

TOWN OF CUTLER BAY

Mayor John F. Cosgrove
Vice Mayor Paul S. Vrooman
Council Member Timothy J. Meerbott
Council Member Ernest N. Sochin
Council Member Peggy R. Bell

Acting Town Manager Charles Scurr
Assisting Town Manager Steve Alexander
Acting Town Attorney Richard Weiss
Acting Town Clerk Meighan Pier

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 Acting Town Clerk at (305) 259-1234 for assistance no later than four days prior to the meeting.

TOWN COUNCIL MEETING AGENDA

Thursday, February 16, 2006

7:00 P.M.

South Dade Government Center
10701 SW 211 Street, Room 203

(305) 259-1234

INVOCATION: The Reverend Don Sullivan, Saint Faith's Episcopal Church

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

Whispering Pines Boy Scout Troop 654 shall lead the pledge of allegiance

II. PROCLAMATIONS, AWARDS, PRESENTATIONS

- A. Proclamation for Priyanshu A. Adathakkar
- B. Proclamation for Barbara Penrod, Cutler Ridge Park Director

III. APPROVAL OF MINUTES

- A. Minutes of the February 2, 2006 Council Meeting

IV. TOWN MANAGER'S REPORT

V. TOWN ATTORNEY'S REPORT

VI. BOARD AND COMMITTEE REPORTS

- A. Report/workshop regarding Cutler Ridge Charrette - Vice Mayor Vrooman

VII. CONSENT AGENDA

VIII. RESOLUTIONS

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE MAYOR, ASSISTING TOWN MANAGER AND ACTING TOWN ATTORNEY TO NEGOTIATE AN INITIAL INTERLOCAL AGREEMENT OR SERIES OF AGREEMENTS FOR CONTINUING SERVICES WITH MIAMI-DADE COUNTY; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AFTER APPROVAL BY THE TOWN COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.
- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR THE ESTABLISHMENT OF TOWN ACCOUNTS WITH A QUALIFIED PUBLIC DEPOSITORY; PROVIDING FOR DEPOSIT OF FUNDS; PROVIDING FOR NECESSARY SIGNATORIES ON SUCH ACCOUNTS; PROVIDING NOTICE TO THE STATE TREASURER; PROVIDING FOR A WAIVER OF COMPETITIVE BIDDING REQUIREMENTS; AUTHORIZING TRANSMITTAL; AND PROVIDING AN EFFECTIVE DATE.
- C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE PREPARATION OF AND SUBMISSION OF THE TOWN'S APPLICATIONS FOR EMPLOYER IDENTIFICATION NUMBER AND TAX EXEMPTION; AUTHORIZING TRANSMITTAL; AND PROVIDING FOR AN EFFECTIVE DATE.
- D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE ASSISTING TOWN MANAGER TO NEGOTIATE THE PURCHASE OF INSURANCE COVERAGE FOR THE TOWN AND ITS ELECTED OFFICIALS, OFFICERS AND OFFICE FACILITIES; PROVIDING FOR A DETERMINATION OF IMPRACTICALITY AS TO COMPETITIVE BIDDING FOR SUCH INSURANCE COVERAGES; AND PROVIDING AN EFFECTIVE DATE.
- E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE PREPARATION OF AND SUBMISSION TO THE STATE OF FLORIDA, DEPARTMENT OF REVENUE, OF THE TOWN'S APPLICATION FOR STATE REVENUE-SHARING PURSUANT TO CHAPTER 218, FLORIDA STATUTES AND PROVIDE FOR AN EFFECTIVE DATE.
- F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ESTABLISHING THE MEETING SCHEDULE OF THE TOWN COUNCIL; ESTABLISHING THE LOCATION; AUTHORIZING THE ASSISTING TOWN MANAGER TO

NEGOTIATE A CONTRACT FOR USE OF THE MEETING LOCATION;
PROVIDING AN EFFECTIVE DATE.

IX. RESOLUTIONS REQUIRING PUBLIC HEARING

X. ORDINANCES FOR FIRST READING AND EMERGENCY ORDINANCES

- A. AN EMERGENCY ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE MIAMI-DADE COUNTY CODE AS APPLICABLE TO THE TOWN PURSUANT TO SECTION 8.3 OF THE TOWN CHARTER TO SUBSTITUTE TOWN COUNCIL FOR COUNTY OFFICIALS, BOARDS, OR COMMITTEES, PROVIDING FOR ZONING REVIEW, PROVIDING FOR AUTHORITY OF TOWN COUNCIL; PROVIDING FOR AN APPEAL PROCESS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.
- B. AN EMERGENCY ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE ESTABLISHMENT OF THE TOWN'S LOCAL PLANNING AGENCY; DESIGNATING THE TOWN COUNCIL AS THE LOCAL PLANNING AGENCY; PROVIDING FOR POWERS AND DUTIES; PROVIDING FOR A RECORDING SECRETARY; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.
- C. AN EMERGENCY ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IMPLEMENTING THE UTILITY TAX AUTHORIZED BY SECTION 166.231, ET. SEQ., FLORIDA STATUTES, TO LEVY AND IMPOSE UTILITY TAX UPON THE PURCHASE WITHIN THE TOWN OF CUTLER BAY OF ELECTRICITY, WATER, METERED GAS, BOTTLED GAS, COAL, AND FUEL OIL; AUTHORIZING TRANSMITTAL; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

XI. ORDINANCES FOR SECOND READING AND PUBLIC HEARING

XII. PUBLIC COMMENTS

XIII. MAYOR AND COUNCIL COMMENTS

XIV. OTHER BUSINESS

- A. Report regarding process for hiring Town Manager-Interim/Permanent – Mayor Cosgrove
- B. Report regarding process for hiring Town Attorney/Legislative Representation – Vice Mayor Vrooman

- C. Report regarding process for selection of finance/banking institution – Council Member Meerbott
- D. Report regarding process for securing temporary facilities – Council Member Sochin
- E. Report regarding process for hiring Town Clerk/Communications – Council Member Bell
- F. Discussion concerning franchise fees

XV. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT

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

**TOWN OF CUTLER BAY, FLORIDA
MINUTES OF THE THURSDAY, FEBRUARY 2, 2006
MEETING OF THE VILLAGE COUNCIL**

CUTLER RIDGE MIDDLE SCHOOL AUDITORIUM
19400 GULFSTREAM ROAD
CUTLER BAY, FLORIDA

The Meeting commenced at 7:05 p.m.

INVOCATION: Father Luis A. Pérez of Holy Rosary Church offered the invocation.

- I. CALL TO ORDER** - Edward MacDougall, Charter Committee Chairman: Mr. MacDougall called the meeting to order.
- II. ROLL CALL** - Edward MacDougall, Charter Chairman: Mr. MacDougall called the roll of the members of the Charter Bay Charter Committee: Delleperche Joseph, Sandra Reyes-Nanni and Eduardo Wolmers were excused.
- III. GREETING AND WELCOME:** Principal Thomas Ennis, Cutler Ridge Middle School expressed his gratitude for the honor of being asked to welcome the first meeting. He urged all to get involved in the local schools. He welcomed Mayor Cosgrove and the members of the Council.

Ms. Charquoya Smith, Student Council President for Cutler Ridge Middle School, welcomed the new municipality.

- IV. PLEDGE OF ALLEGIANCE:** The Holy Rosary Boy Scout Troop #314 led the pledge of allegiance.
- V. NATIONAL ANTHEM:** Kelly Kessell sang the National Anthem.

VI. SWEARING IN OF ELECTED OFFICIALS:

Village of Palmetto Bay Mayor Eugene Flinn swore in the following Council Members, who were joined by their family members:

- District 1 Council Member Timothy J. Meerbott
- District 2 Council Member Ernest N. Sochin
- District 3 Council Member Peggy R. Bell

Miami-Dade County Commissioner Katy Sorenson swore in Vice Mayor Paul S. Vrooman and Mayor John F. Cosgrove, both of whom were joined by their family members.

- VII. CHARTER AND GAVEL PRESENTATION:** Mr. MacDougall formally presented the original executed Charter to Mayor Cosgrove and provided him with the gavel.

VIII. CALL TO ORDER: Mayor Cosgrove welcomed the Council and asked them to assume their seats on the dais. He formally called the first Council meeting to order at 7:30 p.m.

Mayor Cosgrove welcomed Charles Scurr, Village Manager of Palmetto Bay, and Meighan Pier, Village Clerk of Palmetto Bay, and thanked them for offering to serve as Acting Manager and Acting Clerk. He thanked Steven Alexander, Village Manager for the Town of El Portal, for agreeing to provide Assisting Manager services. Mayor Cosgrove introduced Attorneys Richard Weiss, Mitch Bierman and John Quick of Weiss, Serota, et al., and thanked them for agreeing to serve as Acting Town Attorneys. Lastly, he expressed his gratitude to Attorney Ed Ludovici for assisting as legal counsel to the Charter Committee.

IX. RECOGNITIONS AND REMARKS: Each member of the Council provided a brief expression of their gratitude.

Mayor Cosgrove recognized and welcomed the following dignitaries: Harriet Carter, Aide to Congresswoman Ileana Ros-Lehtinen; former County Commissioner Jimmy Morales; Former School Board Member Betsy Kaplan; Miami-Dade Police Major Grace O'Donnell and Major Victor Ramirez; Palmetto Bay Mayor Eugene Flinn, Councilman Paul Neidhart, Councilman John Breder; Julie Fishman, Aide to Senator Nan Rich; School Board Member Evelyn Greer; Pinecrest Mayor Gary Matzner and Councilwoman Cindie Blanck; and Suzette Rice of Miami-Dade County Mayor Alvarez' office.

Mayor Cosgrove, together with the Council, presented Proclamations to the members of the Charter Committee and the members of the Municipal Advisory Committee. He provided a Proclamation to Attorney Ed Ludovici for his service as legal counsel to the Charter Committee. Mayor Cosgrove also offered special thanks to Miami-Dade County Commissioner Katy Sorenson for her support.

X. SPECIAL PRESENTATIONS

A. Teacher of the Year: Lynn Carrier. Mayor Cosgrove, the Council and School Board Member Evelyn Greer presented a Proclamation to Lynn Carrier, Teacher of the Year from Gulfstream Elementary. Resident Louise Lockwood provided flowers to Ms. Carrier. School Board Member Greer offered congratulatory remarks. Ms. Carrier thanked the Council, Ms. Lockwood and the Town of Cutler Bay.

B. Presentation: Nancy McCue, Chair of the Cutler Bay Steering Committee, Ed McCue and John Sykes: Ms. McCue thanked the members of the Steering Committee. The issues of the Community Newspapers that told the story of Cutler Bay incorporation and the front pages digitized and framed were presented to Mayor Cosgrove and the Council.

Mayor Flinn and the Village Council of Palmetto Bay presented the Mayor and Council with a congratulatory proclamation. Mayor Matzner and Councilwoman Cindie Blanck of Pinecrest expressed their good wishes, as did County Commissioner Sorenson and School Board Member Greer.

XI. RECESS - CAKE AND PICTURES: The meeting was recessed at 8:20 p.m.; the meeting re-convened at 9:00 p.m.

XII. REVIEW OF SUNSHINE LAW, PUBLIC RECORDS LAW & JENNINGS RULE: Attorney Edward Ludovici provided an explanation of the Sunshine Law, Public Records Law and the Jennings Rule.

Attorney Richard Weiss advised that members of his firm would meet individually with each Council person to provide further explanation and answer any other questions concerning these laws.

XIII. COMMENTS FROM CHARLES D. SCURR, Palmetto Bay Village Manager: Mr. Charles Scurr congratulated the Council and remarked that he feels privileged to help. He advised that the Council will have to move quickly, as the County Interlocal agreements and preparation of the budget is imminent. He provided report concerning several of the coming agenda items.

Mayor Cosgrove again expressed his appreciation to Palmetto Bay.

XIV. COMMENTS FROM RICHARD JAY WEISS, Esquire, City of Homestead Legal Counsel: Mayor Cosgrove thanked the City of Homestead Council for allowing the firm to assist the Town.

Attorney Weiss thanked the Council. He also thanked Attorney Ludovici for his preparation of the Agenda. He introduced Attorneys Mitchell Bierman and John Quick. He stated that Mayor Roscoe Warren of the City of Homestead sends his regards.

XV. RESOLUTIONS:

A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO TOWN CLERK; APPOINTING MEIGHAN PIER AS ACTING TOWN CLERK FOR NO COMPENSATION; PROVIDING AN EFFECTIVE DATE.

Mayor Cosgrove briefly explained the item. The Clerk read the proposed Resolution by caption.

Vice Mayor Vrooman moved to approve. Seconded by Council Member Sochin. All voted in favor. The Motion carried unanimously (5-0). Resolution 06-01 was adopted.

- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO TOWN MANAGER; APPOINTING MR. CHARLES D. SCURR AS ASSISTING TOWN MANAGER FOR NO COMPENSATION; PROVIDING AN EFFECTIVE DATE.

Mayor Cosgrove explained the item, noting that Mr. Steven Alexander, Village Manager for El Portal, would also be supplementing Mr. Scurr's assistance. The Clerk read the proposed Resolution by caption.

Vice Mayor Vrooman asked if the Resolution should include Mr. Alexander's assistance.

Mayor Cosgrove advised that if Mr. Scurr must step aside, then the Council would consider appointing Mr. Alexander in an official capacity.

Council Member Sochin moved to approve. Seconded by Council Member Bell. All voted in favor. The Motion carried unanimously (5-0). Resolution 06-02 was adopted.

- C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO TOWN ATTORNEY; APPOINTING WEISS SEROTA HELFMAN PASTORIZA COLE AND BONISKE, P.A., TO SERVE AS ACTING TOWN ATTORNEYS FOR NO COMPENSATION; PROVIDING AN EFFECTIVE DATE.

Mayor Cosgrove explained the item. The Clerk read the proposed Resolution by caption.

Council Member Sochin moved to approve. Seconded by Vice Mayor Vrooman. All voted in favor. The Motion carried unanimously (5-0). Resolution 06-03 was adopted.

- D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO COUNCIL MEETING PROCEDURE; APPROVING AN AGENDA FORMAT; PROVIDING AN EFFECTIVE DATE.

Mayor Cosgrove explained the item. He advised the audience that while the proposed Resolutions are read by caption, all agenda items are available for review. The Clerk read the proposed Resolution by caption.

Council Member Sochin moved to approve. Seconded by Council Member Meerbott. All voted in favor. The Motion carried unanimously (5-0). Resolution 06-04 was adopted.

- E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO COUNCIL MEETING PROCEDURE; ADOPTING ROBERT'S RULES OF ORDER; PROVIDING AN EFFECTIVE DATE.

The Clerk read the proposed Resolution by caption.

Vice Mayor Vrooman moved to approve. Seconded by Council Member Bell. All voted in favor. The Motion carried unanimously (5-0). Resolution 06-05 was adopted.

- F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO ITS NEXT COUNCIL MEETING; ESTABLISHING THE NEXT MEETING OF THE TOWN COUNCIL; PROVIDING AN EFFECTIVE DATE.

Mayor Cosgrove explained that while he did not wish to make unilateral decisions, he wanted to insure that the next meeting could be scheduled. The Clerk read the proposed Resolution by caption.

Council Member Meerbott moved to approve. Seconded by Council Member Bell. All voted in favor. The Motion carried unanimously (5-0). Resolution 06-06 was adopted.

- G. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA RELATING TO FINANCE; REQUESTING FUNDING ASSISTANCE FROM MIAMI-DADE COUNTY IN THE AMOUNT OF \$300,000; PROVIDING AN EFFECTIVE DATE.

The Clerk read the proposed Resolution by caption.

Vice Mayor Vrooman moved to approve. Seconded by Council Member Bell. All voted in favor. The Motion carried unanimously (5-0). Resolution 06-07 was adopted.

- H. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROCUREMENT; AUTHORIZING THE ASSISTING VILLAGE MANAGER, THROUGH THE VILLAGE OF PALMETTO BAY, TO PROCURE ESSENTIAL ITEMS RELATIVE TO THE INITIAL ADMINISTRATIVE FUNCTIONS IN AN AMOUNT NOT TO EXCEED \$10,000; PROVIDING FOR REIMBURSEMENT TO THE VILLAGE OF PALMETTO BAY; PROVIDING AN EFFECTIVE DATE.

Council Member Sochin moved to approve. Seconded by Council Member Meerbott. All voted in favor. The Motion carried unanimously (5-0). Resolution 06-08 was adopted.

XVI. ORDINANCES FOR FIRST READING AND EMERGENCY ORDINANCES

- A. AN EMERGENCY ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO OFFICIAL SEAL OF THE TOWN OF CUTLER BAY; DESIGNATING THE TEMPORARY OFFICIAL SEAL OF THE TOWN OF CUTLER BAY; PROVIDING FOR USE AND PENALTIES; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

Mayor Cosgrove explained the proposed Ordinance and explained the procedure for adoption of ordinances and the nature of an emergency ordinance. The Clerk read the proposed Ordinance by caption.

Council Member Meerbott moved to pass the item on first reading. Seconded by Vice Mayor Vrooman. A roll call vote was taken, as follows: Mayor Cosgrove: Yes; Vice Mayor Vrooman: Yes; Council Member Meerbott: Yes; Council Member Sochin: Yes; Council Member Bell: Yes. Ordinance 06-01 was adopted unanimously (5-0).

Attorney Weiss noted that emergency ordinances expire in 180 days.

XVII. OTHER BUSINESS

Mayor Cosgrove explained that he felt it would be appropriate to assign responsibilities to members of the Council to design a process for several matters and recommend the process to Council on February 16th. He stated that each Council Member would then appoint one member to a citizen's advisory committee on that particular item; and, the Council Member would be appointed the non-voting liaison and convening chair of that particular committee. He noted that all meetings would be subject to the provisions of the Sunshine Law. Mayor Cosgrove explained that he has been contacted by several interested parties and, as the items arose, he provided the responsible Council Member with the information he had received. He briefly explained the difference between a Request for Proposals and a Request for Qualifications.

- A. Discussion on a process for hiring a Town Clerk/Communications: Council Member Bell accepted this responsibility.
- B. Discussion on a process for hiring a Town Attorney/Legislative Representation: Vice Mayor Vrooman accepted this responsibility. Mayor Cosgrove noted that the Town can "piggy-back" on Palmetto Bay's existing lobbyist contract, as the legislative session begins in 30 days.
- C. Discussion on a process for hiring a Town Manager: Mayor Cosgrove stated that he will take this responsibility.

- D. Discussion on a process for finding temporary facilities: Council Member Sochin accepted this responsibility.
- E. Discussion on a process for dealing with finance/banking issues: Council Member Meerbott accepted this responsibility.

Mr. Scurr remarked that while establishing of procedures for the final selection of these important issues remains important, the Council should consider that interim decisions be made as soon as possible.

Mayor Cosgrove concurred.

Mr. Bill Meiklejohn, 9311 Sterling Drive, asked when Cutler Bay would receive additional funds as lobbyists are expensive.

Mayor Cosgrove remarked that Vice Mayor Vrooman will be working on the process to select the lobbyist.

- F. Discussion ensued regarding the regular meeting times and dates. It was concluded that the Council would consider either Tuesdays or Thursdays.
- G. Discussion regarding Invocation: Mayor Cosgrove advised that he had invited Father Don Sullivan of Saint Faith's Episcopal Church to the February 16th meeting and asked the Vice Mayor to choose the next guest for the invocation and the pledge of allegiance, with Council seats 1, 2 and 3 to subsequently follow and rotate.
- H. Discussion regarding initial citizen committee ideas: Mayor Cosgrove provided a list of 22 subject areas and asked the Council to review the areas and determine which would be appropriate for citizen advisory committees and which could be combined. He encouraged public participation and stated that he hoped to have constant participation through approximately seven or eight committees.

Following brief discussion, Attorney Weiss explained that each Advisory Committee and its appointed members would be formally adopted through Council action.

The Council discussed equal representation throughout the Town and Mr. Scurr reminded the Council to consider the scope of the advisory committees-the delineation of the committees' duties.

- I. Discussion regarding Cutler Ridge Charette: Vice Mayor Vrooman provided a report concerning the Cutler Ridge Charrette. He thanked Miami-Dade County Planning & Zoning for their assistance and asked Attorney Weiss to draft a municipal ordinance.

Following discussion, it was determined that a workshop and first reading of the Ordinance would be held on February 16, if possible.

XVIII. PUBLIC COMMENTS

- A. Peter Velar and Odell Ford of Miami-Dade County Incorporation/Annexation Unit were recognized. Mr. Velar urged the Council to move quickly in securing an Interim Manager to begin negotiations and handle financial matters.

Mayor Cosgrove asked the gentlemen to contact him to schedule a meeting.

- B. Ms. Joy Cooper, 9365 Nassau Drive, reminded the Council that the Concerned Citizens for Cutler Ridge Committee meets on Tuesdays.
- C. Ms. Nancy McCue, 20827 SW 86 Avenue, urged the Council to seek finalization of the Charrette by Miami-Dade County. She also requested the Council seek a temporary moratorium on issuing new building permits until the County provides status of pending items.
- D. Mr. Ralph Geronimo, 9765 Cutler Ridge Drive, expressed his pleasure with the Council's actions and professionalism.

XIX. COUNCIL COMMENTS

- A. Council Member Sochin broached the subject of Council attire for meetings. Discussion ensued. The consensus was that individuals should dress as they feel is appropriate.
- B. Council Member Bell remarked that a moratorium should be investigated closely as individuals are still repairing their homes following the recent hurricanes.
- C. Vice Mayor Vrooman stated that he is pleased that FPL is considering burying utility lines and other infrastructure improvements. He noted that he will be walking the community with representatives from FPL in coming week.
- D. Mayor Cosgrove stated that he has been in contact with the County concerning the pending repairs that should have been completed by public works prior to incorporation. He advised that he had invited Ms. Penrod from Cutler Ridge Park to the next meeting to be recognized, as she was named outstanding parks employee of the quarter for the County.

XX. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT

Mayor Cosgrove announced that the next meeting shall be held on February 16, 2006 at the South Dade Government Center, Room 203. He asked the Council if they had suggestions regarding the pledge of allegiance.

Councilman Meerbott suggested that the Town utilize youth groups, such as the Scouts to lead the pledge of allegiance at the meetings.

Mayor Cosgrove concurred and stated that when a Council Member has the responsibility of seeking an individual for the invocation, he or she should also locate a youth group for the pledge.

Mr. Mark Delifino, Local Scout Troop 654, Whispering Pines, volunteered his troop.

Ms. Suzette Rice congratulated the Council and asked that they forward emails to her regarding pending items with the County and she will follow up.

The Meeting was officially adjourned at 10:40 pm.

Prepared and submitted by:

*Meighan J. Pier, CMC
Acting Town Clerk*

*Adopted by the Town Council on
this ___ day of February, 2006.*

John F. Cosgrove, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW. WHILE THE FLORIDA STATUTES DO NOT REQUIRE AUDIO RECORDINGS, TO THE EXTENT THAT AUDIO RECORDINGS ARE MADE, THE RECORDING MAY BE REQUESTED FROM THE TOWN CLERK FOR REVIEW AND/OR COPYING. THE TOWN OF CUTLER BAY CAN NOT GUARANTEE THE QUALITY OF ANY RECORDING.

RESOLUTION NO. 06-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE MAYOR, ASSISTING TOWN MANAGER AND ACTING TOWN ATTORNEY TO NEGOTIATE AN INITIAL INTERLOCAL AGREEMENT OR SERIES OF AGREEMENTS FOR CONTINUING SERVICES WITH MIAMI-DADE COUNTY; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AFTER APPROVAL BY THE TOWN COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, as a newly incorporated municipality, the Town of Cutler Bay (the “Town”) is unable to provide all of the required municipal services, including but not limited to such services as fire rescue, planning and zoning analysis and solid waste, to its residents; and

WHEREAS, Miami-Dade County (the “County”) has been providing these services to the Town’s residents prior to incorporation and continues to provide them.

WHEREAS, the Town Council finds that it is in the best interests of the Town to enter into an Interlocal Agreement with the County so that the County continues to provide services to 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. Authorization to Negotiate. The Mayor, Assisting Town Manager and Acting Town Attorney are authorized to negotiate an Interlocal Agreement or series of agreements between Miami-Dade County and the Town of Cutler Bay to continue receiving certain municipal services from the County and to provide for a smooth transition of other services.

Section 3. Execution of Agreement. The Mayor is authorized to execute this

RESOLUTION NO. 06-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR THE ESTABLISHMENT OF TOWN ACCOUNTS WITH A QUALIFIED PUBLIC DEPOSITORY; PROVIDING FOR DEPOSIT OF FUNDS; PROVIDING FOR NECESSARY SIGNATORIES ON SUCH ACCOUNTS; PROVIDING NOTICE TO THE STATE TREASURER; PROVIDING FOR A WAIVER OF COMPETITIVE BIDDING REQUIREMENTS; AUTHORIZING TRANSMITTAL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) does not presently have a bank account; and

WHEREAS, the Town Council finds it is necessary to establish accounts with a qualified public depository for the purpose of the deposit and subsequent expenditure of municipal funds for the Town; and

WHEREAS, the Town Council has determined that it is impracticable to competitively bid these services because of the immediate need for banking services; and

WHEREAS, it is the desire of the Town Council to open an account with _____.

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. Establishment of Accounts. The Town Council authorizes the Assisting Town Manager to open an operating account, one or more trust accounts and such accounts, other than loan accounts, as may be necessary for the conduct of Town business at _____.

Section 3. Initial Signatories. The initial signatories on the accounts shall be the five (5) elected Town officials and each check shall require two (2) signatures.

Section 4. Notice to State Treasurer. Prior to the initial deposit into such accounts, the Town shall provide notice to the State Treasurer as required by Section 280.17, Florida Statutes.

Section 5. Authorizing Transmittal. The Acting Town Clerk is directed to provide a copy of this Ordinance to the bank(s) as necessary.

Section 6. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED and ADOPTED this ____ day of February, 2006.

JOHN F. COSGROVE, MAYOR

ATTEST:

MEIGHAN PIER, CMC
Acting Town Clerk

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

ACTING TOWN ATTORNEY

FINAL VOTE AT ADOPTION:

Mayor John F. Cosgrove _____

Vice Mayor Paul S. Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest N. Sochin _____

Council Member Peggy R. Bell _____

RESOLUTION NO. 06-

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE PREPARATION OF AND SUBMISSION OF THE TOWN'S APPLICATIONS FOR EMPLOYER IDENTIFICATION NUMBER AND TAX EXEMPTION; AUTHORIZING TRANSMITTAL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is necessary for the Town of Cutler Bay (the "Town") to submit an application to obtain a federal employer identification number and an application to the State of Florida to obtain a sales and use tax exemption (the "Applications"); and

WHEREAS, it is appropriate to authorize the Assisting Town Manager and the Acting Town Attorney to prepare and submit the Applications to the appropriate authorities.

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. Authorization of Town Officials. The Assisting Town Manager and the Acting Town Attorney are authorized to prepare and submit the Applications to the appropriate authorities and to take all steps necessary to obtain the Town's federal employer identification number and tax exemption.

Section 3. Transmittal. The Acting Town Clerk is directed to transmit the Applications to the appropriate state and federal agencies for final processing, approval, and issuance of the Town's federal employer identification number and tax exemption.

Section 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this ____ day of February, 2006.

JOHN F. COSGROVE, MAYOR

ATTEST:

MEIGHAN PIER, CMC
Acting Town Clerk

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

ACTING TOWN ATTORNEY

FINAL VOTE AT ADOPTION:

Mayor John F. Cosgrove _____

Vice Mayor Paul S. Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest N. Sochin _____

Council Member Peggy R. Bell _____

RESOLUTION NO. 06-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE ASSISTING TOWN MANAGER TO NEGOTIATE THE PURCHASE OF INSURANCE COVERAGE FOR THE TOWN AND ITS ELECTED OFFICIALS, OFFICERS, AND OFFICE FACILITIES; PROVIDING FOR A DETERMINATION OF IMPRACTIBILITY AS TO COMPETITIVE BIDDING FOR SUCH INSURANCE COVERAGES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “City”) desires to purchase Director’s and Officer’s Liability coverage for its elected officials and officers, general commercial liability, and other required coverage for the City; and

WHEREAS, the Town Council finds that it is impracticable to solicit competitive bids or proposals for such insurance services upon detailed specifications, because of the necessity to immediately obtain such insurance coverage.

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. Establishment of Insurance. The Assisting Town Manager is authorized to negotiate and finalize the terms and conditions of necessary insurance coverage for the Town from _____ and report such action to the Town Council as soon as possible.

Section 3. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED and ADOPTED this ____ day of February, 2006.

JOHN F. COSGROVE, MAYOR

ATTEST:

MEIGHAN PIER, CMC
Acting Town Clerk

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

ACTING TOWN ATTORNEY

FINAL VOTE AT ADOPTION:

Mayor John F. Cosgrove _____

Vice Mayor Paul S. Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest N. Sochin _____

Council Member Peggy R. Bell _____

RESOLUTION NO. 06-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE PREPARATION OF AND SUBMISSION TO THE STATE OF FLORIDA, DEPARTMENT OF REVENUE, OF THE TOWN'S APPLICATION FOR STATE REVENUE-SHARING PURSUANT TO CHAPTER 218, FLORIDA STATUTES AND PROVIDE FOR AN EFFECTIVE DATE.

WHEREAS, to be eligible to receive state revenue-sharing funds, it is necessary for the Town of Cutler Bay (the "Town") to submit an application for revenue-sharing to the State Department of Revenue, in accordance with Chapter 218, Florida Statutes; and

WHEREAS, it is appropriate to authorize the Acting Town Attorney to prepare and submit the revenue-sharing application.

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

Section 1. The Acting Town Attorney is authorized to prepare and submit to the State Department of Revenue the Town's application for revenue-sharing, and to take all steps necessary to obtain receipt of such revenue-sharing funds.

Section 2. This Resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this ____ day of February, 2006.

JOHN F. COSGROVE
MAYOR

ATTEST:

MEIGHAN PIER, CMC
Acting Town Clerk

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

ACTING TOWN ATTORNEY

FINAL VOTE AT ADOPTION:

Mayor John F. Cosgrove _____

Vice Mayor Paul S. Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest N. Sochin _____

Council Member Peggy R. Bell _____

Section 3. Land Development Hearings. The Town Council shall hold hearings on applications for land development approvals and/or permits on the _____ of each month.

Section 4. Authorization of Assisting Town Manager. The Assisting Town Manager is authorized to negotiate and finalize an agreement with _____ or any other appropriate authority for the future use of the meeting location.

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

PASSED and ADOPTED this ____ day of February, 2006.

JOHN F. COSGROVE
MAYOR

ATTEST:

MEIGHAN PIER, CMC
Acting Town Clerk

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

ACTING TOWN ATTORNEY

FINAL VOTE AT ADOPTION:

Mayor John F. Cosgrove _____

Vice Mayor Paul S. Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest N. Sochin _____

Council Member Peggy R. Bell _____

ORDINANCE NO. 06-_____

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

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

WHEREAS, pursuant to Section 8.8 of the Town Charter, the Town Council may adopt ordinances required to effect the transition as emergency ordinances within 60 days after the first Council meeting which ordinances shall be effective for a period of no longer than 180 days and thereafter may be readopted; and

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

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

Section 1. Pursuant to Section 8.8 of the Town Charter, an emergency transitional ordinance is adopted to read as follows:

- (a) County Staff; Provisions In Effect. The Miami-Dade County Code, as made applicable to the Town pursuant to the provisions of Section 8.3 of the Town Charter, is amended to substitute the Town Council in the place and stead of County officials, boards or committees, including

but not limited to the Board of County Commissioners, the Director of Planning, Development and Regulation the Community Zoning Appeals Board, and the Code Enforcement Board and/or Hearing Officer, so that any and all actions shall be taken by the Town Council. The County staff shall perform those functions for the Town as may be provided by agreement between the Town and the County. Except as otherwise provided in this ordinance, the provisions of the Miami-Dade County Code, as made applicable to the Town to the extent required by Section 8.3 of the Town Charter, shall remain in full force and effect until otherwise modified or replaced by the Town Council.

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

provided by the Florida Rules of Appellate Procedure for the review of the rulings of any commission or board; and such time shall commence to run from the date the decision sought to be reviewed is transmitted to the Town Clerk.

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

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

The foregoing Emergency Ordinance was offered by Council Member _____, who moved its adoption. The motion was seconded by _____ and upon being put to a vote, the vote was as follows:

| | |
|------------------------------------|-------|
| Mayor John F. Cosgrove | _____ |
| Vice Mayor Paul S. Vrooman | _____ |
| Council Member Timothy J. Meerbott | _____ |
| Council Member Ernest N. Sochin | _____ |
| Council Member Peggy R. Bell | _____ |

PASSED and ADOPTED this ____ day of February, 2006.

Attest: _____
MEIGHAN PIER, CMC
Acting Town Clerk

JOHN F. COSGROVE
Mayor

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

ACTING TOWN ATTORNEY

EMERGENCY ORDINANCE NO. _____

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

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

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

WHEREAS, Article VIII, Section 8.8 of the Town Charter empowers the Town Council to enact emergency ordinances to effect the transition to municipal government, and provides that transitional ordinances shall be effective for a period of no longer than 180 days from the date of enactment, unless the ordinance is re-enacted.

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

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

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

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

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

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

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

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

Section 7. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are repealed.

Section 8. Effective Date. This ordinance shall take effect immediately upon enactment and sunset 180 days later.

PASSED and ENACTED this ____ day of February, 2006.

Attest: _____
MEIGHAN PIER, CMC
Acting Town Clerk

JOHN F. COSGROVE
Mayor

APPROVED AS TO FORM:

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

FINAL VOTE AT ADOPTION:

Mayor John F. Cosgrove _____

Vice Mayor Paul S. Vrooman _____

Council Member Timothy J. Meerbott _____

Council Member Ernest N. Sochin _____

Council Member Peggy R. Bell _____

ORDINANCE NO. 06-_____

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

WHEREAS, pursuant to Section 8.8 of the Town Charter, the Town Council may adopt ordinances required to effect the transition as emergency ordinances; and

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

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

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

WHEREAS, although the Town Council believes that no further action is necessary, it

wishes to expedite the payment of Utility Taxes to the Town and avoid a lengthy technical debate with any Utility Service providers; and

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

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

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

ARTICLE I. UTILITY TAX

Sec. 1.01. Definitions

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

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

Town: Town of Cutler Bay, Florida.

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

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

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

the incorporated area of the Town.

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

Purchase: Every act or transaction whereby possession of, utilization of, control over or title to Water, Electricity, Metered Gas, Bottled Gas, Coal, or Fuel Oil, and the duty and obligation to pay therefor become vested in the Purchaser within the incorporated area of the Town, but such term shall not pertain to nor include any such Purchase act or transaction when undertaken or performed by an agency or instrumentality of the United States Government, the State, the County or a municipality as Purchaser.

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

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

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

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

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

- (1) When the Seller, in accordance with rules and regulations, renders a bill to the Purchaser to cover purchases made during the period of time to which the bill is applicable, the amount of excise tax shall be ten (10) percent of the total amount shown on any such bill due and payable on account of such

purchases (not exceeding four cents (\$0.04) per gallon for purchases of fuel oil), exclusive of governmental charges, and adjustments caused by the increased cost of energy-producing fuels, provided such governmental charges, service fees, taxes and fuel adjustments are shown separately on any such bill.

- (2) In the use and application set out in this section, purchases of Water, Electricity, Metered Gas, Bottled Gas, Coal, Fuel Oil, shall be considered and treated as constituting and being distinct and unrelated classes of purchases, and in the event that more than one (1) such class shall be shown upon the same bill, the amount of excise tax payable pursuant hereto shall be determined and computed for each such class separately.
- (3) The Seller is required and it shall be Seller's duty to render to each Purchaser bills covering all such purchases made, and the amount of such excise tax shall be entered and shown by the Seller as a separate item on each such bill and shall become due and payable to the Town whenever such bill becomes due and payable under the rules and regulations of the Seller. Each such bill shall include purchases applicable to but one (1) location, or to but one (1) family or business where more than one (1) family or business uses separate metered services at one (1) location in the incorporated areas of the Town.
- (4) The Purchaser is required and it shall be Purchaser's duty to pay such excise tax to the Seller, as agent for the Town, at the time of the payment of each such bill, and in the event that the Purchaser shall fail, neglect or refuse to pay such excise tax to the Seller when such bill becomes due and payable, the Seller is hereby empowered to discontinue forthwith to make any further sales or to render any further service to the Purchaser until the total amount, including such excise tax, shown upon such bill has been paid in full. The Seller is hereby authorized and required and it shall be Seller's duty to collect such excise tax from such Purchaser at the time of the payment of each such bill and to remit the same to the Town Manager's office or his designee in accordance with the provisions hereinafter stated, provided that the Seller shall have the right and privilege of assuming and paying such excise tax itself in lieu of collecting the same from the

Purchaser; and that whenever the Seller shall fail or neglect to collect such excise tax from the Purchaser within one (1) year from the date of the bill on which such tax was or should have been imposed, the Seller shall be deemed to have assumed such excise tax itself and shall thereupon become liable for the payment of the amount thereof to the Town to the same extent as if such excise tax had been collected from the Purchaser, with further recourse to the Purchaser therefor.

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

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

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

(b) The Town Manager and/or his designee shall assess interest and penalties in accordance with this paragraph for failure of a Seller to pay any tax when due or to file any required return or statement, except that no penalty shall be assessed in the absence of willful neglect, willful negligence, or fraud. Interest shall be assessed at a rate of one percent (1%) per month of the delinquent tax from the date the tax was due until paid. Penalties shall be assessed at the rate of five percent (5%) per month of the delinquent tax, not to exceed a total penalty of 25%, except that in no event will the penalty for failure to file a return be less than fifteen dollars (\$15). In the case of a fraudulent return or statement or a willful intent to evade payment of the

tax, the Seller making such fraudulent return or statement or willfully attempting to evade payment of the tax, shall be liable for a specific penalty of 100% of the tax. Interest and penalties shall be computed on the net tax due after application of any overpayments, and are subject to compromise by the Town Manager pursuant to Section 166.234(14), Fla. Stat.

(c) All collected tax, interest and penalties shall be deposited to the credit of the general fund of the Town to be expended for Town purposes in accordance with law.

Sec. 1.04. Records To Be Kept.

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

Sec. 1.05. Reports of Deliveries For Resale.

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

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

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

(b) The Town may assess audit expenses, including travel, only as authorized by

Section 166.234, Fla. Stat.

Sec. 1.07. Administration.

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

Sec. 1.08. Violations.

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

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

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

Section 4. **Effective Date.** This ordinance shall apply to Utility Services purchased on or after November 8, 2005, and shall be effective immediately upon adoption.

The foregoing Emergency Ordinance was offered by Council Member _____, who moved its adoption. The motion was seconded by _____ and upon being put to a vote, the vote was as follows:

Mayor John F. Cosgrove _____
Vice Mayor Paul S. Vrooman _____
Council Member Timothy J. Meerbott _____
Council Member Ernest N. Sochin _____
Council Member Peggy R. Bell _____

PASSED AND ADOPTED this ____ day of February, 2006.

JOHN F. COSGROVE, MAYOR

ATTEST:

MEIGHAN PIER, CMC
Acting Town Clerk

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

ACTING TOWN ATTORNEY