUILDING, AND INSPECTION REQUIREMENTS FOR WIRELESS COMMUNICATIONS FACILITIES.**

A. General Regulations. The standards listed in this Section apply specifically to all Antennas, Towers and Wireless Communications Facilities, except those owned by the Town, located on property owned, leased, or otherwise controlled and approved by the Town or as otherwise specified herein. The Town reserves the right to modify or waive the requirements for use on public property. The Town shall not be required to provide access to Town property.

B. The construction, maintenance, operation and repair of Wireless Communications Facilities are subject to the regulatory supervision of the Town to the full extent permitted by applicable law, and shall be performed in compliance with all laws, ordinances and practices affecting such facility including, but not limited to, zoning codes, building codes, and safety codes, and as provided in this Ordinance. The construction, maintenance, operation and repair shall be performed in a manner consistent with applicable industry standards, including the Electronic Industries Association.

C. All Telecommunication Towers and Antennas must meet or exceed current standards and regulations of the FAA, the FCC, including emissions standards, and any other agency of the local, state or federal government with the authority to regulate Towers and Antennas prior to issuance of a building permit by the Town. If such applicable standards and regulations are revised and require that existing facilities adhere to such revised standards, then the owners of Telecommunications Towers and Antennas governed by this Ordinance shall bring such Towers and Antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring Towers and Antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the Telecommunications Tower, Antenna or Wireless Communications Facility at the owner's expense.

D. To ensure the structural integrity of Telecommunications Towers installed, the owner shall construct and maintain Telecommunications Tower in compliance with the Florida Building Code, and all other applicable codes and standards, as amended from time to time. A statement shall be submitted to the Town by a licensed engineer certifying compliance with this section upon completion of construction and/or subsequent modification. Where an Existing Structure, including Poles, is requested as a Stealth Facility, the facility, and all modifications thereof, shall comply with all requirements as provided in this Ordinance and all other applicable standards as may be amended from time to time. Following the issuance of a building permit, the Town shall require an analysis of a soil sample from the base of the Telecommunications Tower site.

E. Telecommunications Towers, Wireless Communications Facilities and Antenna owners shall submit an annual report to the Planning Director within the last thirty (30) days of the Town's fiscal year, each year, including, but not limited to:

(1) A Summary of any and all complaints of Interference with Public Safety Telecommunications within the Town that includes remedial measures that were taken to rectify or eliminate Interference, and any other information which may be reasonably required to monitor the Telecommunication Towers and Antenna owner's compliance with this Ordinance; and

(2) A Certification of the Wireless Communications Facilities, Towers or Antenna's structural and electrical integrity.

F. The Town reserves the right to conduct periodic inspection of Wireless Communications Facilities, Towers, and Antennas at the owner's expense, to ensure structural and electrical integrity and compliance with this Ordinance. The owner of the Wireless Communications Facilities, Towers, or Antennas may be required by the Town to have more frequent inspections should there be an emergency, Extraordinary Conditions or other reason to believe that the structural and electrical integrity of the Wireless Communications Facility, Tower, or Antenna is jeopardized. There shall be a maximum of one inspection per year unless emergency or Extraordinary Conditions warrant additional inspections. The owner of Wireless Communications Facility, Tower or Antenna may be required by Town to have more frequent inspections should there be reason to believe that the structural and electrical integrity of the Tower is jeopardized. If, upon inspection, the Town concludes that a Wireless Communications Facility, Tower, or Antenna fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner, the owner shall commence work within thirty (30) days to bring such Wireless Communications Facility, Tower, or Antenna into compliance with such standards. Failure to bring such Wireless Communications Facility into compliance within sixty (60) days of notice shall constitute grounds for requiring the removal of the facility at the owner's expense. The Town reserves the right to require additional inspections if there is evidence that a Tower or a Wireless Communications Facility has a safety problem or is exposed to Extraordinary Conditions. During the inspection, the Planning Director will ensure structural and electrical integrity and compliance with the Florida Building Code, as amended, the Code of the Town, as amended, and other applicable codes and regulations. Additionally, Towers shall be inspected once every five (5) years by a Florida licensed engineer, at the Tower owner's expense, and the results submitted to the Planning Director. Tower owners shall also submit a report to the Town certifying structural and electrical integrity every two (2) years. The report shall be accompanied by a non-refundable fee of two hundred dollars (\$200.00) to reimburse the Town for the cost of review. Based upon the results of the inspection, the Planning Director may require repair or removal of a Wireless Communications Facility or Tower.

G. Wireless Communications Facilities in Residential Areas. The Town prohibits the placement of a Telecommunications Tower and Antennas in a residential area or residential zoning district unless the Applicant demonstrates to the satisfaction of the Town that it cannot reasonably provide its Personal Wireless Service to the residential area or zone from outside the residential area or zone. In such a case, the Town and the Applicant shall cooperate to determine an appropriate location for an Antenna of an appropriate design within the residential area or zone. The Applicant shall reimburse any and all reasonable costs and expenses incurred by the Town for this cooperative determination, including attorney's fees. Such Application for

cooperation shall be accompanied by an Application fee in the same amount as for a new Tower. The cooperation Application shall not be subject to the timeframes contained in this Ordinance for granting and denying Applications.

H. Hierarchy of Zoning Districts and Siting Alternatives. Development of a Wireless Communications Facility shall be permitted in the following Preferred Zoning Districts and in accordance with the following siting alternatives hierarchies.

(1) The Preferred Zoning Districts order of ranking is from highest (a) to lowest (g). Where a lower ranked alternative is proposed, the Applicant must demonstrate in its Application that higher ranked options are not available. The availability of a less expensive lease on a lower ranked site is not sufficient in and of itself to justify using the lower ranked alternative where a higher ranked alternative is otherwise available.

- (a) GP
- (b) GU
- (c) IU-1 and IU-C
- (d) BU-3, BU-2, BU-1A, and BU-1
- (e) PAD, UCD and AU;
- (f) RU-4; and
- (g) Any other zoning district in accordance with 33-63.11 (G) above.

(2) The order of ranking is from highest (a) to lowest (g). Where a lower ranked alternative is proposed, the Applicant must demonstrate in its Application that higher ranked options are not available. The availability of a less expensive lease on a lower ranked site is not sufficient in and of itself to justify using the lower ranked alternative where a higher ranked alternative is otherwise available.

- (a) Collocation on existing Stealth Tower on Town-owned property in a Preferred Zoning District.
- (b) Collocation on existing Telecommunications Tower on Town-owned property in a Preferred Zoning District.
- (c) Collocation on Existing Structures on Town-owned property in a Preferred Zoning District
- (d) Collocation on existing Telecommunications Tower in a Preferred Zoning District.
- (e) Attachment of Antenna on a current Wireless Communications Facility in a Preferred Zoning District.
- (f) New Stealth Tower in a Preferred Zoning District.
- (g) New Telecommunications Tower in a Preferred Zoning District.

(3) On property owned by the Town, the Town shall authorize the Application and use of Town property after the Applicant executes a lease agreement acceptable to the Town. The Town shall have no obligation whatsoever to execute such lease even if the Applicant can meet the criteria set forth herein.

I. Unmanned Communication Buildings.

(1) Minimum Setbacks. Unmanned communication buildings shall comply with the Setback requirements of the zoning district where such buildings are situated.

(2) Size limitations. An unmanned communication building shall be a permanent structure not to exceed two hundred fifty (250) square feet in floor area. More than one (1) unmanned communication building may be permitted on a site; provided, however, that the total square footage of such buildings, added together, does not exceed five hundred (500) square feet. If the site contains more than one (1) building, the required distance separation between the buildings may be excused.

**SECTION 33-63.12. STANDARDS FOR TELECOMMUNICATIONS TOWERS.**

A. Minimum standards. Except where a Non-Use Variance is granted, every Telecommunications Tower must meet the following minimum standards:

(1) The Height of a Telecommunications Tower shall not exceed one hundred (100) feet. Tower Height shall be measured from the crown of the road of the nearest public street.

(2) All Telecommunication Towers shall be designed and constructed with the capability of supporting a minimum of two (2) Collocation connections. At a minimum, Self-Support/Lattice or Guyed Towers shall be able to accommodate three (3) users.

(3) Telecommunication Towers or Antennas shall be approved by the Federal Aviation Administration (FAA), Miami-Dade County Aviation Authority or other appropriate agency prior to issuance of a building permit by the Town and comply with section 33-63.8. of this code. Prior to the issuance of a building permit by the building division and/or Planning Director, the Applicant shall provide evidence that the Telecommunication Towers or Antennas are in compliance with FAA regulations. Where an Antenna will not exceed the highest point of the Existing Structure upon which it is to be mounted, such evidence shall not be required.

(4) All proposed Telecommunication Towers shall comply with current radio frequency emissions standards of the Federal Communications Commission.

(5) All Telecommunication Tower sites must comply with the landscaping requirements of the Town in force at the time the Application for a Telecommunication Tower site plan approval is submitted to the Town. An eight-foot fence or wall constructed in accordance with the Town Code, as measured from the finished grade of the site, shall be required around the base of any Tower and may be required around any accessory building or structures.

(6) Landscaping, consistent with the requirements of the Town Code, as amended, shall be installed around the entire perimeter of the fence or wall, encircling the



leased premises on which said Telecommunication Tower shall be placed. Additional landscaping may be required around the perimeter of the fence or wall and around any or all anchors or supports if deemed necessary to buffer adjacent properties. The Town Council, upon site plan review, may require landscaping in excess of the above requirements as is deemed reasonably necessary in order to enhance compatibility with adjacent residential and nonresidential land uses. Landscaping shall be installed on the outside of the perimeter wall.

(7) Landscaping, consistent with the requirements of the Town Code, as amended, shall be installed around any accessory buildings or structures. In addition to the Town's landscaping requirements, at a minimum the following landscaping shall be provided: (i) A row of shade trees at least eight (8) feet in height, at a maximum distance of ten (10) feet apart, shall be planted around the perimeter of the fence; (ii) A continuous hedge at least thirty (30) inches in height at planting and capable of growing to a height of thirty-six (36) inches within eighteen (18) months shall be planted on the outside of the perimeter of the fence and tree line; (iii) All landscaping shall be properly maintained to insure good health and viability; and (iv) In locations where the impact of the Wireless Communications Facility would be minimal, the Planning Director may waive or reduce the landscaping requirements.

(8) Telecommunication Towers shall only be located on leased premises larger than twenty-five hundred (2,500) square feet.

(9) Warning signs for high voltage and trespassing.

(a) No signs, including commercial advertising, logo, political signs, flyers, flags, or banners, but excluding warning signs, shall be allowed on any part of an Antenna or Tower. Any signs placed in violation of this section shall be removed immediately at the facility owner's expense.

(b) If high voltage is necessary for the operation of the Telecommunication Tower, associated equipment, or Backhaul Network or any accessory structures, "HIGH VOLTAGE---DANGER" warning signs shall be permanently attached to the fence or wall and spaced no more than forty (40) feet apart.

(c) "NO TRESPASSING" warning signs shall be permanently attached to the fence or wall and spaced no more than forty (40) feet apart.

(d) The height of the lettering of the warning signs shall be at least twelve (12) inches in height. The warning signs shall be installed at least five (5) feet above the finished grade.

(e) The warning signs may be attached to freestanding Poles if the content of the sign may be obstructed by landscaping.

(10) Mobile or immobile equipment not used in direct support of a Tower facility shall not be stored or parked on the site of the Telecommunication Tower, unless repairs to the tower are being made.

(11) The minimum Setbacks shall conform to the zoning districts where the Towers are situated. Notwithstanding the above, the Planning Director of the Town may require minimum Setback requirements for properties zoned industrial, up to twenty-five (25) feet from the rear yard and front yard, and fifteen (15) feet from the side yards, as measured from the base of the Tower or from the guy wire anchor, whichever is closest to the property line or Right-of-Way when, in his or her discretion, he or she believes said Setbacks to be necessary in the interest of protection and safety of the public. The Planning Director may administratively reduce the minimum Setbacks required in the paragraph above, depending on the type of Tower to be used, i.e., a Monopole Tower versus a Guyed Tower.

(12) All Telecommunication Towers shall be located no closer than one hundred (100) percent of the Height of the Tower from residential areas or districts, as measured on a straight line from the two (2) closest points between the nearest residential zoning district line and the nearest point of the proposed Tower structure.

(13) The minimum distance separation between an existing Tower and a proposed Tower shall be no less than one mile. When a Stealth/Camouflaged Facility or Tower is proposed to be used by the Applicant, or an Existing Tower or Structure that serves another purpose, i.e., Poles, then, in that event, the Planning Director, after administrative review, may reduce the minimum separation as set forth above up to fifty (50) percent of said minimum separation, providing that the proper landscaping and/or buffering is put in place at the direction of the Planning Director of the Town.

(14) All buildings and other structures to be located on the same property as a Telecommunications Tower shall conform with the Setbacks established for the underlying zoning district.

(15) Any requests which deviate from the aforementioned regulations shall be subject to a special land use process.

(16) Each Application for a Wireless Communications Facility may be required to include written approval or a statement of no objection from other state agencies that may regulate Wireless Communications Facility siting, design, and construction.

(17) Removal of abandoned or unused facilities. A provider who has determined to discontinue its operations or part of its operations in the Town must either:

(a) Remove its own facilities.

(b) Provide information satisfactory to the director that the provider's obligations for its equipment in the Public Right-of-Way or public easement or

private property under this division have been lawfully assumed by another provider; or

(c) Submit to the Planning Director a proposal and instruments for transferring ownership of its equipment to the Town. If a provider proceeds under this clause, the Town may, at its option:

(1) Assume ownership of the equipment with a ten (\$10.00) dollar nominal consideration, or

(2) Require the provider, at its own expense, to remove it, or

(3) Require the provider to post a bond in an amount sufficient to reimburse the Town for reasonably anticipated costs to be incurred in removing the equipment. Equipment of a provider who fails to comply with the preceding paragraph and which, for twelve (12) months, remains unused shall be deemed to be abandoned. Abandoned equipment is deemed to be a nuisance. The Town may exercise any remedies or rights it has at law or in equity, including, but not limited to (i) abating the nuisance, (ii) taking possession of the equipment and restoring it to a useable condition, or (iii) requiring removal of the equipment by the provider or by the provider's surety under the bond required by section 33-63.16 herein. Telecommunication Towers being utilized for other purposes, including but not limited to light standards and power Poles, may be exempt from this provision.

(18) Signs and advertising. The use of any portion of a Tower for signs or advertising purposes including company name, banners, streamers, etc., shall be strictly prohibited.

(19) Accessory buildings or structures. All accessory buildings or structures shall meet all building design standards as listed in this Code, and in accordance with the provisions of the Florida Building Code. All accessory buildings or structures shall require a building permit issued by the building division and/or Planning Director.

(20) Colors. Except where superseded by the requirements of other county, state, or federal regulatory agencies possessing jurisdiction over Telecommunications Towers, Telecommunications Towers shall be painted or constructed in neutral colors, designed to blend into the surrounding environment such as non-contrasting gray, earth tones of appropriate shades of green, or such other colors as determined by the Planning Director.

### **SECTION 33-63.13. STANDARDS FOR ANTENNAS.**

A. Minimum standards.

(1) Antennas on Rooftops or building mounted shall be permitted as an Accessory Use in all Preferred Zoning Districts except in the residential zoning districts, subject to the procedure and requirements provided elsewhere in this Ordinance, as follows:

(a) No commercial advertising shall be allowed on an Antenna;

(b) No signals, lights, or illumination shall be permitted on an Antenna, unless required by the Federal Communications Commission or the Federal Aviation Administration;

(c) Any related unmanned equipment building shall not contain more than two hundred fifty (250) square feet of gross floor area or be more than ten (10) feet in Height;

(d) If the equipment building is located on the roof of the building, the area of the equipment building shall not occupy more than twenty-five (25) percent of the roof area;

(e) Antennas, and related equipment buildings, shall be set back a minimum of twenty (20) feet from the edge of the building or rooftop, located or screened to minimize the visual impact of the Antenna upon adjacent properties and shall be of a material or color which matches the exterior of the building or structure upon which it is situated; and

(f) Antennas shall only be permitted on buildings which are at least fifty (50) feet tall. Antennas may be placed on buildings less than fifty (50) feet tall if the Planning Director determines that public safety needs warrant the Antenna.

(2) Building Rooftop Stealth Antennas may not extend more than twenty (20) feet above highest point of a roof. Stealth Antennas attached to but not above Rooftop structures shall be exempt from this provision. Antennas may exceed twenty (20) feet above the roof if the Planning Director determines that public safety needs warrant additional Height.

(3) Building Rooftop non-Stealth Antennas may not extend more than ten (10) feet above highest point of a roof. Stealth Antennas attached to but not above Rooftop structures shall be exempt from this provision. Antennas may exceed twenty (20) feet above the roof if the Planning Director determines that public safety needs warrant additional Height.

C. Antenna types. To minimize adverse visual impacts, Stealth Antenna types shall be preferred. If a non-Stealth Antenna is proposed, the Application shall be required to demonstrate, in a technical manner acceptable to the Planning Director, why the Stealth Antenna (i.e. an Antenna incorporated into the architecture of the building or fully screened from view

from sight proximate to the Antenna) cannot be used for the particular Application. This does not preclude a combination of the various types of Antenna.

D. Antenna dimensions. Antenna dimensions shall be reviewed by the Planning Director as required by existing technology. A statement shall be submitted, prepared by a professional registered engineer licensed to practice in the state, and competent to evaluate Antenna choices, to certify the need for the required dimensions.

(1) Whip (omni-directional) Antennas and their supports must not exceed fifteen (15) feet in Height and three (3) inches in diameter and must be constructed of a material or color which matches the exterior of the building.

(2) Microwave Dish Antennas located below sixty-five (65) feet above the ground may not exceed six (6) feet in diameter. Microwave Dish Antennas located sixty-five (65) feet and higher above the ground may not exceed eight (8) feet in diameter. Ground-mounted dish Antennas must be located or screened so as not to be visible from abutting public streets or adjacent properties.

(3) No more than five (5) dish Antennas shall be installed on a Monopole Tower.

E. Aircraft hazard. Prior to the issuance of a building permit by the building division and/or Planning Director, the Application shall provide evidence that the Telecommunications Towers or Antennas are in compliance with FAA regulations. Where an Antenna will not exceed the highest point of the Existing Structure upon which it is to be mounted, such evidence shall not be required.

F. Non-Use Variances. The location of a new Antenna in any zoning district other than the Preferred Zoning Districts specified in Section 33-63.11, shall be prohibited unless approved as a Non-Use Variance by the Planning Director and Town Council.

#### **SECTION 33-63.14. USE OF PUBLIC RIGHTS-OF-WAY.**

A. No Telecommunications Towers or Equipment Facilities may be installed or placed in Public ROW, with the exception that Antennas and its associated Equipment Facility may be placed on any Pole that has been already installed or placed in the ROW, with the consent of the Pole owner, subject to the standards in this Section.

B. Development Standards.

(1) Any Antenna to be installed in the ROW, and its accompanying Equipment Facilities, shall be subject to all site plan review and permitting requirements of the Town. No more than one Service Provider may locate Antennas on a single Pole.

(2) When installing an Antenna on a Pole, any and all associated Equipment Facility shall not be placed on the ground in the ROW.

(3) When installing an Antenna on a Pole, any and all of the Antenna associated Equipment Facility shall be placed in any of the following areas:

(a) Underground in the ROW;

(b) On an adjacent property, with the consent of the property owner, provided that all the wiring is underground; or

(c) On the Pole itself.

(4) Before installing any Antenna on any Pole already installed in the ROW, an Applicant must complete the Antenna Application pursuant to this Ordinance and must also comply with the other applicable sections of this Ordinance. An Application pursuant to this section shall not be deemed a Collocation Application.

(5) No Antenna may be installed under this section until the Applicant fully complies with all the indemnification and insurance requirements of this Ordinance.

(6) An Antenna may be mounted on an existing Pole, with the consent of the Pole owner, provided the Height of the Antenna does not extend more than ten (10) feet above the top of such Pole. An existing Pole may be modified, replaced or rebuilt to accommodate an Antenna so long as the Height of such Pole is not increased by more than ten (10) feet from its existing Height.

### **SECTION 33-63.15. REPLACEMENT OR MODIFICATION OF A WIRELESS COMMUNICATIONS FACILITY.**

A. A Telecommunications Tower that is modified or reconstructed to accommodate the Collocation of an additional Antenna shall be of the same Telecommunications Tower type as the existing Telecommunications Tower, unless the Town allows reconstruction as a Monopole pursuant to this Section.

B. An existing Telecommunications Tower may be modified or rebuilt to a taller Height to accommodate an additional Antenna. Such modification or rebuild of the Telecommunications Tower shall require the approval of the Town Council. The new Height shall comply with the requirements of this Ordinance.

C. A Telecommunications Tower that is being rebuilt to accommodate an additional Antenna and which requires movement onsite from its existing location shall require an Application for a new Tower. After the Telecommunications Tower is rebuilt to accommodate Collocation, only one Telecommunications Tower may remain on the site. A relocated onsite Telecommunications Tower shall continue to be measured from the original Telecommunications Tower location for purposes of calculating separation distances between Towers pursuant to this Section. The relocation of a Telecommunications Tower pursuant to this Section shall not be deemed to cause a violation of the separation requirements contained herein.

D. Modification of Existing Wireless Communications Facility. Minor modification of a Wireless Communications Facility shall not require an additional approval so long as the modification does not change the Height of the Telecommunications Tower, enlarge the Antenna Array, enlarge the Equipment Facility and does not involve any Collocation. All other modifications shall require approval.

E. An Pre-Existing Tower, including a nonconforming Tower, may be structurally modified to permit Collocation or may be replaced through no more than administrative review and Building-Permit Review, and is not subject to public hearing review, if the overall Height of the Tower is not increased and, if a replacement, the replacement Tower is a Monopole Tower or, if the Pre-Existing Tower is a Stealth Tower, the replacement Tower is a like-Stealth Tower.

F. Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas. Legal nonconforming Telecommunications Towers or Antennas that are damaged or destroyed may be rebuilt subject to Section 33.30(c) of the Town Code. Building permits to rebuild the facility shall comply with the then applicable Building Codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if the permit expires, the Telecommunications Tower or Antenna shall be deemed abandoned as specified in Section 33-63.12. herein.

#### **SECTION 33-63.16. INDEMNIFICATION, INSURANCE AND SECURITY FUNDS.**

A. Indemnification. The Town shall not enter into any lease agreement for Town owned property until and unless the Town obtains an adequate indemnity from such provider. The indemnity must at least:

(1) Release the Town from and against any and all liability and responsibility in or arising out of the construction, operation or repair of the Wireless Communications Facility.

(2) Indemnify and hold harmless the Town, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the Town or any third party arising out of, or by reason of, or resulting from or of each Wireless Communications Facility operator, or its agents, employees, or servants negligent acts, errors, or omissions.

(3) Provide that the covenants and representations relating to the indemnification provision shall survive following the term of any agreement and continue in full force and effect for at least one year following the termination of the party's agreement as to the party's responsibility to indemnify.

(4) In no event shall the Town indemnify a Service Provider and/or the owner or operator of a Wireless Communications Facility.

B. Insurance. The Town shall not grant or approve an Application for the installation of a Tower, Antenna and/or Wireless Communications Facility and shall not enter into any lease agreement for Town owned property until and unless the Town obtains assurance that such Applicant or lessee (and those acting on its behalf) have adequate insurance. At a minimum, the following requirements must be satisfied:

(1) A Wireless Communications Facility owner shall not commence construction or operation of the facility without obtaining all insurance required under this Section and approval of such insurance by the Town Manager, nor shall a Wireless Communications Facility operator allow any contractor or subcontractor to commence work on its contract or sub-contract until all similar such insurance required of the same has been obtained and approved. The required insurance must be obtained and maintained for the entire period the Wireless Communications Facility is in existence. If the operator, its contractors or subcontractors do not have the required insurance, the Town may order such entities to stop operations until the insurance is obtained and approved.

(2) Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the Town. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage.

(3) These certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days prior written notice has been given to the Town. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Town may amend its requirements pertaining to insurance from time to time and may require additional provisions pertaining to such insurance in a lease.

(4) In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the lease agreement with the Town, then in that event, the Wireless Communications Facility operator shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period.

C. Comprehensive General Liability. A Wireless Communications Facility operator and its contractors or subcontractors engaged in work on the operator's behalf, shall maintain adequate insurance to cover liability, bodily injury and property damage in the amount to be determined by the Town at the time of Application. Exposures to be covered include premises, operations, and those certain contracts relating to the construction, installation or maintenance of the Wireless Communications Facility. Coverage shall be written on an occurrence basis. Certificates of insurance reflecting evidence of the required insurance shall be filed with the Town.



D. Prior to any construction, every Service Provider, whether on public or private property within the Town, shall establish a cash security fund, or provide the Town with an irrevocable letter of credit subject to the Town Attorney's approval, in the amount specified in an agreement, permit, or other authorization as necessary to ensure the provider's faithful performance of construction and compliance with this Ordinance. The minimum amount of the Security Fund for each Telecommunications Tower shall be Twenty-five Thousand Dollars (\$25,000) and the minimum amount for each Antenna shall be Five Thousand Dollars (\$5,000).

E. In the alternative, at the Town's discretion, a Service Provider may, in lieu of a cash security fund or letter of credit, file and maintain with the Town a bond in the same amounts as required in subsection A. The provider and the surety shall be jointly and severally liable under the terms of the bond. The bond shall be issued by a surety having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the Town Attorney; and shall provide that: "This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the Town, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

F. The rights reserved by the Town with respect to any Security Fund or bond established pursuant to this Section are in addition to all other rights and remedies the Town may have under this Ordinance, a lease, or at Law or equity.

G. Any person, firm or corporation who knowingly breaches any provision of this Ordinance shall upon receipt of written notice from the Town be given a time schedule to cure the violation. Failure to commence to cure the violation within thirty (30) days and to complete cure, to the Town's satisfaction, within sixty (60) days, or such longer time as the Town may specify, shall result in revocation of any permit or license and the Town shall seek any remedy or damages to the full extent of the law. This shall not preclude other penalties allowed by law.

H. In addition to revoking any permit or license for violation of this Ordinance, the Town may enforce this Ordinance pursuant to the Local Government Code Enforcement Act, Chapter 162, F.S., as amended. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.

**Section 4. 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 5. Conflict.** 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 6. Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

PASSED AND ADOPTED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
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 S. Vrooman \_\_\_\_\_

Vice Mayor Edward P. MacDougall \_\_\_\_\_

Councilmember Peggy R. Bell \_\_\_\_\_

Councilmember Timothy J. Meerbott \_\_\_\_\_

Councilmember Ernest N. Sochin \_\_\_\_\_

TAB 12



## Planning & Zoning Department

R. Don O'Donniley, AICP  
*Planning Director*

# MEMORANDUM

To: Steven Alexander, Town Manager

From: Don O'Donniley, AICP, Planning Director

Date: May 11, 2007

Re: Revisions to Sections 33-126, 127 and 132.1 pertaining to parking areas in residential districts

As Town staff continues to review Chapter 33 of the Town Code, staff realizes that there are a number of relatively minor revisions that will make the Code more user friendly for the residents of the Town and more in keeping with the direction of the Town with respect to lifestyle. This proposal is a step towards implementing Goal 9.1 of the Strategic Plan; which calls for the town to become "a model" in terms of addressing roads and swale areas.

## REQUEST

That the Town Code be amended as outlined in the accompanying ordinance.

The following is a summary of the proposed changes to the Town Code:

- That Section 33-124. "Standards.", be amended to require parking spaces associated with single-family dwelling units be hard-surfaced.
- That Section 33-126. "Surface of parking areas.", be amended to reflect the type of hard-surfaced material that are allowed in the specified zoning districts.
- That Section 33-126. "Surface of parking areas.", be amended to reflect that it is a violation of town code to have off-street parking located on non-hard-surfaced areas.
- That Section 33-126. "Surface of parking areas.", be amended to include a maximum area for off-street parking in the front yard area.

- That Section 33-127. "Districts where parking area permitted between setback line and right-of-way.", be amended to delete reference to a zoning district that is not in the town and to clarify that RU-1, RU-2 and RU-3 (up to four unit apartment buildings only) zoning districts may use the front, side and side street areas for off-street parking so long as said areas meet the requirements in Section 33-126, as proposed.
- That Section 132.1. "Parking in swale areas within residential zoning districts.", be added to allow, upon application to the director of public works, parking for one vehicle on an improved surface as outlined in Section 33-126. This would only allow for one auto or light truck to be parked in a safe and orderly manner. The parking of boats, trailers or campers would still be prohibited in the swale area. This section also states the factors that the director will use in consideration of any application.

## **BACKGROUND AND ANALYSIS**

### **Background**

Currently, the referenced sections of the Code provide allowances for parking on grass or dirt surfaces, which is environmentally unsound. The intent of these revisions is to require all parking surfaces to be surfaced in some manner and to limit the maximum size of parking in the front yard area.

Additionally, other new provisions address the need for increased parking in residential areas by including allowances for parking in the public right-of-way swale under certain and limited conditions as provided for in proposed Section 33-132.1.

### **Analysis**

This original provision of the Dade County Zoning Code, as written in 1957, which now acts as the Town Code provides for a different time in the County's history. In analyzing this issue staff reviewed the parking codes of a variety of municipalities within South Florida and determined that the proposed revisions are an appropriate course of action.

This ordinance was approved on first reading on March 21, 2007.

## **RECOMMENDATION**

Approval of the proposed revisions that pertain to off-street parking areas in residential districts.

**ORDINANCE NO. 07- \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 “ZONING” OF THE TOWN CODE OF ORDINANCES RELATED TO PARKING; PROVIDING THAT OFF-STREET PARKING SHALL BE PERMITTED ONLY ON SURFACED PARKING AREAS; PROVIDING FOR THE MAXIMUM AREA PERMITTED FOR OFF-STREET PARKING AREAS WITHIN CERTAIN ZONING DISTRICTS; PROVIDING FOR SURFACED PARKING AREA MATERIALS FOR OFF-STREET PARKING; CREATING SECTION 33-132.1 WHICH PROVIDES FOR A PROHIBITION AGAINST PARKING IN THE SWALE AREAS WITHIN RESIDENTIAL ZONING DISTRICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Cutler Bay (the “Town”) has determined that the general appearance of the streetscapes within the Town contribute directly to, or detract directly from, the property values and the quality of life within the Town for its residents, businesses, and visitors; and

**WHEREAS**, motor vehicles parked on non-surfaced areas, including but not limited to, front yards and the swales within the right-of-way, detract from the potential for increasing property values and the quality of life within the Town for its residents, businesses, and visitors; and

**WHEREAS**, Town staff recommends prohibiting parking in the swale within the right-of-way in residential zoning districts in order to ensure a safe driving and aesthetically pleasing environment and to provide for adequate passive recreational open space; and

**WHEREAS**, Town staff also recommends amending the materials that are permitted for construction of surfaced parking areas, to provide the maximum benefit of these areas which were created and designed to provide stormwater management and aquifer recharge; and

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

**WHEREAS**, the Town finds that these changes are consistent with the Miami-Dade County’s Comprehensive Development Master Plan, which now functions as the Town’s Comprehensive Plan; and

**WHEREAS**, the Town Council finds these changes to be in the best interest and welfare of the Town.

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

**Section 1. Findings.** The foregoing “Whereas” clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

**Section 2. Amendment to Chapter 33 of the Town Code.** Article VII “Off-Street Parking” of Chapter 33 “Zoning” of the Town Code of Ordinances shall be amended as follows:

**Sec. 33-124. Standards.**

Off-street parking shall be provided in accordance with the following minimum standards:

(a) *Dwellings:*

(1) Single-family dwellings not specifically referenced elsewhere in this section shall be provided two (2) parking spaces. Paving of said spaces shall ~~not~~ be required in accordance with section 33-126 of the town code.

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**Sec. 33-126. Surface of parking areas.**

(1) Off-street parking shall only be permitted on surfaced parking areas as provided for in this article. In the AU, RU-1, ~~EU~~, RU-2 and RU-3 Districts the area reserved for off-street parking shall be ~~either graveled, mulched or hard-surfaced, including, but not limited to, pavers, concrete, or asphalt materials.~~ In all other zoninges districts it shall be hard-surfaced, which shall be limited to concrete or asphalt materials. ~~Where the parking area is hard surfaced, the same shall consist of a good rolled rock base, well tamped and topped with oil and sand or with asphalt or surfaced with concrete.~~ Occupancy of a given structure or premises shall be prohibited until the required parking area has been improved, inspected and approved. It shall be a violation of the town code for off-street parking to be located on any non-hard surfaced areas.

~~(2) In all other districts, all off street parking areas shall be surfaced with a minimum of a rolled six inch rock base and a one inch durable weatherproof asphaltic pavement. The occupancy or use of a given structure or premises shall be prohibited until the required off street parking area has been improved, inspected and approved.~~

~~(23)~~ All required off-street parking areas shall be properly drained so that no nuisance will be caused to adjacent or nearby properties. All construction shall comply with design standards as established by all applicable laws, ordinances and regulations.

~~(34)~~ All required off-street parking areas shall be maintained in good repair and shall be kept in a reasonably clean and sanitary condition free from rodents, insects and vermin.

(4) In the RU and EU Districts the maximum area reserved for off-street parking shall be the lesser of 1,000 square feet or 75 percent of the front yard area, but not more than half the width of the property along the street front.

**Sec. 33-127. Districts where parking area permitted between setback line and right-of-way.**

No parking areas including driveways except for minimum ingress and egress drives in the RU, EU, AU, and GU and RU-5 (with the exception of RU-5A), Districts shall be located closer than twenty-five (25) feet to an official right-of-way except parking areas for single family, two-family, three-and four-unit apartment uses.

In the RU-1 and RU-2 Districts and single family, two-family, three-unit apartment and four-unit apartment users in the RU-3 District, front, side, and side street setback areas may be used for off-street parking if said area is of sufficient depth to permit the parking of vehicles and meets the surface of parking area requirements set forth in section 33-126 of the town code. Parking in the BU Districts shall be permitted between the required setback line and the official right-of-way line, providing a continuous, extensively planted greenbelt of not less than five (5) feet shall be placed along all property lines abutting said official right-of-way line. Parking in the IU-1, IU-2, IU-3 Districts shall be permitted between the required setback line and the official right-of-way line providing that greenbelt requirements as provided elsewhere in this chapter are satisfied. In no event may parking areas located in the setback areas be sheltered or enclosed in any manner.

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**Section 33-132.1 Prohibition Against Parking in swale areas within residential zoning districts.**

In all residential zoning districts, parking in swale areas within any right-of-way shall not be permitted.

**Section 3. 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 4. Conflict.** 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 5. Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 21<sup>st</sup> day of March, 2007.

PASSED AND ADOPTED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2007.



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PAUL S. VROOMAN, Mayor

Attest:

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ERIKA GONZALEZ-SANTAMARIA, CMC  
Town Clerk

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

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

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman \_\_\_\_\_

Vice Mayor Edward P. MacDougall \_\_\_\_\_

Councilmember Peggy R. Bell \_\_\_\_\_

Councilmember Timothy J. Meerbott \_\_\_\_\_

Councilmember Ernest N. Sochin \_\_\_\_\_