

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 J. Alexander
Interim Town Attorney Mitchell Bierman
Interim Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria

In accordance with the American with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (305) 234-4262 for assistance no later than four (4) days prior to the meeting.

TOWN COUNCIL MEETING AGENDA

Wednesday, March 21, 2007

7:00 PM

Cutler Ridge Park
10100 SW 200th Street
Cutler Bay, Florida 33157

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

II. INVOCATION

III. PROCLAMATIONS, AWARDS, PRESENTATIONS

A. Proclamation for Mr. Jose Fuentes – South Florida Water Management District

IV. APPROVAL OF MINUTES

A. February 21, 2007 (Regular Council Meeting)

TAB 1

V. ADDITIONS, DELETIONS, AND DEFERRALS

VI. TOWN MANAGER'S REPORT

VII. TOWN ATTORNEY'S REPORT

VIII. BOARD AND COMMITTEE REPORTS

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

A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING

TAB 2

SELECTION OF KIMLEY-HORN AND ASSOCIATES, INCORPORATED AS THE HIGHEST RANKED FIRM FOR THE DEVELOPMENT OF THE TOWN'S STORMWATER MASTER PLAN; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE A PROJECT AGREEMENT AND IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

B. 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.

TAB 3

C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA ADOPTING THE AMENDED INTERIM BUDGET FOR THE GENERAL FUND OF THE TOWN FOR THE PARTIAL FISCAL YEAR WHICH BEGAN NOVEMBER 2, 2005 AND ENDED ON SEPTEMBER 30, 2006 PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

TAB 4

D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, URGING THE FLORIDA LEGISLATURE TO ABOLISH THE PROHIBITION AGAINST ADOPTION BY HOMOSEXUALS IN THE STATE OF FLORIDA.

TAB 5

E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN AGREEMENT WITH VALLEYCREST LANDSCAPE MAINTENANCE FOR THE COMPREHENSIVE LANDSCAPE/GROUNDS MAINTENANCE OF THE TOWN'S PARKS; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AN AGREEMENT AND IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

TAB 6

F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IN SUPPORT OF NORTH MIAMI'S PETITION TO REQUIRE FLORIDA POWER & LIGHT TO COMPLY WITH THE PUBLIC SERVICE COMMISSION ORDER IMPLEMENTING A 3 YEAR LATERAL TRIM CYCLE; AND PROVIDING AN EFFECTIVE DATE.

TAB 7

- G. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS (RFP) FOR TOWN ATTORNEY SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 8

RESOLUTIONS FOR DISCUSSION

- X. **QUASI-JUDICIAL CONSENT AGENDA (ANY ITEM MAY BE REMOVED FROM THE CONSENT AGENDA IF REQUESTED BY A MEMBER OF THE TOWN COUNCIL, THE TOWN STAFF, THE APPLICANT, OR ANY AFFECTED PARTY)**

- XI. **QUASI-JUDICIAL HEARINGS**

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.

- XII. **PUBLIC HEARINGS**

- A. **RESOLUTIONS**

- B. **ORDINANCES**

- 1. **FIRST READING**

- a. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, 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.

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- b. 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.

TAB 10

- c. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, GRANTING

TAB 11

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.

- d. 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.

TAB 12

- e. 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 "PARKING IN SWALE AREAS IN RESIDENTIAL ZONING DISTRICTS" PROVIDING FOR RESTRICTIONS AND REGULATIONS FOR PARKING IN THE SWALE AREAS WITHIN RESIDENTIAL ZONING DISTRICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 13

2. SECOND READING

- 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

TAB 14

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.

- b. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING NONRESIDENTIAL DESIGN STANDARDS AND REGULATIONS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR NONCONFORMING STRUCTURES; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 15

- c. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IMPLEMENTING THE PROVISIONS OF SECTION 286.0115, FLORIDA STATUTES, TO ESTABLISH A PROCEDURE GOVERNING EX PARTE COMMUNICATIONS WITH LOCAL PUBLIC OFFICIALS CONCERNING QUASI-JUDICIAL MATTERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 16

- d. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA , AMENDING CODE ENFORCEMENT PROCEDURES; CREATING ENHANCED PENALTIES FOR VIOLATIONS OF THE SIGN ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 17

XIII. PUBLIC COMMENTS

XIV. MAYOR AND COUNCIL MEMBER COMMENTS

XV. OTHER BUSINESS

XVI. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT

- A. Regular Town Council Meeting
Wednesday, April 11, 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 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.

TAB 1

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

Wednesday, January 17, 2007
7:00 PM

South Dade Government Center
10710 SW 211 Street, Room 203
Cutler Bay, Florida 33189

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

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

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 Sochin made a motion approving the minutes of the meeting of January 17, 2007. The motion was seconded by Councilmember Meerbott 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 recognized Rafael Casals, Public Works Director, who then spoke of the many accomplishments that his NEAT Team have accomplished. Mr. Casals' staff have identified 1500 cracks and obstructed sidewalks around the Town, over 104 intersections needing street signs, 80 illegally placed signs on average a week are removed from the right of way and many other statistics were provided to Council. Mr. Casals also mentioned that a stormwater masterplan is being considered due to the recent grant monies provided by the South Florida Water Management District. The Manager then introduced Alan Ricke, Parks and Recreation Director, who spoke

about the Founder's Day event on Feb.24th at Cutler Ridge Park. Mr. Ricke provided detailed information on many amusements for kids and adults and entertainment for all. Later, the Manager introduce Chief Richard Pichardo, Commander of the Cutler Bay Policing Unit, who spoke about various Town policing figures which included response times, crime level analysis, and stated that traffic enforcement has issued well over 5200 citations within the last six months. The Chief also indicated that juvenile violations are increasing and in turn his police forces are participating actively with local schools within the area to educate the youth. He explained to Council how the crime rate within the Town has decreased dramatically versus the district crime rate. The Town Manager reported that the new official Town website has launched. He briefly discussed that property taxes is an arising issue in Tallahassee and how legislative decisions may affect the Town. He reminded Council that Dade Days is quickly approaching to remember to turn in the applications for attendance as soon as possible. The Mayor asked the Town Chief of Police, Public Works Director and Ms. Suzette Rice to approach the podium. The Mayor indicated that a Cutler Bay resident has been living without power for 15 years, since Hurricane Andrew, and thanks to various departments within the Town and Ms. Rice from the County Mayor's Office for their successful attempts and coordination with FPL to turn on the resident's power.

VII. TOWN ATTORNEY'S REPORT:

The Town Attorney discussed that in conjunction with the Town Manager and Town Clerk, the creation of the Town Code book will be readily underway. He mentioned that the Town has been adopting Town Ordinances that change the current Code which is the Miami-Dade County Code. He stated that since adopting the Miami-Dade County Code, as the Town adopts its own ordinances it is creating its own code and eventually must be codified and incorporated within the code. The process will be ongoing once the codification process is started.

VIII. BOARD AND COMMITTEE REPORTS:

Vice Mayor MacDougall reported that Senior Transportation committee is making much progress and many issues are being addressed.

Councilmember Sochin commented that the WiFi Committee has not met because he is waiting on the results of the new Miami-Dade County initiative to kick off a County-wide WiFi program.

Councilmember Bell mentioned that the Parks committee has been meeting on a monthly basis and that many initiatives are being addressed

IX. CONSENT AGENDA:

A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, DESIGNATING ADMINISTRATORS; AUTHORIZING ADMINISTRATORS TO ACT IN RELATION TO FUNDS HELD AT THE STATE BOARD OF ADMINISTRATION; PROVIDING FOR CONTINUATION OF THE AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, SUPPORTING PASSAGE OF A

PROPOSED HOUSE AND SENATE BILL TO BE HEARD BEFORE THE FLORIDA LEGISLATURE, RELATING TO THE PRESERVATION OLD CUTLER ROAD AS A HISTORIC HIGHWAY; AND PROVIDING FOR AN EFFECTIVE DATE.

- C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RECOMMENDING TO THE MIAMI-DADE COUNTY PUBLIC WORKS DEPARTMENT TO REMOVE SW 87 AVENUE "ROAD WIDENING" PROJECT APPROVED BY THE PEOPLE'S TRANSPORTATION PLAN (PTP) AND REALLOCATE APPROVED FUNDS TO OLD CUTLER ROAD AND CARIBBEAN BOULEVARD ROADWAY IMPROVEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Bell pulled Item C. from the Consent Agenda for discussion.

Councilmember Meerbott made a motion to approve the Consent Agenda as amended. The motion was seconded by Vice Mayor MacDougall and Resolutions 07-05 and 07-06 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.

The Town Manager and Town Attorney discussed Item C with further detail. Councilmember Sochin made a motion to approve the Resolution as written, since there were no seconds the motion died. Councilmember Bell offered amending the current Resolution to include SW 216th Street. The Town Attorney then provided the language to clarify the amended title of the Resolution and the body of the Resolution to include SW 216th Street. Councilmember Meerbott made a motion to approve Item C as amended. The motion was seconded Vice Mayor MacDougall and Resolution 07-07 was approved by unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

RESOLUTIONS FOR DISCUSSION

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

XI. QUASI-JUDICIAL HEARINGS: The following quasi-judicial hearing was held by Council.

All witnesses giving testimony were sworn-in by the clerk. The clerk read the following resolutions by title:

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A REQUEST BY FLAMINGO HOMES INVESTMENT GROUP TO WAIVE 15 FEET OF THE ZONED RIGHT-OF-WAY FOR PROPERTY LOCATED AT THE SOUTHWEST CORNER OF S.W. 213 STREET AND OLD CUTLER ROAD (FOLIO# 36-6008-005-0610); AND PROVIDING FOR AN EFFECTIVE DATE.

- B.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A REQUEST BY FLAMINGO HOMES INVESTMENT GROUP TO WAIVE 15 FEET OF THE ZONED RIGHT-OF-WAY FOR PROPERTY GENERALLY LOCATED SOUTHWEST OF THE INTERSECTION OF S.W. 213 STREET AND OLD CUTLER ROAD (FOLIO# 36-6008-005-0600); AND PROVIDING FOR AN EFFECTIVE DATE.

Alex David, the Planning Consultant, gave an oral report and based on Don O'Donniley's, the Planning Director, memorandum on February 21, 2007, recommended approval of the ordinance with conditions provided in the memorandum.

The mayor opened the public hearing. Rudy Castellano, representing Flamingo Investment, addressed the Council.

Councilmember Meerbott made a motion to approve Item A. The motion was seconded by Vice Mayor MacDougall and Resolution 07-08 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.

Councilmember Meerbott made a motion to approve Item B. The motion was seconded by Councilmember Sochin and Resolution 07-09 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.

XII. PUBLIC HEARINGS:

A. RESOLUTIONS: None at this time.

B. ORDINANCES:

1. FIRST READING: The clerk read the following ordinance, on first reading, by title:

- a.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33, "ZONING", ARTICLE I, "IN GENERAL," SECTION 33-20(e), "BOAT STORAGE", OF THE TOWN'S CODE OF ORDINANCES, BY ALLOWING STORAGE OF TWO BOATS IN CERTAIN ZONING DISTRICTS WITHIN THE TOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

The Local Planning Agency submitted a recommendation for adoption of the ordinance.

Councilmember Meerbott gave a brief report on the ordinance to the Council.

The mayor opened the public hearing. Bob Horne, 20501 Marlin Road, Rick Maloney, 9434 Southwest 185 Street, Andre Chelini, 9284 Southwest 222 Way, Gerald Klein, 9730 Cutler Ridge Drive, Marilyn Horne, 20501 Marlin Road, Stephen Zarzecki, 757 Paradiso Avenue, Louise Lockwood, 9071 Ridgeland Drive, Barbara Condon, 19641 Holiday Road, Tom Condon, 19641 Holiday Road, Charles Chapman, 19788 Bel Aire Drive, Jim Shiver, 20020 Southwest 105 Avenue.

Councilmember Meerbott made a motion to adopt the ordinance on first reading. The motion was seconded by Councilmember Sochin and adopted by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

This ordinance will be on second reading March 21, 2007.

- b. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING NONRESIDENTIAL DESIGN STANDARDS AND REGULATIONS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR NONCONFORMING STRUCTURES; AND PROVIDING FOR AN EFFECTIVE DATE.**

The Local Planning Agency submitted a recommendation for adoption of the ordinance.

Don O'Donniley, the Planning Director, gave a brief report on the ordinance.

Vice Mayor MacDougall made a motion to adopt the ordinance on first reading. The motion was seconded by Councilmember Bell and adopted by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

This ordinance will be on second reading March 21, 2007.

- c. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IMPLEMENTING THE PROVISIONS OF SECTION 286.0115, FLORIDA STATUTES, TO ESTABLISH A PROCEDURE GOVERNING EX PARTE COMMUNICATIONS WITH LOCAL PUBLIC OFFICIALS CONCERNING QUASI-JUDICIAL MATTERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

The Town Attorney gave a brief report on the ordinance to the Council.

Councilmember Sochin made a motion to adopt the ordinance on first reading. The motion was seconded by Councilmember Meerbott and adopted by a 4-1 roll call vote. The vote was as

follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall voting Yes; Mayor Vrooman voting No.

This ordinance will be on second reading March 21, 2007.

- d. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA , AMENDING CODE ENFORCEMENT PROCEDURES; CREATING ENHANCED PENALTIES FOR VIOLATIONS OF THE SIGN ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

The Town Attorney gave a brief report on the ordinance to the Council.

Vice Mayor MacDougall made a motion to adopt the ordinance on first reading. The motion was seconded by Councilmember Bell and adopted by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes; Councilmember Meerbott voting No.

This ordinance will be on second reading March 21, 2007.

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 ARTICLE I "IN GENERAL," SECTION 33-11 "FENCES, WALLS, BUS SHELTERS AND HEDGES" OF THE TOWN CODE OF ORDINANCES, TO PROVIDE THAT ALL FENCES BE ERECTED WITH THE FINISHED SIDE OUTWARD; PROVIDING THAT CHAIN LINK FENCES SHALL NOT BE LOCATED BEYOND THE FRONT FAÇADE OF THE BUILDING OR 25 FEET FROM THE FRONT PROPERTY LINE, WHICHEVER IS GREATER, AND SHALL BE PERMITTED ONLY ALONG INTERIOR SIDE PROPERTY LINES AND REAR PROPERTY LINES THAT ARE NOT ADJACENT TO A RIGHT-OF-WAY; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Staff provided information on the ordinance.

The mayor opened the public hearing. Joy Cooper, 9665 Nassau Drive, Tom Condon, 19641 Holiday Road, Debbie Wilson, 9951 Cutler Ridge Boulevard, addressed Council.

Councilmember Bell made a motion adopting the ordinance on second reading. The motion was seconded by Councilmember Sochin and Ordinance 07-06 was approved by a 3-2 roll call vote. The

vote was as follows: Councilmembers Bell, Sochin, and Mayor Vrooman voting Yes; Councilmember Meerbott and Vice Mayor MacDougall, voting No.

XIII. PUBLIC COMMENTS: The following individuals spoke: Louise Lockwood, 9071 Ridgeland Drive, Barbara Condon, 19641 Holiday Road , Joy Cooper, 9665 Nassau Drive, Jim Shiver, 20020 Southwest 105 Avenue, Tom Condon, 19641 Holiday Road, Dianna Ward, 19112 Southwest 99 Avenue.

XIV. MAYOR AND COUNCIL MEMBER COMMENTS:

Councilmember Meerbott expressed that the Council share a common vision of making the Town a better place to live and secondly he discussed that he attended a school boundary zoning change meeting.

Councilmember Bell reported that she also attended the school boundary zoning change. She indicated that there will be two new schools south of Cutler Bay being. Briefly, she reported on the Parks Committee and the recent Women's Club event.

Vice Mayor MacDougall thanked the Parks Director and the Town Clerk for setting up the first Town Council meeting at Cutler Ridge Park.

Councilmember Sochin addressed that the Committee for selection of the Interim Attorney was to only make a recommendation to Council. The Town Manager provided further explanation as to what the committee was intended to accomplish.

Mayor Vrooman discussed that in the upcoming weeks he will be traveling to Tallahassee to meet with Senator Bullard. The Mayor also mentioned that the Strategic Plan is still an ongoing project and a youth seminar will be planned in the near future. The mayor also reported that as part of an agreement previous to the Town's incorporation, the Town Charter specifically requires the Town to participate in a CRA with Goulds, and indicated that a meeting will take place in reference to the CRA very shortly. The mayor requested that all Councilmembers meet with the Town Manager individually for further discussion.

Vice Mayor made a motion to extend the meeting after 11:00 PM. The motion was seconded by Councilmember Bell. 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 March 21, 2007, at Cutler Ridge Park.

The meeting was officially adjourned at 11:05 P.M.

Respectfully submitted:

*Erika Gonzalez-Santamaria, CMC
Town Clerk*

*Adopted by the Town Council on
this 21st day of March, 2007.*

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



Office of the Town Manager

Steven J. Alexander
Town Manager

M E M O R A N D U M

To: Honorable Mayor and Town Council
From: Steven J. Alexander, Town Manager
Date: March 21, 2007
Re: Selection of Kimley-Horn and Associates, Inc.

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING SELECTION OF KIMLEY-HORN AND ASSOCIATES, INCORPORATED AS THE HIGHEST RANKED FIRM FOR THE DEVELOPMENT OF THE TOWN'S STORMWATER MASTER PLAN; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE A PROJECT AGREEMENT AND IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

RECOMMENDATION

My recommendation is that the Town Council approve the proposed resolution which, authorizes the Town Manager to negotiate a project agreement with the highest ranked engineering firm, Kimley-Horn & Associates, for the development the Town's Stormwater Master Plan, and to execute such agreement if successfully negotiated. Funding is available from the \$ 200,000 grant awarded by the South Florida Water Management District, to develop a Stormwater Master Plan.

BACKGROUND AND ANALYSIS

As a new municipality founded in November 2005, preparation of a stormwater master plan reflects a high priority initiative for the Town. The success of the stormwater master plan will provide the key to supporting the Town's effort of creating a Storm Water Utility to plan, construct, operate and maintain a Storm Water Management System. This will allow the Town to assume responsibility for stormwater management and utilize stormwater utility funds from Miami-Dade County.

The objective of the Stormwater Master Plan is to map the stormwater collection and distribution system, identifying issues of concern within that system and planning for improvements to the system so it can better serve the Town's residents and businesses.



Office of the Town Manager

On February 2, 2007, pursuant to Section 287.055 Florida Statutes, [the Consultants Competitive Negotiation Act or "CCNA"], the town staff issued a Request for Qualifications (RFQ), for the development of a Stormwater Master Plan. The Town received seven (7) submittals from various engineering firms, prior to the February 27, 2007 submittal deadline. The Town's Selection Committee, which was comprised of the Planning, Parks & Recreation, and Public Works Director, was formed to review the proposals. The Selection Committee short-listed four (4) firms: Craig A. Smith & Assoc., E.A.C. Consulting Inc., Kimley-Horn & Associates, and the Corradino Group.

On March 5, 2007, the Selection Committee interviewed the short-listed firms and thereafter ranked Kimley-Horn Associates number one (1) and E.A.C. Consulting Incorporated number (2).

The number one (1) ranked consultant (Kimley-Horn and Associates) has successfully developed identical Stormwater Master Plans, which were funded by the South Florida Water Management District, for both the Town of Miami Lakes and the Village of Palmetto Bay. Town staff has reviewed both municipalities' Master Plans and is confident that the consultant can provide the Town a high quality standard plan that will meet the Town's needs and the South Florida Water Management District's requirements. Pursuant to the CCNA and the RFQ, if the Town Manager is unable to negotiate a satisfactory agreement with the number one ranked firm, he shall attempt to negotiate an agreement with the second ranked firm.

SCOPE OF WORK:

The consultant shall complete the following five tasks in two phases in their entirety in order to assure a comprehensive process that will meet the objectives of this project.

- Task 1: Information Gathering and Mapping
- Task 2: Basin and Sub-Basin Delineation
- Task 3: Basin and Sub-Basin Prioritization
- Task 4: Priority Sub-Basins Modeling and Analysis
- Task 5: Capital Improvement Program Stormwater Planning

Tasks 1 through 3 of this project are essential components in developing the necessary information that will allow evaluation of the effects of varying land uses within the Town and will help to establish the basis for comprehensive land use decisions. Data to be collected includes, but is not limited to , land surface and ground water elevations, existing stormwater management infrastructure, soil characteristics, water quality data, the ability of canals to convey stormwater and ground water table elevations. In task 4, a computer model will be used to calculate flows and pollutant loads to downstream water bodies and analyze the timing and distribution of stormwater discharged through the watershed. This model will also be capable of comparing stormwater impacts associated with alternative future land use scenarios and identifying stormwater projects that will minimize the impacts. Task 5 will provide for developing the framework of the Town's Capital improvement Program as it relates to stormwater management.



Office of the Town Manager

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. Goal 9.1 reads as follows:

DEVELOP THE TOWN OF CUTLER BAY INTO A MODEL COMMUNITY FOR THE CONDITION OF ITS ROADS, STREET LIGHTING, STORM DRAINAGE FACILITIES, SWALE MAINTENANCE, SIDEWALKS, ETC.

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.

RESOLUTION NO. 07-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING SELECTION OF KIMLEY-HORN AND ASSOCIATES, INCORPORATED AS THE HIGHEST RANKED FIRM FOR THE DEVELOPMENT OF THE TOWN'S STORMWATER MASTER PLAN; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE A PROJECT AGREEMENT AND IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on February 2, 2007 the Town of Cutler Bay (The "Town") issued a Request for Qualifications (the "RFQ") for the development of a Stormwater Master Plan as provided under Chapter 287.055 Florida Statutes; and

WHEREAS, the RFQ provided that the selected engineering firm must be able to complete the deliverables required by South Florida Water Management District's Scope of Work to develop the Town's Stormwater Master Plan; and

WHEREAS, the Scope of Work is comprised of information gathering and mapping, basin and sub-basin delineation, basin and sub-basin prioritization, priority sub-basin modeling and analysis, and capital improvement program stormwater planning; and

WHEREAS, on February 27, 2007 the Town received seven (7) proposals from engineering firms; and

WHEREAS, on March 1, 2007 the proposals were reviewed by the Town's Selection Committee and the committee created a short list comprised of the following four (4) firms: Craig A. Smith & Associates, E.A.C. Consulting Inc., Kimley-Horn & Associates, and The Corradino Group; and

WHEREAS, on March 5, 2007, the Selection Committee interviewed the short-listed firms and thereafter ranked them based upon the firm's interviews and qualification packages; and

WHEREAS, the Selection Committee members ranked Kimley-Horn & Associates as number one (1) and E.A.C. Consulting Inc. number two (2) and recommended Kimley-Horn & Associates as the highest ranked firm to the Town Manager and the Town Manager concurred with the recommendation; and

WHEREAS, the Town Council hereby authorizes the Town Manager to negotiate and execute a project agreement between the Town and Kimley-Horn and Associates, Inc. for the preparation of the Town's Stormwater Master Plan; and

WHEREAS, if a project agreement can not be negotiated with the highest ranked firm (Kimley–Horn & Associates) the Town Manager is authorized to enter into negotiations with the second highest ranked firm (E.A.C. Consulting Inc.).

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. The Town Manager is authorized to negotiate a project agreement for the development of a Stormwater Master Plan with Kimley-Horn & Associates. If an agreement can not be reached with Kimley-Horn, then the Town Manager is authorized to negotiate with the second highest ranked firm, E.A.C. Consulting Incorporated. The Town Manager is authorized to execute an agreement if one is successfully negotiated with either firm provided that the total fees to be paid under such agreement shall not exceed grant monies allocated by the South Florida Water Management District, specifically \$200,000, for such project.

Section 3. 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

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

RESOLUTION NO. 07-_____

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.

WHEREAS, Town of Cutler Bay (“Town”) Ordinance 07-___requires a property owner to obtain a permit for storage of a second boat; and

WHEREAS, The ordinance provides that the amount of the permit fee for storage of the second boat shall be established by resolution and the Town wishes to set such fee.

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. Permit Fee for Storage of a Second Boat Established. The permit fee for storage of a second boat shall be \$50 per year.

Section 3. 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

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 4



Office of the Town Manager

Steven J. Alexander
Town Manager

M E M O R A N D U M

To: Honorable Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: March 12, 2007

Re: Amended Interim Budget for Fiscal Year 2006

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING THE AMENDED INTERIM BUDGET FOR THE GENERAL FUND OF THE TOWN FOR THE PARTIAL FISCAL YEAR WHICH BEGAN NOVEMBER 2, 2005 AND ENDED ON SEPTEMBER 30, 2006 PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

The prior fiscal year interim budget for the General Fund of the Town of Cutler Bay (the "Town") was adopted via Ordinance 06-14. Given the start-up nature of the first interim fiscal year, many assumptions had to be made in the adopted interim budget regarding anticipated revenues and expenditures, some of which were to be allocated to the Town by Miami-Dade County (the "County") and were beyond the control of the Town.

As a result of the above factors, actual expenses for certain departments exceeded amounts in the adopted interim budget. Total actual expenses of the General Fund for the interim fiscal year ended 9/30/06, however, are well below budget.

Additionally, as to timing, the Town did not receive the County's final report of revenues and expenditures allocable to the Town for the interim fiscal year ended 9/30/06 until mid-December 2006 and, the Town and its consultant (Dr. David Morris) did not complete its review of such report with the County until March 2007.



Office of the Town Manager

RECOMMENDATION

Accordingly, based on the foregoing, it is recommended that a resolution be passed by the Mayor and Town Council adopting an amended interim budget for the General Fund of the Town for the partial fiscal year ending 9/30/06 which transfers \$110,000 unused budgeted amounts from the Police department to the following departments:

Town Clerk	\$ 45,000
Town Attorney	65,000

	\$ 110,000
	=====

RESOLUTION NO. 07-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA ADOPTING THE AMENDED INTERIM BUDGET FOR THE GENERAL FUND OF THE TOWN FOR THE PARTIAL FISCAL YEAR WHICH BEGAN NOVEMBER 2, 2005 AND ENDED ON SEPTEMBER 30, 2006 PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, it is necessary to adopt a final revised interim Town of Cutler Bay (“Town”) budget for the General Fund for the prior fiscal year, which concluded on September 30, 2006, as provided herein.

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

Section 1. Recital Adopted. That the recital set forth above is hereby adopted and confirmed.

Section 2. Budget Amended. That the prior fiscal year adopted interim budget for the General Fund of the Town of Cutler Bay, as originally adopted via Ordinance 06-14, is hereby amended as described in the attached Memorandum from the Town Manager, a copy of which Memorandum is attached hereto and incorporated herein, so as to maintain a fully balanced and conformed budget.

Section 3. 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 4. 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

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 5

RESOLUTION NO. 07-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, URGING THE FLORIDA LEGISLATURE TO ABOLISH THE PROHIBITION AGAINST ADOPTION BY HOMOSEXUALS IN THE STATE OF FLORIDA.

WHEREAS, the State of Florida is the only state in the United States which expressly prohibits homosexuals from adopting children; and

WHEREAS, Florida's ban on adoption by homosexuals in Chapter 63 of the Florida Statutes has existed for almost 30 years and is an out-dated vestige of a 1977 movement to discriminate against gay and lesbian individuals; and

WHEREAS, there is no evidence that children of gay or lesbian parents are harmed because of their parents' sexual orientation; to the contrary, The American Psychological Association has concluded that "home environments provided by gay and lesbian parents are as likely as those provided by heterosexual parents to support and enable children's psychosocial growth;" and

WHEREAS, in 2005, the American Academy of Pediatrics commissioned a study which concluded that "[m]ore than 25 years of research has documented that there is no relationship between parents' sexual orientation and any measure of a child's emotional, psychosocial, and behavioral adjustment" and that data demonstrates "no risk to children as a result of growing up in a family with 1 or more gay parents;" and

WHEREAS, in view of the lack of evidence to support the conclusion that children of gay or lesbian parents are any less likely to grow up as happy, healthy, and well-adjusted as children of heterosexual parents, there is no rational basis or moral justification to continue Florida's ban on adoption by gay and lesbian individuals; and

WHEREAS, since the Florida ban was enacted, public opinion indicates that there is greater acceptance and support for adoption by members of the gay and lesbian community; and

WHEREAS, it is estimated that the total number of children nationwide living with at least one gay parent ranges from 6 to 14 million and that, within the State of Florida alone, more than 5,000 children are now in foster care available for adoption; and

WHEREAS, there is a critical shortage of adoptive and foster parents in the United States, as well as within the State of Florida, which results in many children not having a permanent home despite the availability of qualified adoptive gay and lesbian individuals.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That the above stated recitals are true and correct and incorporated herein by this reference.

Section 2. Abolishment of Prohibition. The Florida Legislature is hereby urged to abolish the restriction against homosexual adoption contained in the Florida Statutes and the City Clerk is hereby directed to forward a copy of this Resolution to Florida Governor Charlie Crist, Florida Senate President Ken Pruitt, and Florida House Speaker Marco Rubio.

Section 3. Effective Date. That this Resolution shall become effective immediately upon adoption hereof.

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 _____



City of Miami Beach
Office of Mayor David Dermer

February 6, 2007

Contact: AC Weinstein
305.673.7035

Dear Mayor Paul Vrooman:

As you are aware, Florida is the only state in the nation with a state law that explicitly prohibits gay men and women from applying for adoption. The law was put into place 30 years ago. It was wrong then and it's wrong now. Its removal is long overdue.

Last month, I brought a Resolution urging the Governor and Legislature to abolish the prohibition against gay adoption to the Miami Beach City Commission, which was approved unanimously at our January 18 meeting. My office has since received more than 700 supportive e-mails from across Florida.

Attached is the Resolution. I would respectfully ask that you present your Commission or Council with the opportunity to support the Resolution and unify with an even stronger message to the Governor and Legislature.

With your support and the support from other Mayors, we can delete the 16 words in the Statute that explicitly prohibits gay men and women from adopting, and thus remove Florida as being the only state in the nation that holds onto that out-dated vestige of a 1977 movement to discriminate against gay men and women.

Best Regards,

David Dermer
Mayor

TAB 6



MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council
From: Steven J. Alexander, Town Manager
Date: March 21, 2007
Re: SELECTION OF LANDSCAPE MAINTENANCE CONTRACTOR

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN AGREEMENT WITH VALLEYCREST LANDSCAPE MAINTENANCE FOR THE COMPREHENSIVE LANDSCAPE/GROUNDS MAINTENANCE OF THE TOWN'S PARKS; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AN AGREEMENT AND IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

At the January 17, 2007 Town Council meeting, authorization was given to advertise Request For Proposal (RFP) # 07-001 for Comprehensive Landscape/Grounds Maintenance of the Town's parks. The RFP resulted in six proposals being submitted prior to the March 9, 2007 deadline. As provided for in the RFP, an evaluation committee was established to provide a ranking of each of the proposals. The evaluation committee, working independently, provided the following cumulative ranking order:

1. Valleycrest Landscape Maintenance
2. SFM Services, Inc.
3. Tropic Lawn Maintenance
4. Groundkeepers, Inc.
5. Tip Top Enterprises, Inc.
6. Superior Landscaping, Inc.

RECOMMENDATION

We recommend that the attached resolution be adopted, authorizing the Town Manager to negotiate an agreement with the top-ranked firm, Valleycrest Landscape Maintenance, and if negotiations are unsuccessful, for the Town Manager to negotiate with the next highest ranked firm(s), in order of ranking, until such time as an agreement in the best interest of the Town is reached.

RESOLUTION NO. 07-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN AGREEMENT WITH VALLEYCREST LANDSCAPE MAINTENANCE FOR THE COMPREHENSIVE LANDSCAPE/GROUNDS MAINTENANCE OF THE TOWN'S PARKS; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AN AGREEMENT AND IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on January 29, 2007 the Town of Cutler Bay (the "Town") issued a Request for Proposals (the "RFP") for the comprehensive landscape/grounds maintenance of the Town's parks; and

WHEREAS, on March 9, 2007 the Town received six (6) proposals from local landscape maintenance firms; and

WHEREAS, in accordance with the stipulations of the RFP, an evaluation committee reviewed all of the proposals and ranked them based upon the information provided in the submittals; and

WHEREAS, the evaluation committee members ranked the proposals in the following order from highest to lowest - Valleycrest Landscape Maintenance, SFM Services, Inc., Tropic Lawn Maintenance, Groundkeepers, Inc., Tip Top Enterprises, Inc., Superior Landscaping, Inc. - and recommended negotiation with Valleycrest Landscape Maintenance as the highest ranked firm; and

WHEREAS, it is in the best interest of the Town for the Town Manager to negotiate an agreement between the Town and Valleycrest Landscape Maintenance for the comprehensive landscape/grounds maintenance of the Town's parks; and

WHEREAS, if a project agreement can not be negotiated with the highest ranked firm (Valleycrest Landscape Maintenance) the Town Manager is authorized to enter into negotiations with the next highest ranked firm(s), in order of ranking, until an agreement in the best interest of the Town is reached.

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. The Town Manager is authorized to negotiate an agreement with Valleycrest Landscape Maintenance and if an agreement can not be reached, the Town

Manager is authorized to negotiate with the next highest ranked firm(s), in order of ranking, until an agreement in the best interest of the Town is reached.

Section 3. 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

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 _____

Landscape/Grounds Maintenance Services RFP - Bid Tabulation Sheet

March 9, 2007

Business Name	Bid Bond	Comp. Parks & Prop. Maint.	Aerate & top-dress Ath. Fields	Fertilization	Tree Trimming	Baseball/Softball Field Maint.		Hourly Rate		%age over cost	Rankings			
								Rate I	Rate II		RD	RC	AR	Total
Groundkeepers	X	\$79,000.00	\$6,500.00	\$13,000.00	\$4,316.00	\$20.00		\$15.00	\$22.50	10.00%	5	4	5	14
Superior Landscaping	X	\$406,250.00	\$21,000.00	\$34,000.00	\$30,000.00	\$265.00		\$28.00	\$56.00	18.55%	4	6	6	16
Tropic Lawn Maint.	X	\$177,890.00	\$7,210.00	\$29,400.00	\$7,500.00	\$45.00		\$17.50	\$26.25	20.00%	3	3	1.5	7.5
Tip Top Ent., Inc.	X	\$110,088.00	\$36,000.00	\$28,068.00	\$14,400.00	M-F	\$150.00	\$21.00	\$28.00	20.00%	6	5	4	15
						S- S	\$175.00							
South Florida Maint.	X	\$199,126.00	\$25,271.00	\$28,000.00	\$23,355.00	\$600.00		\$21.00	\$31.50	10.00%	1	1.5	3	5.5
Valley Crest	X	\$224,768.00	\$7,250.00	\$17,300.00	\$51,720.00	\$139.50		\$25.00	\$37.50	25.00%	2	1.5	1.5	5

tal
4th
6th
3rd
5th
2nd
1st

TAB 7

RESOLUTION NO. 07-_____

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL
OF THE TOWN OF CUTLER BAY, FLORIDA, IN
SUPPORT OF NORTH MIAMI'S PETITION TO REQUIRE
FLORIDA POWER & LIGHT TO COMPLY WITH THE
PUBLIC SERVICE COMMISSION ORDER
IMPLEMENTING A 3 YEAR LATERAL TRIM CYCLE;
AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, The Town of Cutler Bay (the "Town") has learned that pursuant to Order No. PSC-06-0351-PAA-EI, issued on April 25, 2006, the Public Service Commission (the "Commission") directed all Florida investor-owned utilities, including Florida Power & Light ("FPL"), to implement a 3-year feeder/3 year lateral trim cycle; and

WHEREAS, FPL has submitted a 3 year feeder/6 year lateral average trim cycle proposal; and

WHEREAS, the Commission approved the FPL proposal in Order No. PSC-06-0781-PAA-EI on September 19, 2006; and

WHEREAS, the City of North Miami timely protested FPL's 3year/6year proposal because the 3 year lateral service cycle results in more reliable service; and

WHEREAS, the Town of Cutler Bay (the "Town") supports North Miami's protest because a 3 year lateral service cycle will result in more reliable service to the citizens of 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. Support. The Town hereby expresses its support for Order No. PSC-06-0351-PAA-EI, which directs FPL to implement a 3 year lateral trim cycle and for the City of North Miami's opposition to FPL's proposal for a 6-year lateral average trim cycle and urges the PSC to adopt the City of North Miami's position and make it applicable to all of FPL's service area within Miami-Dade County including but not limited to said service area that is within the municipal boundaries of the Town and hereby directs the Clerk to furnish the PSC with a copy of this resolution immediately upon its adoption.

Section 3. 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

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 8

RESOLUTION NO. 07-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS (RFP) FOR TOWN ATTORNEY SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay, (the “Town”) Charter, §3.7 provides for the Town Council to hire an individual attorney or law firm to serve as Town Attorney under such terms, conditions and compensation as may be established by the Council; and

WHEREAS, a Request For Proposals has been prepared to assist the Council to identify the best available attorney or firm to serve as Town Attorney; and

WHEREAS, Town Ordinance Number 06-22 requires the Town Manager to obtain authorization from the Town Council to advertise solicitations for bids and proposals prior to advertising the solicitation.

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. Request For Proposals Advertising Approved. The Town Manager is hereby authorized to advertise and issue a Request For Proposals for Town Attorney services in substantially the form attached hereto as Exhibit “A.”

Section 3. 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

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 _____



REQUEST FOR PROPOSALS TOWN ATTORNEY SERVICES

Proposal Due Date: 3 pm on Thursday April 19, 2007

The Town of Cutler Bay, Florida, a municipality with an approximate population of 35,000 located in Southern Miami-Dade County, hereinafter referred to as the Town, is soliciting proposals from qualified individuals or law firms who are interested in providing legal services to the Town.

Proposals are due to the Town Clerk's Office by 3 pm on Thursday April 19, 2007. The Town seeks services encompassing the traditional scope of work including legal counsel, opinions, consultation and coordination with special counsel. Attendance at a variety of meetings will be required, including staff meetings and Council meetings as specified. The Town is not seeking criminal prosecutorial services at this time. For a copy of the RFP package, access the Town Web Site (www.cutlerbay-fl.gov).

Delivery: Proposals may be mailed, or hand-delivered to the Town of Cutler Bay Attention: Erika Santamaria, Town Clerk, 10720 Caribbean Boulevard, Suite 105, Cutler Bay, FL 33189. Please see the RFP document for specific information regarding delivery.

Communications: Restrictions on communications and requests for information are delineated within the RFP package. All communications are to be directly through the Town Clerk's Office, and under restricted conditions.

Minimum Qualifications:

- (a) Each attorney in the proposed team must possess a juris doctorate degree and have graduated from a United States law school accredited by the American Bar Association.;
- (b) Each attorney in the proposed team must be a member in good standing of the Florida Bar.;
- (c) The proposed designated Town Attorney must have a minimum of five (5) years experience in the field of municipal law. Experience in land use and Community Redevelopment Agency law is a plus.

The Town of Cutler Bay reserves the right to reject any or all proposals, waive technicalities or irregularities, and to accept any proposal if such action is believed to be in the best interest of the Town.



Overview

Introduction

For information about the Town of Cutler Bay, visit www.cutlerbay-fl.gov.

The Town of Cutler Bay operates under a Council-Town Manager form of government. The Town Council consists of five members elected at large. The Town Manager directs all Town operations.

The Town has four central departments (Administrative Services, Community Development, Public Works and Parks & Recreation). Each department works actively with the Town Attorney for advice and counsel. Currently, the Police Department is contracted through the Miami-Dade County Police Department.

Individual departments may frequently initiate the work, although the Town Manager retains the core responsibility for legal functions, coordination of these services, and the legal budget.

Scope of Work

1. The Town Attorney provides legal advice, counsel, services, training, consultation, and opinions to the Town Manager, Town Council, Advisory Boards, and all levels of the Town government, on a wide variety of civil assignments, including but not limited to land use planning, laws against discrimination, construction of public works, purchasing and procurement, leasing, purchase and sale of property, employment legal matters, public disclosure issues, and tort law. The Town Attorney's advice includes methods to avoid civil litigation.
2. The Town Attorney shall represent the Council and any established Advisory Boards, provide appropriate legal advice and/or written opinions, as necessary, and provide parliamentary guidance concerning the conduct of each of the meetings of the Council and Boards. The Town Attorney shall attend Town Council work sessions, Town Council meetings or other meetings as directed by the Town Council when items under consideration warrant legal input.



3. Draft and/or review ordinances, charter amendments, resolutions, contracts, and correspondence; provide legal consultation on some Town insurance matters; and provide legal advice or written opinions to Town staff on matters related to their official duties. The Florida League of Cities Municipal Insurance Trust (FMIT) currently provides Workers Compensation, Automobile Liability and General Liability insurance coverage. As such, legal representation is provided by FMIT selected attorneys for those cases covered under this policy.
4. As required by resolution of the Town Commission, the Town Attorney shall defend the Town on all civil complaints, suits or controversies in which the Town is a party. Specifically, the Town Attorney is responsible for defending the Town in civil action when no counsel is provided by liability insurance or when the Town's exposure exceeds its insurance coverage. The Town Attorney may also represent an employee or elected official who is individually named in a suit as a result of the execution official duties with the Town. When the Town's insurance coverage is activated on a given matter, the Town Attorney shall consult and cooperate as necessary with the legal counsel designated by the Town's insurance company to ensure that the matter is dealt with in an expedient and professional manner.
5. Provides the Mayor and Town Council with guidance as to Robert's Rules of Orders Sunshine, Public Records and related procedural matters relating to Council meetings.
6. Prepares legal opinions at the request of the Town Manager and/or the Town Council.
7. Provides the Town Manager, Mayor and Town Council, and administration a legal perspective and advice on various governmental issues.
8. Performs other legal services and tasks, as assigned by the Town Manager.



Specifications

1. The appointed Town Attorney attends all Town Council business meetings. These are scheduled for the third Wednesday night every month, commencing at 7:00 p.m., which could typically last to 11:00 pm and such other special meetings, workshops and attorney-client sessions as are scheduled from time to time. The Town Attorney attends all Council meetings, so that there remains continuity in representation.
2. The Town Attorney also attends any scheduled Town Council Work Sessions. The Town Attorney attends all Plan Review and potentially CRA Meetings.
3. The Town Attorney may attend Town Manager Staff Meetings, which are held at Town Hall. This should be the same attorney to attend all Council meetings, although occasional substitution is acceptable.
4. The Town Attorney must be available at all times by phone, cell phone, fax and e-mail.
5. Timeliness of response and accessibility to the Town Attorney is an important aspect of the service. Accessibility and responsiveness for the proposed designated Town Attorney is of greatest importance, although these elements will also be considered in relation to assistant attorney(s) as well.
6. Accessibility includes the ability to be generally available to attend meetings in person on short notice and the ability to be reached promptly by telephone.
7. The Town does not currently offer space for offices in a Town location. The Town may be able to assist in certain ways to promote efficient coordination among offices, such as mail delivery services or copy services, although this will be considered following award. Should an individual be awarded the agreement as opposed to a firm, and subject to negotiation, the Town will make every effort to provide in-house offices as soon as possible.
8. The Town encourages the responder by individuals who wish to be an “In House” Attorney on a full-time basis for the Town. To that end, the provision of office space for an “In House” Attorney will be possible. Other support services may be provided subject to proposal and negotiation.

Contract Term



The Town anticipates an initial period of two (2) years with options for two (2) year renewals. The Agreement will be terminable by either party without cause.



Schedule

The Town provides the following schedule. This is for information only and will be adjusted as needed. Proposers are encouraged to reserve flexibility for interviews from _____ TBA _____ through _____ TBA _____, as the Town will not be able to allow much advance notice when scheduling initial interviews.

No	Event	Date*	Time* (EST)
1	Advertisement/ Distribution of RFP & Cone of silence begins	TBA	-----
2	Deadline to Submit RFP-Response	3 pm on Thursday April 19, 2007	-----
3	Announcement of short-listed Consultants	TBA	-----
4	Oral presentations	TBA	-----
5	Announcement of selected individual or the firm	TBA	-----

*The Town reserves the right to change the scheduled dates and time.

[Space left intentionally blank]



How to Respond

Please provide ten (10) copies of a written response, responding to each inquiry in the order below. Please attach one set of business cards for your team with the original.

1. Vendor Business History

Please complete and submit Attachment "A".

2. Firm Experience

- Provide a narrative description of the individual or firm.
- Describe the general experience of the individual or firm.
- Identify other municipal clients.
- Identify experience with municipal issues including land use, zoning, growth management, environmental law, complicated agreements including interlocal agreements, public works, personnel, and other municipal specialties.

3. Proposed Attorney, Team

- Name and describe the attorney(s) and/or team proposed. Clearly identify the lead Town Attorney and name assisting attorney(s), if applicable.
- Provide a resume or similar description for each team member, with considerable detail in the experience and qualifications of the lead Town Attorney and any significant assisting attorney(s).
- Specify the organization structure applicable to this contract, including who the lead Town Attorney is, and the relationship of any assisting attorney(s) to that lead Town Attorney.
- If specialty attorney(s) or additional resources are available through your firm (in addition to the named team) to meet special or unusual needs, please identify such individuals and specialties as well.

4. Accessibility and Responsiveness

- Identify the accessibility of the proposed designated Town Attorney, and the response time that the individual offers to the Town. Specifically identify the lead-time required for attending scheduled or ad-hoc meetings. Identify how quickly the Town Attorney can arrive in person to attend an unscheduled, urgent meeting.
- Identify the same for any assisting attorney(s).



5. Proposed Fee Structure

- Propose a compensation package, inclusive of all service costs. The Town is open to a variety of approaches, including hourly rates or a flat monthly rate with add-ons. The Town will select the finalist by considering the proposed compensation as a “best and final offer,” although the Town reserves the right to negotiate terms as needed to improve elements of the proposal to best meet the needs of the Town, including cost.

6. References

Provide three (3) references for the lead Town Attorney.

- The Town prefers references that include municipal government experience.
- Inclusion of the reference in your proposal is also agreement that the Town may contact the named reference.
- The Town may contact any companies or individuals, whether offered as references or others, to obtain information that will assist the Town in evaluating the Proposer. The Town retains the right to use such information to make selection decisions. Submittal of a proposal is agreement that the Town may contact and utilize such information.

Evaluation and Selection

Evaluation Process

The Town reserves the right to award the contract to the proposer that best meets the needs and interest of the Town. The following steps are anticipated.

- Step 1:** Receipt and review of minimum qualifications
- Step 2:** Town scoring of written proposals
- Step 3:** Initial reference and information checks
- Step 4:** Town Council interviews of finalists
- Step 5:** Town Council Confirmation process



Scoring and Evaluation of the Written Proposal

Proposals will be evaluated using the criteria listed below. Proposers meeting the mandatory criteria will have their proposals evaluated for technical qualifications and fee structure.

1. Mandatory Elements:

- a. The proposer is licensed to do business in the State of Florida and the Attorneys are current members in good standing of the Florida Bar Association.
- b. The proposer has no conflict of interest with regard to any other work performed by the proposer in the Town of Cutler Bay.
- c. The proposer adheres to the instructions in this request for proposals on preparing and submitting the proposal.

2. Technical Quality:

The Town Council of the Town of Cutler Bay may, in its sole discretion in making an award, consider the following:

- a. Expertise and experience (maximum 50 points)
 - (1) Experience in the field in handling similar and related types of matters
 - (2) Depth of legal talent.
 - (3) Availabilty of facilities and resources
- b. Ability to meet the specifications (maximum 30 points)
 - (1) Ability to meet the Town's demands in a timely and efficient manner
 - (2) The existence of any potential conflicts in considering the award of this RFP.
- c. Fee structure proposed (maximum 20 points)

During the evaluation process, the Town Council may, at its discretion, request any proposer or proposers to present themselves for interviews.

The successful proposer shall execute a retainer letter or contract in a form satisfactory to the Town.



Contract Negotiations

The Town of Cutler Bay reserves the right to negotiate all elements which comprise the apparent successful proposal to ensure that the best possible consideration is afforded to all concerned. Town representatives and the selected finalist will review in detail all aspects of the requirements and the proposal. During the review of the most favorable, apparent successful proposal, the Proposer may offer and the Town may accept revisions to the proposal.

Contract Term

The Town seeks a two-year contract, with options for two-year extensions. Town Council authorization will be required for each extension.

Cost Liability

The respondent shall bear all costs associated with submitting the RFP, including RFP preparation, or any travel connected with the submittal of the proposal. In no case shall any proposer be entitled to recover its preparation costs regardless of the circumstances.

Contents of RFP/Public Records

Once opened by the Town, a response to this RFP is public record under Chapter 119, Florida Statutes. The contents of the RFP as accepted by the Town may become part of any contract awarded as a result of this RFP. All RFP's, being public record, will be available for public inspection during normal business hours.

[Space left intentionally blank]



Attachment "A": Submittal Form

Business Statement

Please complete and submit with your proposal response.

1. Name of Business: _____
2. Business Address: _____
3. Phone: _____ Business Fax: _____ E-Mail: _____
4. Business Classification (check all that apply):
 Individual Partnership Corporation Women or Minority Owned
5. Federal Tax Number (a SSN or Federal Tax Number): _____
6. Name of Owner: _____
7. Does firm maintain insurance in amounts specified by the Town contract:
Yes: _____ No: _____
*General Liability insurance of at least \$1,000,000 per occurrence;
\$1,000,000 aggregate, Combined Single Limit (CSL); Automobile
liability of at least \$1,000,000 per accident CSL Professional
Liability of at Least \$1,000,000*
If no, describe differences: _____
8. Are there claims that are pending against this insurance policy?
Yes: _____ No: _____
If yes, describe: _____
9. During the past five years, has the firm, business, or any attorney in the firm or business, been involved in any (1) bond forfeiture, (2) litigation personally involving the firm, business or any attorney in the firm or business (other than dissolution of marriage), or (3) claims filed with any insurance carrier concerning the firm, business, or any attorney in the firm or business, and/or (4) Bar Association complaints? If yes, attach an explanation. Yes: _____ No: _____
10. Has company been in bankruptcy, reorganization or receivership in last five years? Yes: _____ No: _____



11. Has company been disqualified or terminated by any public agency:
Yes:_____ No:_____
12. Has the proposed designated Town Attorney practiced municipal law a minimum of 5 years? Yes:_____ No:_____
13. Is each proposed attorney accredited and in good standing with the State Bar?
Yes:_____ No:_____
14. Proposal Offers shall be good and valid until the Town completes award or rejections of quotes. Failure to concur with this condition may result in rejection of the offer. Does the firm accept this condition?
Yes:_____ No:_____ (If no, state the desired exception:_____)

*Having carefully examined all the documents of the **solicitation, including the instructions, the Contract and Terms and Conditions, the undersigned proposes to perform all work in strict compliance with the above-named documents, as well as in compliance with all submitted proposal information.***

FIRM NAME:_____ FID:_____

SIGNATURE:_____

PRINT NAME:_____

[Space left intentionally blank]

TAB 9

ORDINANCE NO. 07-_____

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.

WHEREAS, the Town of Cutler Bay, Florida (the “Town”) has become aware that the Florida Legislature amended Fla. Stat. Chapter 205 by changing the term “occupational license” to “local business tax receipt”; and

WHEREAS, this change was necessitated in order to prevent unscrupulous persons from misrepresenting that their occupational licenses constitute proof of competency to perform certain services; and

WHEREAS, the Town finds it would be prudent to amend Ordinance 06-27 to reflect the state law’s changes.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:¹

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

Section 2. Amendment of Town Ordinance 06-27. Town Ordinance 06-27 shall be amended as follows.

Occupational Licenses Local Business Tax Receipt.

Sec. 1. Tax imposed.

(a) Every person, as defined in F.S. § 205.022(3), engaged in or managing any business, profession or occupation in the Town is required to have a Town ~~license~~ receipt and shall, on or before each October 1, before engaging in or managing any business, profession or occupation, register with the Town their name, profession or occupation, and their place of business. If October 1 falls on a weekend or holiday, the ~~license~~ receipt shall be

^{1/} Proposed additions to existing Town Code text are indicated by underline; proposed deletions from existing Town Code text are indicated by ~~strikethrough~~.

obtained on or before the first business day following October 1. No person shall engage in or manage any such business, profession or occupation without first obtaining the required local business tax receipt ~~occupational license~~. The Town Manager or his designee shall develop administrative procedures relating to the issuance of ~~business licenses~~ local business tax receipts and designate the department responsible for implementing the procedures and issuing the appropriate ~~licenses~~ receipts.

(b) This ~~occupational license tax~~ local business tax receipt requirement shall apply to:

(1) Any person who maintains a permanent business location or branch office within the Town for the privilege of engaging in or managing any business within the Town.

(2) Any person who maintains a permanent business location or branch office within the Town for the privilege of engaging in or managing any profession or occupation within the Town.

(3) Any person who utilizes their home for uses as outlined in subsection (b)(1) or (2) of this section for authorized business activities.

(4) Any person who does not qualify under the provisions of subsection (b)(1) or (2) of this section and who transacts any business or engages in any occupation or profession in interstate commerce where such ~~license~~ local business tax is not prohibited by section 8 of article I of the United States Constitution.

(c) A person shall be required to pay a ~~license~~ local business tax to the Town as outlined in the schedule contained in this article. A ~~license~~ local business tax shall be required for each type of business performed at the applicant's location that requires a separate ~~license~~ local business tax as outlined in the schedule contained in this article.

Sec. 2. Term of license receipt; half year license receipt; transfer of license receipt.

(a) ~~Licenses~~ Receipts issued under this article shall expire on September 30 of each year. No ~~license receipt~~ shall be issued for more than one year. For each ~~license receipt~~ obtained between October 1 and April 1, the full tax for one year shall be paid, and for each ~~license receipt~~ obtained between April 1 and September 30, one-half the full tax for one year shall be paid.

(b) Any ~~license receipt~~ may be transferred with the approval of the Town Manager or his designee when there is a bona fide sale and transfer of the business and the property used and employed therein as stock in trade, and not otherwise. Such transfer shall be made within 30 days after such bona fide sale has taken place. If the provisions of this section are not strictly and completely complied with in every respect, the ~~license receipt~~ pertaining to the business shall be null and void and of no further effect. Such transfer shall take effect upon payment of a transfer fee of \$3.00 and after presentation of evidence of both the sale and of the original ~~license receipt~~.

(c) Upon written request and presentation of the original ~~license receipt~~, any ~~license receipt~~ may be transferred from one location to another location upon payment of a transfer fee of \$3.00 and upon verification that such use is permitted by the zoning district regulations at the new location.

Sec. 3. Affidavit of applicant for license local business tax receipt; annual filing of information.

(a) No ~~license receipt~~ shall be issued or granted under this article to any applicant to engage in the business of selling merchandise at retail or wholesale or the practice or

pursuit of any profession or occupation coming within any of the categories set forth in this article except upon written application filed with the Town. The applicant shall execute an affidavit before an officer or employee of the Town authorized to administer oaths, which shall set forth the following:

- (1) The applicant's name, address and telephone number.
 - (2) The particular location in the Town wherein the applicant proposes to engage in the business for which the license receipt is sought.
 - (3) The date proposed to commence business.
 - (4) A statement as to whether the fee is based on area, capacity, average value of stock carried, number of persons or things employed or engaged, quantity, valuation, or other contingency.
 - (5) The names and addresses of corporate officers.
- (b) The affidavit shall be filed with the Town.
 - (c) On an annual basis, prior to renewal, the Town will send out a questionnaire and will require all licensees receipt holders to fill in the appropriate information in order for the Town to update its files and determine the correct amount to charge as a license fee local business tax.

Sec. 4. Prerequisites for granting license receipt; certificate of use required; invalid licenses receipts.

- (a) A certificate of use shall be required prior to the issuance of any new occupational license local business tax receipt. The fee for such certificate of use is \$35.00.
- (b) No license receipt shall be granted under this article until there has been full compliance with section 4 and 5(a), and no license receipt which may have been granted without full and complete compliance with the provisions of this article shall be a protection to the applicant in any civil or criminal proceeding.

Sec. 5. Violations; penalties.

- (a) Any person convicted of violating this article, or of making a fraudulent return, shall be punished as provided by subsection (e) of this section, in the discretion of the court, and in addition such person shall be penalized a sum equal to 25 percent of any license fee local business tax avoided or evaded by and through the medium of such fraudulent return.
- (b) Each and every day of selling or disposing of merchandise or engaging in a business or profession without making the affidavit and/or without compliance in full with all of the provisions of this article shall constitute a separate and distinct violation of this article.
- (c) No person shall engage in or manage any business, profession or occupation without first obtaining from the Town a license receipt for each separate location in the Town and paying the amount set forth in this article. Any person engaging in or managing any business, occupation or profession mentioned in this article between October 1 and November 1 of each year without first having complied with the provisions of this article and paying the amount of license local business tax as provided for in this article shall be declared delinquent. Those licenses receipts not renewed when due and payable and considered delinquent shall be subject to a delinquency penalty of ten percent for the month of October, plus an additional five percent penalty for each month of delinquency

thereafter until paid. However, the total delinquency penalty shall not exceed 25 percent of the ~~occupational license fee~~ local business tax for the delinquent establishment.

(d) A ~~license~~ receipt shall be required to cover each and every business advertised by sign, newspaper, magazine or otherwise. Such advertisement shall be considered evidence of conducting the business advertised and shall be a sufficient predicate for conviction by the court or other enforcement authority. Such ~~license~~ receipt shall be issued to cover each and every location of such business, and the assessment and amount of such ~~license~~ local business taxes are classified and fixed per annum unless otherwise specified.

(e) Any person who violates any provision of this article shall, upon conviction, be punished by a fine not to exceed ~~\$500.00~~ \$250.00 ~~or imprisonment in the County jail not to exceed 60 days, or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate violation.~~ This article shall be subject to enforcement under the Local Government Code Enforcement Act, F.S. Ch. 162. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.

Sec. 6. Grounds for denial of ~~license~~ a local business tax receipt.

After interview or investigation, the Town shall not grant or issue a ~~license~~ receipt under this article to an applicant when the Town has reasonable and probable grounds to believe that:

- (1) Information provided by the applicant is false.
- (2) Within the past three years the applicant committed any act which if done by any person ~~licensed~~ holding a receipt to do business within the Town would constitute grounds for the revocation of the ~~license~~ receipt.

Sec. 7. Appeal of denial of ~~license~~ receipt.

Any person whose application for a ~~license~~ receipt under this article has been rejected shall have a right to appeal the decision of the Town ~~licensing~~ local business tax official to the Town Manager by appropriate written petition.

Sec. 8. Revocation of ~~license~~ receipt.

(a) Notwithstanding any other section in this article to the contrary, the privilege of doing business within the Town allowed by the issuance of an ~~an occupational license~~ local business tax receipt will be subject to a summary administrative revocation by one written 30-day notice of revocation issued to the ~~license~~ receipt applicant by the official designated by the Town Manager, if it is determined that one or more of the following conditions exist:

- (1) Repeated violations of this Code.
- (2) Misrepresentations in the application or affidavit.
- (3) Use of the business location for illegal or unsafe activities.
- (4) Use of the business location for activities not contemplated in the application.
- (5) Misrepresentations made to the Town during the application and investigation process.
- (6) Use of the business not in compliance with the conditions of the ~~license~~ receipt.
- (7) Lack of refuse collection or utility services.

(b) Such revocation may be appealed to the Town Manager within ten days of notice of revocation.

(c) Such revocation of ~~license receipt~~ will be deemed to relate back to the original time of issuance of such ~~license receipt~~ as if the ~~license receipt~~ had been originally denied at the time of application. Such revocation will be effective immediately. In addition to the grounds listed in subsection (a) of this section, the Town Commission or Town Manager at any time may revoke a ~~license receipt~~, upon providing written notice and hearing, for violation of any ordinance of the Town or law of the State or County or for any other good and sufficient reason in the interests of health, safety and welfare.

(d) Nothing in this section shall affect the liability of any person or business as required by section 18-35.

Sec. 9. Display of ~~license receipt~~.

All persons to whom ~~licenses receipts~~ are issued pursuant to this article shall cause the ~~license receipt~~ to be displayed at all times in a prominent place in their business establishments. Failure to display the ~~license receipt~~ in such a manner shall constitute a violation of this article.

Sec. 10. Unclassified business categories.

If application is made for an ~~occupational license~~ local business tax receipt not specifically enumerated in the tax schedule, the Town Manager or his designee shall have the authority to determine the most nearly similar category that shall apply to the applicant.

Sec. 11. Home ~~occupation licenses~~ use business tax receipts.

(a) *Generally.* For purposes of this section, the term "home occupation" shall mean a business or occupation conducted for limited business activities. In any instance where a residential unit is used to conduct a home business consistent with this section, a home ~~use license~~ use business tax receipt shall be required. No home use business ~~license tax receipt~~ issued pursuant to this article shall be transferable, assignable or otherwise alienable.

(b) *Permitted activities.* The following limited business activities are permitted subject to a home use ~~license~~ business tax receipt being issued:

- (1) Post and receive correspondence of a business nature.
- (2) Initiate and receive business communications by telephone or fax.

(c) *Conditions.* The issuance of a home use business ~~license tax receipt~~ shall be subject to the following provisions:

(1) Home occupations conducted within the Town shall be clearly incidental and secondary to the use of the residence for residential purposes, and shall not change the character thereof.

(2) No person other than members of the family residing in the premises shall be engaged in such occupation or business.

(3) No residence shall be used for the conduct of any business or activity which requires manufacturing, assembly or construction or which by its nature or character may disrupt, disturb or adversely alter, change or modify the nature or character of the neighborhood or the quality of life therein.

- (4) No home occupation shall generate or attract vehicular or pedestrian traffic to a residence.
- (5) No sign or other advertising of the residential location shall be permitted.
- (6) No storage of materials or products shall be permitted.
- (7) Products shall not be offered for sale on the premises.
- (8) No commercial vehicles shall be kept on the premises or parked overnight on the premises unless otherwise permitted by this section.
- (9) No evidence of the occupation shall be visible or audible from the exterior of the dwelling unit.
- (10) In no event shall a barbershop, beauty parlor, tearoom, tourist home, animal hospital, nursing home, retail store, dancing or band instrument instruction, or clairvoyant be allowed as a home occupation.

Sec. 12. Tax schedule.

For the purposes of this article, inventory shall mean the average selling value of annual inventory owned by the business, exclusive of excise tax. The amounts assessed for ~~Occupational License~~ Local Business Taxes shall be fixed by resolution.

Section 3. Comprehensive Amendment. The Miami Dade County Code, as made applicable to the Town pursuant to the provisions of Section 8.3 of the Town Charter, and all other ordinances adopted by the Town, are hereby amended to substitute the term “local business tax receipt” in the place of the term “occupational license”, the term “holding/holder of a receipt” in the place of the term “licensed”, the term “receipt holder” for the term “licensee” and the term “receipt” or “business tax receipt” for the term “license”, as appropriate.

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 including Miami-Dade County Code sections made applicable to the Town by Charter Section 8-3 in conflict herewith are hereby repealed.

Section 7. Effective Date. This Ordinance shall be effective retroactively from and after January 1, 2007.

PASSED AND ADOPTED 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 10

ORDINANCE NO. 07- _____

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.

WHEREAS, the Town Council of the Town of Cutler Bay (the “Town”) adopted Ordinance 06-12, which provided in part the procedures and agenda format for Town Council meetings; and

WHEREAS, the Town Council desires to adopt the Town Council agenda format by resolution instead of by ordinance; and

WHEREAS, as such, it is the intent of the Town Council to repeal the agenda format set forth in Section 1 (E) of Ordinance 06-12 and to establish such format by resolution of the Town Council; and

WHEREAS, public notice was provided in accordance with law; 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 Section 1 of Ordinance 06-12. Section 1 of Ordinance 06-12 shall be amended as follows:

Section 1. Agenda Format and Council Meeting Procedures.

(A) *Agenda.* The town council agenda shall be set by the town manager and prepared by the town clerk.

(E) *Agenda Format.* The format of the council meeting agenda shall be established by a resolution of the town council. ~~is hereby established as follows:~~

- I. ~~CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE~~
- II. ~~INVOCATION~~
- III. ~~PROCLAMATIONS, AWARDS, PRESENTATIONS~~
- IV. ~~APPROVAL OF MINUTES~~
- V. ~~ADDITIONS, DELETIONS, AND DEFERRALS~~
- VI. ~~TOWN MANAGER'S REPORT~~
- VII. ~~TOWN ATTORNEY'S REPORT~~
- VIII. ~~BOARD AND COMMITTEE REPORTS~~
- IX. ~~CONSENT AGENDA (ANY ITEM SHALL BE REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION OR SEPARATE VOTE IF REQUESTED BY A COUNCILMEMBER)~~
- X. ~~QUASI JUDICIAL CONSENT AGENDA (ANY ITEM MAY BE REMOVED FROM THE CONSENT AGENDA IF REQUESTED BY A MEMBER OF THE TOWN COUNCIL, THE TOWN STAFF, THE APPLICANT, OR ANY AFFECTED PARTY.)~~
- XI. ~~QUASI JUDICIAL HEARINGS~~
- XII. ~~PUBLIC HEARINGS~~
 - A. ~~RESOLUTIONS~~
 - B. ~~ORDINANCES~~
 - 1. ~~FIRST READING~~
 - 2. ~~SECOND READING~~
- XIII. ~~PUBLIC COMMENTS~~
- XIV. ~~MAYOR AND COUNCIL MEMBER COMMENTS~~
- XV. ~~OTHER BUSINESS~~
- XVI. ~~NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT~~

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 AND ADOPTED 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 _____

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 J. Alexander
Town Attorney Mitchell Bierman
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, March 21, 2007

7:00 PM

Cutler Ridge Park
10100 SW 200th Street
Cutler Bay, Florida 33157

1. **CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE, MOMENT OF SILENCE**
2. **PROCLAMATIONS, AWARDS, PRESENTATIONS**
3. **APPROVAL OF MINUTES**
4. **REPORTS**
 - A. TOWN MANAGER'S REPORT
 - B. TOWN ATTORNEY 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.) (Voice Vote as to Entire Consent Agenda)**
6. **QUASI JUDICIAL HEARINGS (Roll Call Vote and public hearing)**
7. **ORDINANCES FOR FIRST READING (NO PUBLIC HEARING REQUIRED) (Roll Call Vote)**
8. **ORDINANCES FOR FIRST READING (PUBLIC HEARING REQUIRED) (Roll Call Vote)**

- 9. ORDINANCES FOR SECOND READING (PUBLIC HEARING REQUIRED) (Roll Call Vote)**
- 10. PUBLIC COMMENTS-LIMIT YOUR PRESENTATION TIME TO 3 MINUTES PLEASE**
- 11. MAYOR AND COUNCIL COMMENTS (Consider Combining with New Business/other business)**
- 12. OTHER BUSINESS**
- 13. 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 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 11



MEMORANDUM

To: Honorable Mayor & Town Council

From: Steven J. Alexander, Town Manager

Date: March 19, 2007

Re: **GRANTING ADMINISTRATIVE AUTHORITY TO THE TOWN MANAGER TO SET SERVICE AND USER CHARGES FOR MUNICIPAL SERVICES**

REQUEST

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.

BACKGROUND AND ANALYSIS

In accordance with Section 8.4 of the Town Charter concerning taxes and fees, all fees imposed within the Town by Miami-Dade County have continued in effect as if they had been assessed by the Town. In addition, Section 8.1 of the Town Charter entitled "Temporary Nature of Article" provides that each section of Article 8 shall become ineffective at such time as the implementation of such section has been accomplished.

Pursuant to Section 4.3. (A) (5) of the Town Charter an ordinance is required to "set service or user charges for municipal services or grant administrative authority to set such charges." These municipal charges include, but are not limited to, all fees established for participation in recreational programs and for use of park and recreation facilities. Subsequent to the adoption of this ordinance, an administrative fee schedule will be established for municipal services within the Town.

The first fee schedule that Town staff intends to establish relates to parks and recreational programs, activities, and facility rentals. The Parks and Recreation Department has conducted an assessment of the fees currently in place. Notably, most of the proposed fees that will be provided for on the parks and recreation fee schedule will remain the same as the County's fees. However, the Town will be assessing several new fees that are not currently in place, as well as a few fee increases.



Office of the Town Manager

In addition, as a part of the parks and recreation fee schedule, we intend to implement fee reduction guidelines so that all Town residents may have access to all programs and activities. Many municipalities, as well as Miami-Dade County, allow low-income residents to participate in recreation programs at a reduced rate. In keeping with standard practices, Town staff anticipates establishing fee reduction guidelines that provide for a 25%, 50%, or 100% fee reduction depending on household size and household income levels. The fee reduction guidelines are based on the 2006-2007 Federal Poverty Guidelines that are used for free and reduced lunch programs at most public schools. As required by Miami-Dade County, the Town's fee schedule and reduction guidelines would also apply to program participants who do not reside within the Town. The proposed fee schedule and recommended fee reduction guidelines that will be established administratively are attached for your review

RECOMMENDATION

We recommend that the attached ordinance be adopted granting administrative authority to the Town Manager to set service or user charges for municipal services.

Town of Cutler Bay			
Parks and Recreation Department			
Fee Schedule			
	Description	Current Fee	Proposed Fee
01	After School Program - Daily	\$7.00	\$7.00
02	After School Program - Weekly	\$20	\$20
03	Camp - Daily	\$16	\$16
04	Camp - Weekly	\$50	\$50
05	Camp - Weekly 2nd Child	\$45	\$45
06	Pool Admission (Adult)	\$2.00	\$2.00
07	Pool Admission (Child)	\$1.50	\$1.50
08	Pool Admission (Sr. Citizen)	\$1.25	\$1.25
09	Pool - D.C.P.S (hourly)	\$20	\$20
10	Pool - Rentals per hour (min. 3 hrs.)	\$75	\$75
11	Pool - Scuba Diving (hourly)	\$40	\$40
12	Pool - Swim Meets (hourly)	\$50	\$50
13	Pool - Swim Team practice (hourly)	\$20	\$20
14	Pool - Water Polo games (hourly)	\$50	\$50
15	Pool - Water Polo practice (hourly)	\$20	\$20
16	Program Registration	\$10	\$10
17	Rental - Building 3 hr. minimum*	\$90	\$120
18	Rental - Building ea. Add'l. hour*	\$40	\$50
19	Rental - Outside Picnic Area (hourly)	N/A	\$25
20	Rental - Security/Clean-up deposit	\$65	\$100
21	Rental Cancellation Fee (w/in 30 days of rental)	N/A	\$25
22	Rental - Football/Soccer Field (w/ lights) hourly	N/A	\$50
23	Rental - Football/Soccer Field (w/o lights) hourly	N/A	\$35
24	Rental - Pavillion (hourly)	N/A	\$30
25	Rental - Softball Field (w/ lights) hourly	N/A	\$35
26	Rental - Softball Field (w/o lights) hourly	N/A	\$25
27	Swim Lesson - Group (10 lessons)	\$50	\$50
28	Swim Lesson - Private	\$120	\$120
29	Swim Lesson - Semi Private (10 lessons)	\$60	\$60
30	Swim Lesson - Lifeguard Certification	\$100	\$125
31	Teacher's Workday Program	\$16	\$16
32	Teacher's Workday Program (current ASP participant)	N/A	\$10
33	Transportation (ASP) - Weekly	\$10	\$15

ORDINANCE NO. 07-_____

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.

WHEREAS, Section 8.4 of the Town Charter entitled “Taxes and Fees” stipulates that all taxes and fees imposed by Miami-Dade County shall continue at the same rate as if those taxes and fees had been adopted and assessed by the Town; and

WHEREAS, Section 8.1 of the Town Charter entitled “Temporary Nature of Article” provides that each section of Article 8 shall become ineffective at such time as the implementation of such section has been accomplished; and

WHEREAS, Section 4.3 of the Town Charter entitled “Ordinances” provides that the Town Council, by ordinance, may grant administrative authority to set service or user charges for municipal services; and

WHEREAS, granting such administrative authority to the Town Manager is in the best interest and welfare of the residents of the Town.

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 ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Granting of Administrative Authority. Pursuant to Section 4.3 entitled “Ordinances” of the Town Charter the Town Manager is hereby granted administrative authority to set service or user chargers for municipal services.

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 AND ADOPTED 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



M E M O R A N D U M

To: Steven Alexander, Town Manager

From: Don O'Donniley, AICP, Planning Director

Date: March 19, 2007

Re: Revisions to Section 33-20 (c) pertaining to swimming pools

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 drainage.

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 33-20. "Accessory buildings; utility sheds; swimming pools; fallout shelters; boat storage.", be amended to remove, as a factor, the presence or absence of a screen enclosure in determining whether or not to count the pool and pool deck as part of lot coverage and drainage calculations. Instead, all pools and pool decks, whether attached to or detached from the principal building, would be calculated to determine if sufficient area remains in the rear yard to provide for drainage and water runoff.

BACKGROUND AND ANALYSIS

Background

Currently, the referenced section of the Code provides that if a pool is within a screen enclosure which is attached to a principal building then it is considered an



Planning & Zoning Department

accessory building for purposes of lot coverage. But if the pool, whether screened or unscreened, is detached from the principal building it is considered an accessory use and therefore is not calculated as part of lot coverage.

Additionally, when pools and their associated decking are not calculated as part of lot coverage they are also not being calculated for drainage and water runoff purposes. In low lying areas with many pools this could increase the chances of localized flooding.

Analysis

This original provision of the Dade County Zoning Code, as written in 1957, which now acts as the Town Code provides for an inconsistent definition of lot coverage. This is because whether or not a swimming pool is calculated as part of the lot coverage is dependent on whether or not a screen, within which it may be enclosed, is attached or detached from the principal building. The presence or absence of screening has nothing to do with drainage.

It is staff's finding that all pools and decks should be considered as part of lot coverage.

RECOMMENDATION

Approval of the proposed revisions so as to adequately take into account drainage impacts of pools and decks.

ORDINANCE NO. 07- ____

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.

WHEREAS, the Town of Cutler Bay (the “Town”) Code of Ordinances (the “Town Code”) distinguishes between swimming pools that are detached or attached to the principal building for purposes of lot coverage; and

WHEREAS, the connection is distinguished in some cases only by the connection of the screened enclosure of the pool and the house; and

WHEREAS, rainwater is a critical element in recharging the aquifer and the creation of new impervious surfaces could exacerbate flooding within areas of the Town; and

WHEREAS, Town staff recommends amending the Town Code to provide that all swimming pools, regardless of whether or not such pools are attached to the principal building, shall be counted for purposes of lot coverage; 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 I “In General” of Chapter 33 “Zoning” of the Town Code of Ordinances shall be amended as follows:

Sec. 33-20. Accessory buildings; utility sheds; swimming pools; fallout shelters; boat storage.

(c) *Swimming pools.* Swimming pools in all districts shall be constructed no closer than five (5) feet to any building foundation, unless both the design and construction are approved by the ~~Director~~ town building official as safe and will not possibly result in a weakening of or damage to the building foundation. In no event shall said pools be closer than eighteen (18) inches to any wall or any enclosure. ~~Screen enclosures, enclosing swimming pools or other approved uses, where attached to the principal building, shall be permitted no closer to the front property line than the principal building; and if so attached, such enclosures shall not be considered as a part of such residence or building, but shall be considered as an accessory building for purposes of lot coverage only.~~ Swimming pools, whether or not enclosed within screen enclosures, ~~that are not attached to the principal building, and other permitted detached screen enclosures,~~ shall be considered as accessory ~~uses~~ buildings for purposes of lot coverage. A pool deck, as a percent of lot coverage, shall be based on the permeability factor of the material used for said deck. Such uses shall be permitted no closer to the front property line than the principal building and shall be setback at least seventy-five (75) feet from the front property line. In addition to the above and foregoing, the following setbacks shall apply:

(1) Minimum setback distances for swimming pools in any RU Districts shall be ten (10) feet from any interior side property line, twenty (20) feet from a side street property line, and seven and one-half (7 1/2) feet from a rear property line, except that where the pool is accessory to other than one-or two-family residential use, the minimum setback distance from a side street property line shall be five (5) feet greater than required for the principal building.

(2) Screen enclosures enclosing swimming pools or other approved uses in all RU Districts shall be setback a minimum distance of seven and one-half (7 1/2) feet from any interior side property line, fifteen (15) feet from any side street property line and six (6) feet from the rear property line, except that the minimum setback distance from a side street property line for a screen enclosure accessory to other than one- or two-family residential use, shall be the same as required for the principal building.

(3) Minimum setback distances for swimming pools in EU-M and EU-S Districts shall be twenty (20) feet from any interior side property line, thirty (30) feet from any side street property line and seven and one-half (7 1/2) feet from a rear property line.

(4) Screen enclosures enclosing swimming pools or other approved uses in EU-M and EU-S Districts shall be setback a minimum distance of fifteen (15) feet from any interior side property line, twenty-five (25) feet from any side street property line and six (6) feet from a rear property line.

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 AND ADOPTED 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 13



M E M O R A N D U M

To: Steven Alexander, Town Manager

From: Don O'Donniley, AICP, Planning Director

Date: March 19, 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.



Planning & Zoning Department

- 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.

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 “PARKING IN SWALE AREAS IN RESIDENTIAL ZONING DISTRICTS” PROVIDING FOR RESTRICTIONS AND REGULATIONS FOR 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 limiting off-street parking and parking in the swale within the right-of-way in order to create an aesthetically pleasing environment and to ensure that there is adequate passive recreationally 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.

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 zoning ~~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.

Section 33-132.1 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. However, upon application by the abutting property owner, the planning director may approve parking within the swale area for one (1) automobile or light truck. An automobile or light truck shall be defined as a motor vehicle which has a gross vehicle weight of less than ten thousand (10,000) pounds. The application shall be made in writing and no parking shall be permitted unless the swale is improved in accordance with section 33-126 of the town code. The application shall contain sufficient drawings and details to address spacing, accessibility, and drainage implications of the proposed improved parking area. The planning director shall approve or deny the application considering: (1) the general safety and welfare; (2) the impact on traffic operations, neighboring properties, and drainage; (3) the need for the requested parking; (4) the overall feasibility to provide improved parking within swales within the general vicinity of the abutting property; and (5) the availability of alternative locations or configurations to accommodate the requested parking.

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 AND ADOPTED 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 14

ORDINANCE NO. 07-

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.

WHEREAS, currently one boat is permitted to be stored on property within certain zoning districts within the Town of Cutler Bay (the "Town"); and

WHEREAS, it is the intent of the Town Council to permit two (2) boats to be stored on property within certain zoning districts within the Town; and

WHEREAS, it is further the intent of the Town Council to modify the length, width, and height of boats that are permitted to be stored within certain zoning districts within the Town; and

WHEREAS, requiring a permit for a second boat will assist the Town in monitoring the amount of boats stored on property within the Town; 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.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS¹:

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

¹Additions to existing text are indicated by underline; deletions are indicated by ~~striketrough~~. Additions between first and second reading are indicated by double underlined and deletions are indicated by ~~double striketrough~~.

Section 2. Amendment to Boat Storage Regulations. The boat storage regulations contained in Chapter 33, "Zoning," Article I, "In General," Section 33-20(e) "Boat storage" are hereby amended as follows:

* * *

(e) *Boat storage.* Boats of less than thirty-three (33) feet in length, ~~not more than one hundred and two (102) inches~~ nine and a half (9.5) feet in width and thirteen (13) feet six (6) inches in height, may be stored or temporarily parked in the RU, EU, AU and GU Zoning Districts subject to the following conditions:

(1) The place of storage shall be to the rear of the front building line. Where the boat storage area is located between the residence and a side street property line, the boat shall be visually buffered by a six-foot wood privacy fence, masonry wall, trees or shrubs maintained to a height of six feet. The front building line referred to shall be that portion furthest from the street.

(2) No more than ~~one (1)~~ two (2) boats may be stored or parked on any one (1) premise. A permit shall be required to be filed with the planning director prior to the storage or parking of a second boat within the Town. The planning director shall take into consideration lot size and configuration as well as accessory uses, buildings, or other structures located on the property when determining whether to issue a permit for a second boat. The second boat shall be no larger than seventeen (17) feet in length, not more than eight and a half (8.5) feet in width, and six (6) feet in height. The property owner shall submit the boat's title or registration with the permit application. A permit fee for a second boat shall be established by resolution of the town council.

(3) Boats and place of storage or temporary parking shall be kept in a clean, neat and presentable condition.

(4) No major repairs or overhaul work shall be made or performed on the premises.

(5) The boats shall not be used for living or sleeping quarters, and shall be placed on and secured to a transporting trailer.

(6) The temporary parking of a boat in front of the front building line or in front of the side street building line for no more than 2 hours in any 24-hour period, while the boat is hitched to an operable motor vehicle with a valid permanent license tag, for the purposes of loading and unloading equipment and supplies shall be permitted, but under no circumstances shall a boat be parked in the public right-of-way, including the swale area of a right-of-way.

(7) For purposes of this section, the height of a boat shall be measured from the ground to the highest point of the boat including all extruding equipment.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections,

sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

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

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

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this 21st day of February, 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 15

ORDINANCE NO. 07- _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING NONRESIDENTIAL DESIGN STANDARDS AND REGULATIONS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR NONCONFORMING STRUCTURES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) desires to regulate the design and modify the site development standards applicable to nonresidential establishments within the Town; and

WHEREAS, these development standards are intended to encourage high quality aesthetically pleasing developments that produce a desirable relationship between buildings and the pedestrian; and

WHEREAS, the adoption of these standards will help to implement the Strategic Master Plan adopted by the Town Council; and

WHEREAS, such standards will assist in the protection of residential areas and neighborhoods from some of the negative impacts of nonresidential development by encouraging excellence in urban design and by improving the overall appearance of the Town; 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 Miami-Dade County 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. Nonresidential Establishment Regulations. The following nonresidential establishment regulations are hereby created as follows:

A. Definitions.

For purposes of this Ordinance, the following words and phrases shall have the meanings herein set forth:

Balcony or Balconies: shall mean a platform projecting from a wall of a building and surrounded by a railing or parapet.

Large nonresidential establishment: A nonresidential establishment, or any combination of nonresidential establishments in a single building or in separate but abutting buildings, occupying between forth thousand (40,000) and fifty thousand (50,000) gross square feet of floor area.

Medium nonresidential establishment: A nonresidential establishment, or any combination of nonresidential establishments in a single building or in separate but abutting buildings, occupying between twenty-five thousand (25,000) and forty thousand (40,000) gross square feet of floor area.

Non-residential uses: Non-residential uses are defined to include commercial retail, commercial services, office, similar uses and expressly excludes institutional, government and agricultural uses.

Pedestrian walkway shall mean a continuous way designated for pedestrians and separated from the through lanes for motor vehicles by space or barrier.

Small nonresidential establishment: A nonresidential establishment, or any combination of nonresidential establishments in a single building or in separate but abutting buildings, occupying less than twenty-five thousand (25,000) gross square feet of floor area.

Visible shall mean that the building can be seen while standing, walking, biking or driving on a public or private street that is located at the front, side or to the rear of the building. While driving, a motorist shall have a 20 degree range of view known as the “Cone of Vision.” (See Figure 1).

B. Purpose.

These standards are intended to ensure that all nonresidential development is compatible with its surrounding area and contributes to the unique community character of the Town.

C. Nonresidential Establishment Regulations Generally.

All Small, Medium, and Large nonresidential establishments shall be subject to the following regulations:

1. **Façades and Exterior Walls.**

- a. Building bays. The building façades of all nonresidential establishments, which are Visible from adjoining properties, or public or private streets shall have articulation in the form of multiple building bays that are a maximum of thirty (30) feet in width. Bays shall be visually established by architectural features such as columns, ribs or pilasters, piers and fenestration pattern. (See figure 2.).
- b. Exteriors walls. No wall that faces a street or connecting Pedestrian walkway shall have a blank, uninterrupted length exceeding thirty (30) feet without including at least two (2) of the following: change in plane, change in texture or masonry pattern, windows, lattice work with vines, or an equivalent element that subdivides the wall into human scale proportions.

When actual doors and windows are not feasible because of the nature of the use of the building, side or rear walls that face Pedestrian walkways shall include false windows and door openings defined by frames; sills and lintels; or similarly proportioned modulations of the wall. All sides of the building shall include materials and design characteristics consistent with those on the front of the building.

- c. Base treatment. All façades shall have a recognizable "base" including, but not limited to:
 - (i) Thicker walls, ledges or sills;
 - (ii) Integrally textured materials such as stone or other masonry;
 - (iii) Integrally colored and patterned materials such as smooth-finished stone or tile;
 - (iv) Lighter or darker colored materials, mullions or panels; or
 - (v) Planters.
- d. Top treatment. All façades shall have a recognizable "top" including, but not limited to:
 - (i) Cornice treatments, other than just colored "stripes" or "bands," with integrally textured materials such as stone or other masonry or differently colored materials;
 - (ii) Sloping roof with overhangs and brackets; or

- (iii) Stepped parapets.

2. **Roofs.**

Roofs shall have no less than two (2) of the following features:

- a. Parapets concealing flat roofs and rooftop equipment such as HVAC units from public view. The average height of such parapets shall not exceed fifteen (15) percent of the height of the supporting wall and such parapets shall not at any point exceed one-third ($\frac{1}{3}$) of the height of the supporting wall. (See Figure 3.). Such parapets shall feature three-dimensional cornice treatment;
- b. Overhanging eaves, extending no less than three (3) feet past the supporting walls;
- c. Sloping roofs that do not exceed the average height of the supporting walls, with an average slope greater than or equal to one (1) foot of vertical rise for every three (3) feet of horizontal run and less than or equal to one (1) foot of vertical rise for every one (1) foot of horizontal run;
- d. Three (3) or more roof slope planes; or
- e. Green roofs or rooftop gardens.

3. **Materials and colors.**

- a. Predominant exterior building materials shall be high quality materials including, but not limited to, brick, sandstone, other native stone and tinted/textured concrete masonry units, stucco, and wood. Manmade substances such as plastic wood or false coral stone are prohibited.
- b. Façade colors shall be low reflectance, subtle, neutral or earth tone colors. The use of high-intensity colors, metallic colors, black or fluorescent colors shall be prohibited.
- c. Building trim and accent areas may feature brighter colors, including primary colors, but neon tubing shall not be an acceptable feature for building trim or accent areas.

4. **Encroachments.**

All nonresidential establishments shall have special architectural features, such as bay windows, decorative roofs, and entry features. Such features may project up to three (3) feet into rights-of-way, provided that they are not less than ten (10) feet above the sidewalk. Trellises, canopies, and fabric awnings may project up to five (5) feet into front

setbacks and rights-of-way, provided that they are not less than ten (10) feet above the sidewalk. No such improvements shall encroach into alley rights-of-way.

5. Time for Delivery/Loading Operations.

No delivery, loading, trash removal or compaction, or other such operations shall be permitted between the hours of 10:00 p.m. and 7:00 a.m. within five hundred feet (500') of a residentially zoned parcel. Such areas shall be acoustically and visually screened. All dumpsters shall be located within an enclosure or otherwise hidden from all public views. The enclosure shall be constructed of a color and materials similar to the primary building(s). All enclosures shall include a gate with a self-locking latch.

6. Site Design and Relationship to Surrounding Community.

- a. Parking lot. The design of all lots shall safely and attractively serve all modes of travel, especially the pedestrian. Shade trees shall be provided in landscape islands to achieve a minimum shading of 50% of the parking lot. The interior width of landscape islands shall be a minimum of five (5) feet.
- b. Maximum size of parking area. No single surface parking area shall exceed 75 spaces unless divided into two or more sub-areas by a building, an internal landscaped pedestrian way, or an internal landscaped street. Parking lots shall be designed so that stormwater flows to the landscaped areas for retention and filtration in compliance with all stormwater mitigation criteria. Roof top parking is encouraged, if appropriately screened, as determined by the planning director.
- c. Parking garages. Parking garages are required to have street-fronting commercial space along all sides of the garage that front a street. In addition, to soften the bulk of the structure other details shall include, but not be limited to, grills, trellises and vine-climbing frames to provide space for clinging plants, and window framing.
- d. Outdoor storage and sales. Areas for outdoor storage and sales are permitted as extensions of the sales floor with free customer access, if incorporated into the building design and landscaping and permanently defined and screened with walls or fences, made of materials and using colors comparable to the primary structure. Such areas shall be counted as part of the gross floor area of the Medium or Large nonresidential establishment. Outdoor storage in areas where customers are not allowed is prohibited, including storage sheds and containers. Outdoor storage of propane tanks may be allowed, with appropriate screening, as determined by the planning director.
- e. Stormwater management. Stormwater shall be directed into grass lined swales from sidewalks and rooftops to provide filtration before entering the

storm drain system. The swales shall provide additional technologically advanced treatment functions for filtering out contaminants from stormwater before it enters the system. Additional treatments could include, but not limited to, a perforated drainage pipe surrounded by a fabric cocoon of clay pellets which accommodate the growth of bacteria. All areas of the site shall place emphasis on allowing as much groundwater percolation as possible.

- f. Pedestrian circulation. A safe and landscaped pedestrian circulation system shall be provided onsite which connects to public streets and neighborhoods. Sidewalks at least eight (8) feet in width shall be provided along all sides of the lot that abut a public street. Sidewalks, no less than eight (8) feet in width, shall be provided along the full length of the building along any façade featuring a customer entrance, and along any façade abutting public parking areas. Such sidewalks shall be located at least six (6) feet from the façade of the building to provide planting beds for foundation landscaping, except where features such as arcades or entryways are part of the façade. All internal Pedestrian walkways shall be distinguished from driving surfaces through the use of durable, low maintenance surface materials, such as pavers, bricks or scored concrete, to enhance pedestrian safety and comfort as well as the attractiveness of the walkways.
- g. Drive-through lane with limitation. No drive-through facility associated with a nonresidential establishment shall be less than eight (8) feet in width. Drive-through lanes cannot restrict or in anyway block any designated parking spaces. Pedestrian walkways shall be clearly separated from drive-through lanes. Each drive-through lane shall have the necessary stacking distance for four (4) cars, and shall be clearly curbed, marked, striped, or otherwise distinctly delineated for the entire length of the lane.
- h. Bike racks. All nonresidential developments shall provide bike racks which store no less than six (6) bicycles. The location of the racks shall be indicated on the site plan. The design of such racks shall be of durable, long-lasting materials.
- i. Storage of shopping carts. Within all commercial developments which provide shopping carts for use by patrons, one parking space per twenty-five (25) spaces shall be dedicated for the storage of shopping carts. The shopping cart storage area shall include durable fence materials in order to contain carts within the designated storage space.

7. **Illumination prohibition.**

Exterior-mounted exposed neon/fiber optic/rope L.E.D. lighting, illuminated translucent materials (except signs), illuminated striping or banding, and illuminated product displays on appurtenant structures (e.g., fuel dispensers) shall be prohibited.

8. **Expansions.**

If the expansion of a nonresidential establishment would result in the establishment becoming a different nonresidential establishment, as defined by this Ordinance, such establishment shall comply with the applicable standards governing such establishments.

D. Small Nonresidential Establishments Only.

Small nonresidential establishments may be located as a stand alone building, but there shall be no off-street parking permitted in the front of a Small nonresidential establishment.

E. Medium and Large Nonresidential Establishments Only.

1. **Location.**

All Medium and Large nonresidential establishments shall be located in shopping centers.

2. **Entryways.**

Each Medium and Large nonresidential establishment on a site shall have clearly defined, highly visible customer entrances featuring no less than three (3) of the following:

- a. Canopies or porticos;
- b. Overhangs;
- c. Recesses/projections;
- d. Arcades;
- e. Raised corniced parapets over the door;
- f. Peaked roof forms;
- g. Arches;
- h. Outdoor covered patios with built-in seating;
- i. Display windows;
- j. Architectural details such as tile work and moldings which are integrated into the building structure and design; or
- k. Integral planters or wing walls that incorporate landscaped areas and covered places for sitting.

3. Maximum number of parking spaces.

The maximum number of parking spaces for a Medium or Large nonresidential establishment and related establishments shall not exceed the minimum required by Chapter 33 of the Town Code by more than ten percent (10%). Reductions in the required parking may be considered based on the mix of uses. For a mixed use development, up to ten percent (10%) of the nonresidential requirement and up to seven percent (7%) of the residential requirement may be approved, with further reductions possible based on proximity to a high quality pedestrian pathway and availability of public transit. A parking management plan must be submitted with the initial development application. The parking management plan must provide justification for any requested reduction in parking. The provisions of this section shall not apply to any property located within the Old Cutler Road Overlay Zoning District.

4. Off-street parking.

There shall be no off-street parking permitted between the front façade of a Medium or Large nonresidential establishment and the abutting street. However, no more than fifteen (15) percent of the off-street parking area for the lot, tract or area of land devoted to a Medium or Large nonresidential establishment may be located between the front façade of the Medium or Large nonresidential establishment and the abutting streets if such establishment provides: (1) at least five (5) of the entryway features provided above; and (2) at least five (5) of the central features and community space features provided below.

5. Central features and community space.

Each Medium or Large nonresidential establishment shall contribute to the establishment or enhancement of community and public spaces by providing at least two (2) of the following:

- a. Patio/seating area;
- b. Pedestrian plaza with benches;
- c. Green roof or green wall;
- d. Window shopping walkway;
- e. Outdoor playground area;
- f. Kiosk area;
- g. Water feature; or
- h. Clock tower or other such deliberately shaped area and/or focal feature or amenity, which in the judgment of the planning director adequately

enhances such community and public spaces. Such areas may be combined into one or more locations, in order to create a larger amenity. Any such areas shall have direct access to the public sidewalk network and such feature shall not be constructed of materials that are inferior to the principal materials of the building and landscape. (See Figure 4.).

6. Outdoor seating/dining areas.

Where a Medium or Large nonresidential building provides outdoor seating, the following regulations shall apply. The site plan must include the layout of all tables, chairs, benches and other furniture; pedestrian ingress and egress; location of refuse containers; and other elements necessary to illustrate the proposed outdoor seating area. The applicant shall provide an indemnity agreement which is acceptable to the Town Attorney. This agreement will include specification of liability insurance provided. All outdoor seating and dining areas shall be kept in a neat and orderly appearance and shall be kept free from refuse and debris. The applicant shall be responsible for daily cleaning and sweeping of the outdoor seating or dining area and for the cleanliness and maintenance of any outdoor planters immediately adjacent to the area. Cleaning shall include twice-monthly pressure cleaning or other appropriate cleaning methods, as determined by the Town. Use of Town sidewalks for trash and garbage removal shall be prohibited.

Outdoor seating and dining areas shall not interfere with the free and unobstructed pedestrian or vehicular circulation of traffic, public access to any street intersections, crosswalks, public seating areas and conveniences, bus stops, alleys, service easements, handicap facilities or access to nonresidential establishments. The width and location of the sidewalk pedestrian passage shall be as follows:

If there is seating on one side of the sidewalk, a minimum of five (5) feet of sidewalk must remain clear and unobstructed for pedestrian passage;

If there is seating on two sides of the sidewalk, a minimum of six (6) feet of sidewalk between the two seating areas must remain clear and unobstructed for pedestrian passage; and

All tables, chairs and umbrellas shall be located a minimum of 18 inches from the curb.

Tables, chairs, and all other furniture used in the operation of an outdoor seating or dining area shall not be anchored or restrained in any manner. Individual table umbrellas, planters, or other such non-stationary elements may be permitted within the outdoor seating or dining area, and where applicable, shall have a minimum clearance height of seven (7) feet above the sidewalk.

The maximum number of outdoor seats shall not exceed fifty (50) percent of the number of indoor seating, except for restaurants with indoor seating of twenty-five (25) seats or less, which may have outdoor seats not to exceed one hundred (100) percent of the number of indoor seats.

7. Public transit.

If a Medium or Large nonresidential establishment is located adjacent to an arterial street which is (or is planned to be) used as a transit route, it shall provide on-site accommodations for public transit access, such as Pedestrian walkways, a bus pullout and shelters.

8. Internal Pedestrian walkways.

Continuous internal Pedestrian walkways, no less than eight (8) feet in width, shall be provided from the public sidewalk or right-of-way to the principal customer entrance of all Medium and Large nonresidential establishments on the site. At a minimum, Pedestrian walkways shall connect focal points of pedestrian activity such as, but not limited to, transit stops, street crossings, building and store entry points, and shall feature adjoining landscaped areas that include trees, shrubs, benches, flower beds, ground covers, or other such materials for no less than fifty (50) percent of the length of the walkway. Such Pedestrian walkways shall provide weather protection features such as awnings or arcades within thirty (30) feet of all customer entrances.

9. Expansions.

No addition to an existing Medium or Large nonresidential establishment which would increase the gross square feet of floor area of such establishment by fifty (50) percent or more, and no addition to an existing building which would create a Large nonresidential establishment and that would increase the gross square footage of floor area of such building by fifty (50) percent or more, shall be approved for construction or occupancy unless the entire Large nonresidential establishment affected by the new construction has been determined by the planning director to be in compliance with this Ordinance, the applicable general development standards, and the applicable district standards, whether the existing Large nonresidential establishment or building was approved under prior law or under this Ordinance.

F. Medium Nonresidential Establishment Only.

All Medium nonresidential establishment façades shall incorporate wall plane projections or recesses having a depth of at least three (3) percent of the length of the façade and extending at least twenty (20) percent of the length of the façade. No uninterrupted length of any façade shall exceed one hundred (100) horizontal feet. Ground floor façades that face public and private streets shall have arcades, display windows, entry areas, awnings, or other such features. The façade at the first floor level shall be detailed and glazed as storefront windows. The wood or metal armature of such storefronts shall be painted. Storefronts shall be directly accessible from sidewalks. Each storefront shall have windows and entry features, equal to 70 percent of its portion of the façade, between 2 and 8 feet from the ground. Storefronts shall have the mullion system, doorways, and signage integrally designed and painted. Balconies within a mixed use development shall have a depth of seven (7) feet and a proportion width.

G. Large Nonresidential Establishments Only.

1. Location.

Large nonresidential buildings shall be located in a group of more than four (4) nonresidential establishments located in a complex which is planned, developed, owned, or managed as a single unit with off-street parking provided on the property.

2. Maximum Size of Large Nonresidential Establishments.

Large nonresidential establishments shall not exceed fifty thousand (50,000) gross square feet. However, the total structure may exceed this size so long as no single nonresidential tenant exceeds this size. To determine whether an establishment has reached this maximum, the area of shared check stands, management, controlling ownership interest, and storage areas shall also be included.

3. Façade.

All Large nonresidential building façades shall include a repeating pattern that includes no less than three (3) of the following elements:

- a. Color change;
- b. Texture change;
- c. Material module change; or
- d. An expression of architectural or structural bays through a change in plane no less than twelve (12) inches in width, such as an offset, reveal or projecting rib. (See Figure 2.)

At least one (1) of elements a., b., or c. shall repeat horizontally. All elements shall repeat at intervals of no more than thirty (30) feet, either horizontally or vertically.

4. Exterior Customer Entrance.

Where additional stores will be located in the Large nonresidential establishment, each such store shall have at least one (1) exterior customer entrance, which shall conform to the above requirements.

H. Exemptions.

Nonresidential establishments located within the Urban Center District shall be exempt from the provisions of this Ordinance.

I. Nonconforming structures.

As of the effective date of this Ordinance, any structures, which are inconsistent with the provisions of this Ordinance, shall be considered legal nonconforming structures and shall be subject to the provisions of Section 33-35 of the Town Code.

Figure 1
Cone of Vision

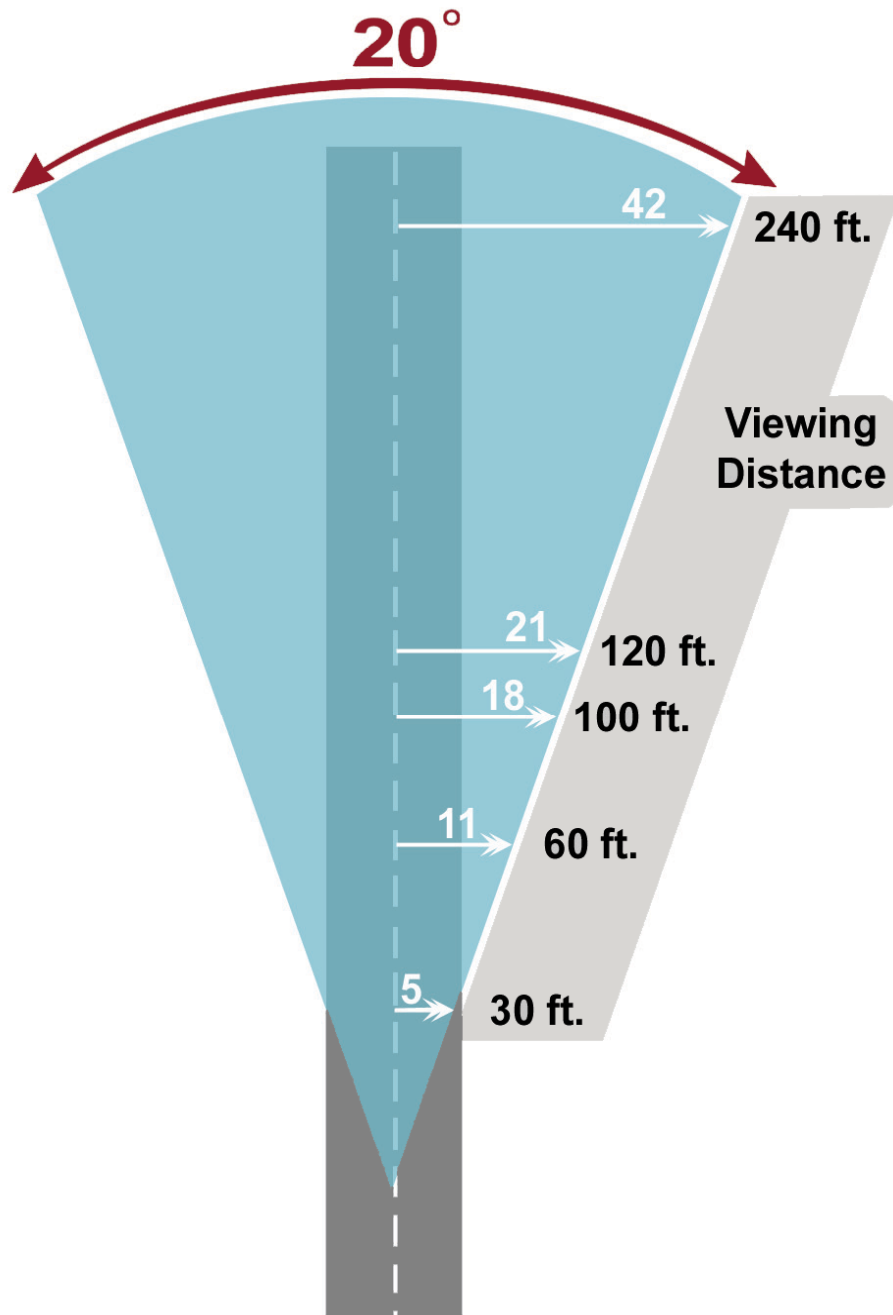


Figure 2
Expression of Architectural or Structural Bay

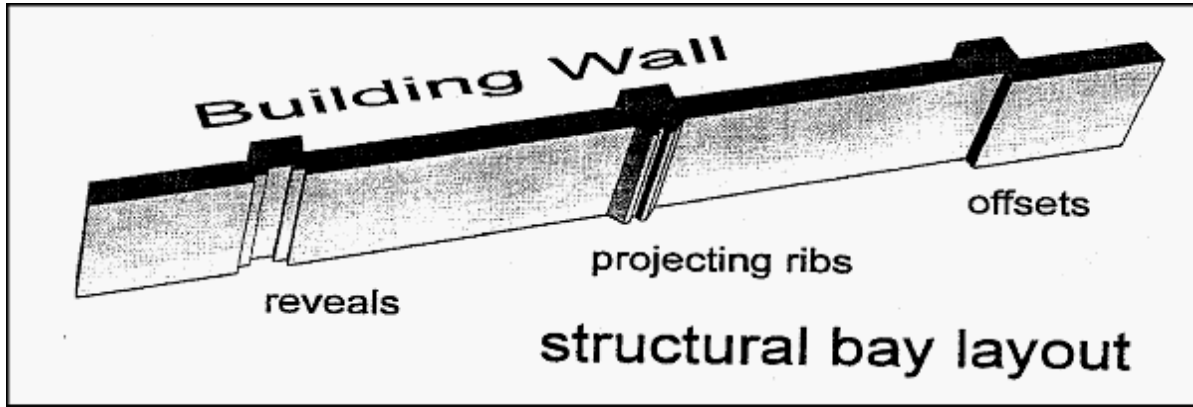


Figure 3
Parapet Standards

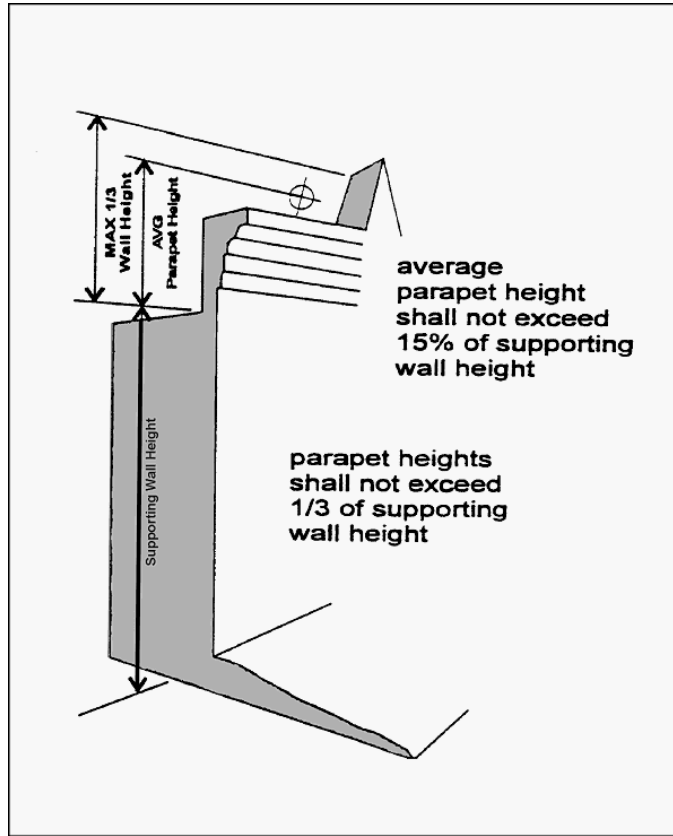
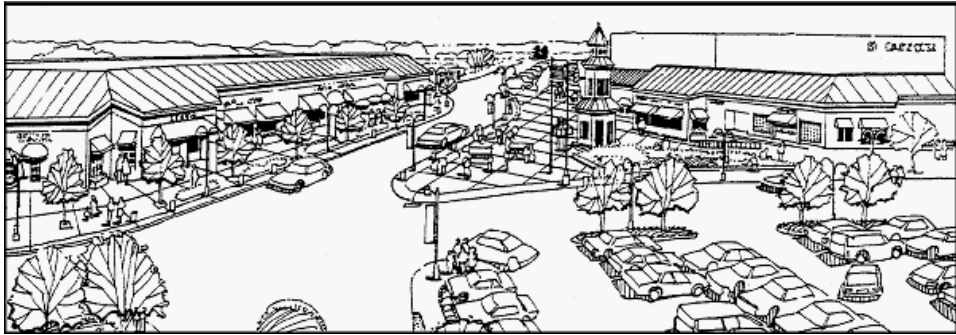


Figure 4
Center With Community Features



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 AND ADOPTED on first reading this 21st day of February, 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 Edwards P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 16



Office of the Town Attorney

Mitchell A. Bierman
Town Attorney

Chad S. Friedman
Town Attorney

MEMORANDUM

To: The Honorable Mayor and Town Council

From: Mitchell Bierman, Town Attorney

Date: March 19, 2007

Re: Ex-Parte Communications on Quasi-Judicial Land Use Matters

We have prepared the attached ordinance addressing disclosure of ex-parte communications regarding quasi-judicial proceedings and land use matters. An explanation follows.

I. QUASI-JUDICIAL BOARDS AND PROCEEDINGS FOR LAND USE MATTERS

The Town's Local Planning Agency ("LPA") and, in certain situations, the Town Council are considered to be quasi-judicial boards of the Town. This means that the LPA and the Town Council will be conducting quasi-judicial proceedings. As Councilmembers, you are most familiar with legislative decision making, in which you are asked to create a general rule or policy to govern the conduct of those within the Town. In contrast, a quasi-judicial proceeding is one that determines the rights of some individual person or business by applying that legislative rule of Town-wide application to the particular facts and circumstances of an individual case. In the area of land use, all comprehensive planning decisions are considered to be legislative. Most zoning decisions are considered to be quasi-judicial proceedings; a few, such as a Town-wide enactment of zoning, are likely to be considered legislative. Decisions on special permits, such as variances and building permits, are quasi-judicial.

Members of quasi-judicial boards are subject to certain restrictions when it comes to communications concerning matters under consideration. Such contacts are considered "ex-parte communications."¹ Since it is possible that applicants or other interested persons may seek to contact (or already have contacted) you to discuss the merits of development applications, the Council should address what, if any, communications will be allowed

¹ / "Ex-Parte" is defined as: on one side only; by or for one party; done for, in behalf of or on the application of, one party only. Black's Law Dictionary, 5th Edition. In other words, when the prosecutor talks to the judge in the absence of the defense attorney about the case against the accused, it is an ex parte contact.

between the Councilmembers and an applicant, as well as communications with the general public.

A. WHAT IS AN EX-PARTE COMMUNICATION?

An ex-parte communication is any communication, whether written or oral, between a Councilmember or other quasi-judicial board member and any person regarding the subject matter of any application that is, or foreseeably will be, heard in a quasi-judicial proceeding. Site visits and review of expert opinions are also considered ex-parte communications.

Currently, you must refrain from all ex-parte contacts with applicants or other interested persons regarding development applications, in order to avoid creating a legal presumption that your future decision on these applications is prejudiced by the contact.¹ However, as discussed below, the Town Council may remove this presumption of prejudice by adopting an ordinance or resolution establishing a process to allow ex-parte communications related to quasi-judicial proceedings.

i. JENNINGS V. METROPOLITAN DADE COUNTY

The leading case dealing with the issue of ex-parte communications and quasi-judicial boards is Jennings v. Metropolitan Dade County, 589 So. 2d 1337 (Fla. 3rd DCA 1991), rev. den., 598 So.2d 75 (Fla. 1992). In Jennings, the court disapproved of ex-parte communications and found them to be inherently improper because they violated the concept of fundamental due process, the cornerstone of quasi-judicial proceedings. The court further found that the existence of an ex-parte communication creates a presumption that the communication is prejudicial. As a result, any aggrieved party that objects to the ex-parte communication is entitled to an entirely new hearing unless it can be successfully proven that the communication was not, in fact, prejudicial.

While the types of matters which are subject to the rules put forth in the Jennings case are not clearly and consistently defined by the law, at a minimum the following matters are considered by courts to be quasi-judicial in nature:

site specific re-zonings, special exceptions, variances, site plan approvals, conditional uses, and code enforcement proceedings.²

ii. SECTION 286.0115(1), FLORIDA STATUTES: ACCESS TO LOCAL PUBLIC OFFICIALS LAW.

Due in large part to the Jennings decision, in 1995 the Florida Legislature enacted Section 286.0115, Florida Statutes, titled "Access to Local Public Officials". This law allows a municipality

¹ / The Town Charter provides for the continued applicability of Miami-Dade County ordinances until replaced or superceded by the Town's own ordinances. Miami-Dade County has not adopted any rules removing the presumption of prejudice and allowing ex-parte communications with members of quasi-judicial boards.

² / Board of County Commissioners of Brevard County v. Snyder; 627 So. 2d 469 (Fla. 1993); Irvine v. DuvalCounty Planning Commission, 495 So. 2d 167 (Fla. 1986); Park of Commerce Associates v. Town of Delray Beach, 636 So. 2d 12 (Fla. 1994); Chapter 162, Fla. Stat. (2000).

to adopt an ordinance or resolution removing the presumption of prejudice from ex-parte communications with local public officials.

By definition, this statute covers all elected or appointed officials holding a municipal office who recommend or take quasi-judicial action as a member of a board or council. It allows any person to engage in ex-parte discussions regarding the merits of quasi-judicial matters with a Councilperson so long as the Councilperson discloses, on the record, the existence of the ex-parte communication. This disclosure must be made before or during the public meeting at which any final action is taken on the matter in order for the presumption of prejudice to be removed. The Councilperson must disclose the communication and the identity of the person, group, or entity with whom the communication took place. This procedure allows an applicant or an affected party with a differing opinion a reasonable opportunity to refute or respond to the substance of the ex-parte communication.

In order to allow any form of ex-parte communication or site visit without creating the presumption of prejudice, the Council is required to adopt an ordinance or resolution specifying what, if any, ex-parte communication is allowed.

iii. ORDINANCE REGARDING EX-PARTE COMMUNICATIONS.

Attached for your consideration is a proposed ordinance authorizing ex-parte communications so long as the communications are properly disclosed. Alternatively, the Council may elect to maintain the current practice followed by the County and prohibit all ex-parte communications in accordance with the court's ruling in the Jennings case.

B. GUIDANCE FOR COMPLYING WITH JENNINGS.

Until such time as the Town Council enacts its own rules governing ex-parte communications, the rule of law set forth in the Jennings decision applies. Any correspondence received by a Councilmember regarding a quasi-judicial application must be forwarded to the Town Clerk. In the event that someone attempts to contact you about a quasi-judicial matter outside of a public meeting, we recommend that you ask them to put their concerns in writing and forward their written documents to the Town Clerk. The Clerk will then make their correspondence part of the record on that application. Additionally, when the application is subsequently heard before the LPA or the Town Council, each Councilmember should state on the record the existence of the ex-parte communication, the nature of the communication, and the name of the person who contacted you. You should also state whether or not the ex-parte communication affects your ability to consider the evidence presented impartially.

Finally, even if the Town Council establishes a process to allow ex-parte communications on quasi-judicial matters, Councilmembers must comply with the Florida Government in the Sunshine Law. As is required on any issue that might come before the Council for consideration, Town Councilmembers may only discuss quasi-judicial matters with each other at a public meeting.

ORDINANCE NO. 07-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IMPLEMENTING THE PROVISIONS OF SECTION 286.0115, FLORIDA STATUTES, TO ESTABLISH A PROCEDURE GOVERNING EX PARTE COMMUNICATIONS WITH LOCAL PUBLIC OFFICIALS CONCERNING QUASI-JUDICIAL MATTERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay, Florida (the "Town") desires to implement Section 286.0115(1) Fla. Stat., by establishing a process to disclose ex parte communications (communications made on behalf of one side only without the presence of the other side) with local public officials; and

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

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

Section 1. The above recitations are true and correct and are incorporated into this ordinance by this reference.

Section 2. Communications with The Town Council. Communications with local public officials [as defined in Sec. 286.0115(1)(b), Fla. Stat. (1997)], regarding quasi-judicial matters [as defined in Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 469 (Fla. 1993)], including the adjudication of the rights of persons and the application of a general rule or policy to a specific individual, property, interest or activity shall be governed by the following procedure:

A. Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official representing the Town the merits of any matter on which action may be taken by any board, council or commission on which the local public official is a member. Such communication shall not raise any presumption of prejudice provided that the following process of disclosure occurs:

1. The subject and substance of any ex parte communication with a local public official representing the Town which relates to quasi-judicial action pending before the official, as well as the identity of the person, group or entity with whom the communication took place, is disclosed and made a part of the record before final action is taken on the matter.

2. A local public official representing the Town may read a written communication

from any person; however, a written communication that relates to quasi-judicial action pending before such official shall be made a part of the record before final action is taken on the matter.

3. A local public official representing the Town may conduct investigations, make site visits and receive expert opinions regarding quasi-judicial action pending before him or her, provided that such activities and the existence of such investigations, site visits, or expert opinions is made a part of the record before final action is taken on the matter.

4. Disclosure made pursuant to paragraphs (1), (2) and (3) above must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication.

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

Section 4. Inclusion in the Code. It is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town Code and that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

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

PASSED and ADOPTED on first reading this 21st day of February, 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 17

ORDINANCE NO. 07-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA , AMENDING CODE ENFORCEMENT PROCEDURES; CREATING ENHANCED PENALTIES FOR VIOLATIONS OF THE SIGN ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Mayor and Town Council of the Town of Cutler Bay (the “Town”) finds it is in the best interest of the Town to amend the code enforcement procedures contained in the Miami-Dade County Code (“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. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. Code Enforcement Procedures Adopted. The Code is amended as follows:

Sec. 8CC-1. Civil offenses and penalties; ~~hearing officers.~~ Special Magistrate.

The violation of any ~~County~~ Town ordinance listed in ~~Section 8CC-10 of this chapter~~ shall constitute a civil offense punishable by civil penalty in the amount prescribed in Section 8CC-10 and as modified by Section 8CC-4 of this chapter. Accordingly, there is hereby created and established a code enforcement position to be filled by ~~hearing officers~~ a Special Magistrate to enforce the ~~ordinances listed in Section 8CC-10 which are contained in and enacted pursuant to this Code.~~ Town code of ordinances.

Sec. 8CC-2. Qualifications of ~~officers~~ the Special Magistrate and removal; organization.

(a) The ~~County Manager~~ Special Magistrate shall create a ~~Hearing Officer Review Board, comprised of three (3) members from code enforcement departments, one (1) member from the County Clerk's Office, two (2) members from the public at large, and one (1) member from the Office of the County Attorney. The duty of the Board shall be to recommend new Hearing Officer appointments and review, on an annual basis, the performance of Hearing Officers and, as necessary recommend the removal or reappointment of Hearing Officers to the County Manager.~~ (b) ~~The Hearing Officer Review Board shall use a basis for recommendation for appointment, criteria to be developed by the Review Board for approval and concurrence of the County Manager and Clerk of the Board of County Commissioners. Such appointments by the County Manager shall be submitted to the Clerk of the Board for ratification by the Clerk.~~(c)

~~Hearing Officers be a resident of Miami Dade County who possess an outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability. The Special Magistrate shall be a member of the Florida Bar in good standing or a retired judge of one of the courts of the State of Florida. The appointment appointments of the Special Magistrate shall be made by the Town Manager County Manager on the basis of experience or interest in code enforcement. Such appointments shall be submitted to the Clerk of the Board of County Commissioners for ratification by the Clerk.~~(d) ~~the County Manager or his designee shall appoint as many hearing officers as are deemed necessary~~ Appointments shall be made for The Special Magistrate shall be appointed for a term of two (2) years. Upon recommendation of the Hearing Officer Review Board The Special Magistrate may be reappointed at the discretion of the County Town Manager. There shall be no limit on the number of reappointments that may be given to any ~~individual Hearing Officer~~ Special Magistrate; provided, however, that a determination as to removal or reappointment must be made ~~for each individual Hearing Officer~~ at the end of each of his or her two-year terms. The Town Manager County Manager shall have authority to remove the Special Magistrate individual Hearing Officers with or without cause. Appointments to fill any vacancy shall be for the remainder of the unexpired term.

~~(e) (b) The Miami Dade County Town~~ Attorney's Office shall, when so requested by the Town Manager, represent the Town in the prosecution of a violation. serve as general counsel to the Hearing Officers Special Master. If an appeal hearing is held pursuant to Section 8CC-8, the ~~County Town~~ Attorney's Office shall, if requested by the Town Manager, represent the ~~County Town~~ at such proceedings.

Sec. 8CC-3. Enforcement procedures.

(a) For the purposes of this chapter, a "Code Compliance Officer" is defined to be any agent or employee of ~~the Miami Dade County Town~~ whose duty is to assure the enforcement of and compliance with the Code of ~~Miami Dade County~~ the Town. ~~Subject to the requirements of Section 8CC-11 below, a "Code Compliance Officer" is also defined to be any agent or employee of a municipality who has been authorized pursuant to that Section to assure code compliance. Municipal employees shall also be required to successfully complete a criminal background investigation prior to being provided authority to initiate enforcement proceedings under this Chapter.~~

(b) Code Compliance Officers shall have the authority to initiate enforcement proceedings as provided below. No ~~Hearing Officer~~ Special Magistrate shall have the power to initiate such proceedings.

(c) For the purposes of this chapter, "violators" shall be deemed to be those persons or entities legally responsible for the violation of the ordinances. ~~listed in Section 8CC-10.~~

(d) A Code Compliance Officer who finds a violation of those ordinances of this Code ~~listed in Section 8CC-10~~ shall determine a reasonable time period within which the violator must correct the violation. This determination shall be based on considerations of fairness; practicality; ease of correction; ability to correct; severity of violation; nature, extent and probability of danger or damage to the public; and other relevant factors relating to the reasonableness of the time period prescribed. A time for correction need not be specified if the violation is deemed to be an uncorrectable violation.

(e) A Code Compliance Officer who finds such a violation shall issue a civil violation notice to the violator. Service shall be effected by delivering the civil violation notice to the violator or his agent, or by leaving the civil violation notice at the violator's usual place of abode with any person residing therein who is fifteen (15) years of age or older and informing that person of its contents. If such service cannot be effected, the civil violation notice may be sent by certified mail, return receipt requested, or by posting of the civil violation notice in a conspicuous place on the premises or real property upon which the violation has been observed or by mailing to or posting the civil violation notice at the property owner's mailing address as listed in the tax records of ~~the Miami-Dade~~ County. Such posting of the civil violation shall be deemed proper service, and the time for compliance, stated in the notice, shall commence with the date such notice is posted.

(f) The civil violation notice shall include but not be limited to the following:

- (1) Date of issuance.
- (2) Name of Code Compliance Officer and division or department issuing the notice.
- (3) Name and address of the violator.
- (4) Section number of the Code Section that has been violated.
- (5) Brief description of the nature of the violation, including location, date, and time of violation.
- (6) Amount of the civil penalty for which the violator may be liable.
- (7) Instructions and due date for paying the civil fine or filing for an administrative hearing before a ~~Hearing Officer~~ Special Magistrate to appeal the civil fine.
- (8) Time within which the violation must be corrected if applicable.
- (9) Notice that each day of continued violation after the time period for correction has run shall be deemed a continuing violation subject to additional penalty in the same amount, without the need for additional notices of violation.
- (10) Notice that the filing of a request for an administrative hearing will toll the accrual of continuing violation penalties.
- (11) Notice that failure to request an administrative hearing within twenty (20) days, or within the specified time period listed for a violation of a specific Section of the Code, after service of the civil violation notice shall constitute a waiver of the violator's right to an administrative hearing before the ~~Hearing Officer~~ Special Magistrate, and that such waiver shall constitute an admission of violation.
- (12) Notice that the violator may be liable for the reasonable costs of the administrative hearing should he be found guilty of the violation.
- (13) Notice that the violator may be liable for the ~~County's~~ Town's costs and expenses incurred as a result of investigation, enforcement, testing or monitoring should the violator be found guilty of the violation.

(g) A Code Compliance Officer is authorized to record in the public record the civil violation notice or a notice of violation which is based upon the civil violation notice. The recording of the civil violation or a notice of violation under this section shall not act as or be a lien on the property and shall not act as a notice of a lien on the property but shall merely act as public notice of the existence of the violation.

Sec. 8CC-4. Civil penalties and related terms construed.

(a) Penalties for violations of the ordinances to be enforced by this chapter shall be in the amount prescribed in the schedule of civil penalties in Section ~~8CC-10~~.

(b) An "uncorrectable violation" is a violation which cannot be remedied after the violation has been committed because the violation constitutes a single prohibited act rather than an ongoing condition or circumstance. Each reoccurrence of an uncorrectable violation shall constitute a separate violation and shall subject the violator to an additional penalty in the same amount as that prescribed for the original violation. If, however, a violator has been once found guilty of an uncorrectable violation, and causes the same uncorrectable violation to occur a second time, each reoccurrence of the uncorrectable violation by such violator shall constitute a "repeat violation" as provided in Section ~~8CC-4~~(d).

(c) "Continuing violations" are those violations which remain uncorrected beyond the reasonable time period for correction contained in either the civil violation notice or the final order of the ~~Hearing Officer~~ Special Magistrate, whichever is applicable. For each day of continued violation after the time for correction has run, an additional penalty in the same amount as that prescribed for the original violation shall be added. ~~The maximum total penalty for any one (1) continuing violation shall be fixed at twenty (20) times the original penalty amount.~~

(d) A "repeat violation" is a recurring violation of an ordinance by a violator who has previously been found guilty or who has admitted guilt of the same violation within the last five (5) years. In the case of correctable violations, a repeat violation can occur only after correction of the previous violation has been made. For the first repeat violation, the amount of the civil penalty shall be double the amount of penalty prescribed for the original violation by Section ~~8CC-10~~. The amount of civil penalty due for each subsequent repeat violation shall be double the amount of penalty due for the first day of the immediately preceding violation., ~~provided that the maximum penalty payable for the first day of any one (1) repeat violation shall be one thousand dollars (\$1000.00)~~

(e) A repeat violation which remains uncorrected beyond the time prescribed for correction in the civil violation notice shall be treated as a continuing violation, and the additional penalty for each day of continued violation shall be equal to the doubled amount due for the first day of the repeat violation.

(f) Continuing violation penalties shall accrue from the date of correction given in the civil violation notice until the correction is made and payment of the fine is received if a request for administrative hearing is not timely filed. If the named violator requests an administrative hearing on a correctable violation and loses his appeal, the ~~Hearing Officer~~ Special Magistrate shall determine a reasonable time period within which correction of the violation must be made, based on the considerations set forth in Section ~~8CC-3~~(d). If correction is not made within the period set by the ~~Hearing Officer~~ Special Magistrate, continuing violation penalties shall begin after the time for correction has run. No continuing violation penalties shall accrue during the time period from the date of the civil violation notice until the date of the administrative hearing, if the named violator timely requests an administrative hearing to appeal the decision of the Code Compliance Officer. Continuing violation penalties cannot be imposed by the ~~Hearing Officer~~ Special Magistrate for uncorrectable violations.

(g) Continuing violation penalties shall be assessed by the ~~hearing officer~~ Special Magistrate upon the filing of an Affidavit of Non-Compliance by the Code Compliance

Officer. The violator may request an administrative hearing, which hearing shall be strictly limited to the amount of the continuing violation based upon the length of time the violation continued to exist. Upon the filing of the Affidavit of Non-Compliance, the ~~Clerk~~ Code Compliance Officer shall send a copy of the Affidavit of Non-Compliance Notice of Assessment of Continuing Penalties to the violator by first class mail, at the last known address of the violator. Said ~~notice~~ affidavit shall include but not be limited to the following:

- (1) The date of issuance.
- (2) Department or division issuing the original ~~notice~~ affidavit.
- (3) Section number of Code that has been violated.
- (4) Amount of continuing penalty to be assessed by the ~~hearing officer~~ Special Magistrate.
- (5) Notice of right to request an administrative hearing and instructions on how to file for the administrative hearing.
- (6) Notice that failure to request an administrative hearing within twenty (20) days after the receipt of the Affidavit of Non-Compliance ~~Notice of Assessment~~ shall constitute a waiver of the violator's right to the administrative hearing.
- (7) Notice that the administrative hearing is strictly limited to the amount of the continuing penalty based solely upon the length of time the violation continued to exist but in no case in excess of the maximum set forth in the Code.
- (8) Notice that the violator shall be liable for the reasonable costs of the administrative hearing if the violator is unsuccessful at the hearing.
- (h) Civil penalties assessed pursuant to this chapter are due and payable to ~~Miami Dade County~~ the Town on the last day of the period allowed for the filing of an appeal from the ~~Hearing Officer's~~ Special Magistrate's decision, or, if proper appeal is made, when the appeal has been finally decided adversely to the named violator.

Sec. ~~8CC-5~~. Rights of violators; payment of fine; right to appeal; failure to pay and correct, or to appeal.

- (a) A violator who has been served with a civil violation notice or Affidavit of Non-Compliance ~~Notice of Assessment~~ shall elect either to:
 - (1) Pay the civil penalty in the manner indicated on the notice, and correct the violation within the time specified on the notice (if applicable); or
 - (2) Request an administrative hearing before a ~~Hearing Officer~~ Special Magistrate to appeal the decision of the Code Compliance Officer which resulted in the issuance of the civil violation notice or Affidavit of Non-Compliance ~~Notice of Assessment~~.
- (b) Appeal by administrative hearing of the notice of violation shall be accomplished by filing a request in writing to the address indicated on the notice, within the time limit stipulated in the specified Code Section which is enforced pursuant to the provisions of this chapter, or no later than twenty (20) calendar days after the service of the notice, whichever is earlier.
- (c) If the named violator after notice fails to pay the civil penalty and correct the violation within the time specified (if applicable), or fails to timely request an administrative hearing before a ~~Hearing Officer~~ Special Magistrate, the ~~Hearing Officer~~ Special Magistrate shall be informed of such failure by report from the Code Compliance Officer. If the named violator pays the civil penalty for a correctable violation but does

not correct that violation within the time specified, each day that the violation continues beyond such specified time shall constitute a continuing violation. Failure of the named violator to appeal the decision of the Code Compliance Officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the ~~Hearing Officer~~ Special Master. A waiver of the right to administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly.

Sec. 8CC-6. Scheduling and conduct of hearing.

(a) Upon receipt of a named violator's timely request for an administrative hearing, the ~~Hearing Officer~~ Special Magistrate shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as possible or as mandated in the specified Code Section which is enforced pursuant to this chapter.

(b) The ~~Hearing Officer~~ Special Magistrate shall send a notice of hearing by first class mail to the named violator at his last known address. The notice of hearing shall include but not be limited to the following:

- (1) Name of the Code Compliance Officer who issued the notice.
- (2) Factual description of alleged violation.
- (3) Date of alleged violation.
- (4) Section of the Code allegedly violated.
- (5) Place, date and time of the hearing.
- (6) Right of violator to be represented by a lawyer.
- (7) Right of violator to present witnesses and evidence.
- (8) Notice that failure of violator to attend hearing may result in civil penalty being assessed against him.
- (9) Notice that requests for continuances will not be considered if not received by the ~~Hearing Officer~~ Special Magistrate at least ten (10) calendar days prior to the date set for hearing.

(c) The ~~Hearing Officers~~ Special Magistrate shall call hearings on a monthly basis, ~~or upon the request of the Clerk of the Board of County Commissioners~~. No hearing shall be set sooner than twenty (20) calendar days from the date of service of the notice of violation.

(d) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by the ~~Hearing Officer~~ Special Magistrate at least ten (10) calendar days prior to the date set for the hearing.

(e) All hearings of the ~~Hearing Officer~~ Special Magistrate shall be open to the public. All testimony shall be under oath. Assuming proper notice, a hearing may proceed in the absence of the named violator.

(f) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.

(g) The ~~Clerk of the Board of County Commissioners~~ Town shall provide clerical and administrative personnel as may be reasonably required by each ~~Hearing Officer~~ the Special Magistrate for the proper performance of his duties.

(h) Each case before a ~~Hearing Officer~~ Special Magistrate shall be presented by the ~~County~~ Town Manager or his designee.

(i) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses. Any relevant evidence shall be admitted if the ~~Hearing Officer~~

Special Magistrate finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.

(j) Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him.

(k) The ~~Hearing Officer~~ Special Magistrate shall make findings of fact based on evidence of record. The ~~Hearing Officer~~ Special Magistrate shall make the findings of fact immediately upon conclusion of the hearing. ~~Once commenced, no hearing shall be deferred, however,~~ The violator or the Town shall have the option to request a reschedule of the hearing. A request to reschedule shall only be considered prior to the commencement of testimony and presentation of evidence. In order to make a finding upholding the Code Compliance Officer's decision, the ~~Hearing Officer~~ Special Magistrate must find that a preponderance of the evidence indicates that the named violator was responsible for the violation of the relevant Section of the Code as charged for purposes of a civil violation notice, or that the violation continued to exist for the time period set out in the ~~Affidavit of Non-Compliance Notice of Assessment~~, for purposes of an Affidavit of Non-Compliance Notice of Assessment.

(l) If the named violator is found guilty of the violation, or if the violation is found to be a continuing violation pursuant to an ~~Affidavit of Non-Compliance Notice of Assessment~~ he shall pay the reasonable costs of the administrative hearing and the costs and expenses of the ~~County Town~~ for investigation, enforcement, testing, or monitoring. The costs and expenses of the ~~County Town~~ for investigation, enforcement, testing, or monitoring shall be calculated and submitted to the ~~Hearing Officer~~, Special Magistrate, to be attached to the final order for amount owed, in standard format as prescribed by departmental administrative orders of the ~~County Town~~ Manager. All costs of enforcement shall be paid within thirty (30) days of the date of the administrative hearing unless an alternate timeframe is established by the department.

(m) The fact-finding determination of the ~~Hearing Officer~~ Special Magistrate for purposes of a civil violation notice shall be limited to whether the violation alleged did occur and, if so, whether the person named in the civil violation notice can be held responsible for that violation. The fact-finding determination of the ~~hearing officer~~ Special Magistrate for purposes of an ~~Affidavit of Non-Compliance Notice of Assessment~~ shall be strictly limited to length of time that the violation existed. Based upon this fact-finding determination, the ~~Hearing Officer~~ Special Magistrate shall either affirm or reverse the decision of the Code Compliance Officer. If the ~~Hearing Officer~~ Special Magistrate affirms the decision of the Code Compliance Officer with respect to a civil violation notice, the ~~Hearing Officer~~ Special Magistrate, pursuant to Section 8CC-4(f), shall determine a reasonable time period within which correction of the violation must be made, provided however, that such time period shall be no more than thirty (30) days. If the ~~Hearing Officer~~ Special Magistrate reverses the decision of the Code Compliance Officer and finds the named violator not responsible for the Code violation alleged in the civil violation notice, the named violator shall not be liable for the payment of any civil penalty, absent reversal of the ~~Hearing Officer's~~ Special Magistrate's findings pursuant to Section 8CC-8(a). If the decision of the ~~Hearing Officer~~ Special Magistrate is to affirm, then the following elements shall be included:

- (1) Amount of civil penalty.
- (2) Administrative costs of hearing.
- (3) Date by which the violation must be corrected to prevent imposition of continuing violation penalties (if applicable).
- (n) ~~The Hearing Officer~~ Special Magistrate shall have the power to:
 - (1) Adopt procedures for the conduct of hearings.
 - (2) Subpoena alleged violators and witnesses for hearings; subpoenas may be served by the ~~Miami Dade County Sheriff's Department~~ Town's Police Department or by the staff of the ~~Hearing Officer~~ Special Magistrate.
 - (3) Subpoena evidence.
 - (4) Take testimony under oath.
 - (5) Assess and order the payment of civil penalties as provided herein.
- (o) ~~(1) A Hearing Officer shall postpone and shall not conduct a hearing if the named violator, prior to the scheduled hearing date, files with a duly authorized County board of appropriate jurisdiction, if one exists, an administrative appeal concerning the interpretation or application of any technical provisions of the Code Section allegedly violated. It shall be the responsibility of the violator to provide evidence at the time of the hearing to show that such administrative appeal has been filed with the County board of appropriate jurisdiction. However, once an issue had been determined by a Hearing Officer in a specific case, that issue may not be further reviewed by a County board in that specific case. A named violator waives his right to administrative appeal to other County boards if the violator does not apply for such appeal prior to the violator's code enforcement hearing before the Hearing Officer.~~
 - (2) ~~Upon exhaustion of a timely filed administrative appeal and finalization of the administrative order by such board, the Hearing Officer may exercise all powers given to him by this chapter. The Hearing Officer shall not, however, exercise any jurisdiction over such alleged Code violations until the time allowed for court appeal of the ruling of such board has lapsed or until such further appeal has been exhausted.~~
 - (3) ~~The Hearing Officer~~ Special Magistrate shall be bound by the interpretations and decisions of duly authorized ~~County~~ Town boards concerning the provisions of the codes within their respective jurisdictions. In the event such a board decides that an alleged violation of the Code is not in accordance with such board's interpretation of the Code provision on which the violation is based, the ~~Hearing Officers~~ Special Magistrate shall not be empowered to proceed with the enforcement of the violation.

Sec. ~~8CC-7~~. Recovery of unpaid civil penalties; unpaid penalty to constitute a lien; interest to be paid on liens; foreclosure; prohibition of the issuance of permits, licenses, certificates of use and occupancy, or zoning approvals to violators with unpaid civil penalties or liens.

- (a) ~~Miami Dade County~~ The Town may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.
- (b) A certified copy of an order imposing a civil penalty may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or upon any other real or personal property owned by the violator; and it may be enforced in the same manner as a court judgment by the sheriffs of this State, including levy against the personal property, but shall not be deemed to be a court judgment except for

enforcement purposes. After ~~one (1) year~~ three (3) months from the filing of any such lien which remains unpaid, ~~Miami Dade County~~ the Town may foreclose or otherwise execute on the lien.

(c) Liens created pursuant to Section 8CC-7 may be discharged and satisfied by paying to ~~Miami Dade County~~ the Town the amount specified in the notice of lien, together with interest thereon from the date of the filing of the lien computed at the rate of twelve (12) percent per annum, together with the administrative costs, filing and recording fees and fees paid to file a satisfaction of the lien in the public records. When any such lien has been discharged, ~~Miami Dade County~~ the Town shall promptly cause evidence of the satisfaction and discharge of such lien to be recorded in the public records. ~~Any person, firm, corporation or legal entity, other than the present owner of the property involved, who pays any such unsatisfied lien shall be entitled to receive an assignment of the lien held by the County and shall be subrogated to the rights of the County in respect to the enforcement of such lien, as permitted by law.~~

(d) Notwithstanding any provision of this Code, no ~~County~~ Town or ~~municipal~~ officer, agent, employee or Board shall approve, grant or issue any operating permit, license, building permit, certificate of use and occupancy, ~~municipal occupational licenses,~~ platting action, or zoning action to any named violator with (i) unpaid civil penalties; (ii) unpaid administrative costs of hearing; (iii) unpaid ~~County~~ Town investigative, enforcement, testing, or monitoring costs; or (iv) unpaid liens, any or all of which are owed to ~~Miami Dade County~~ Town pursuant to the provisions of the Code of ~~the Town of Miami Dade County,~~ Cutler Bay, Florida.

Sec. 8CC-8. Appeals.

(a) The named violator or the ~~County~~ Town may appeal a final order of the ~~Hearing Officer~~ Special Magistrate for all violations ~~except those contained in Chapter 5 of the County Code~~ by filing a notice of appeal in the Circuit Court in and for Miami-Dade County, Florida, in accordance with the procedures and within the time provided by the Florida Rules of Appellate Procedure for the review of administrative action.

~~(b) For violations of Chapter 5 of the County Code, the violator or the County may seek to overturn the order of a Hearing Officer by making application to Miami Dade County Court for a trial de novo on the merits. Such application shall be filed within thirty (30) calendar days of the issuance of the order sought to be overturned. A violator shall have the right to a de novo proceeding provided that all administrative remedies have been exhausted. Failure to make such application within the prescribed thirty day period shall render the findings of the Hearing Officer conclusive, binding and final. All findings of the Hearing Officer shall be admissible evidence at any de novo proceeding held pursuant to this section.~~

~~(c) (b)~~ Unless the findings of the ~~Hearing Officer~~ Special Magistrate are overturned in a proceeding held pursuant to Section 8CC-8(a), all findings of the ~~Hearing Officer~~ Special Magistrate shall be admissible in any proceeding to collect unpaid penalties.

Sec. 8CC-9. Provisions contained herein are supplemental; general penalty for failure to correct violations.

(1) Nothing contained in this chapter shall prohibit ~~Miami Dade County~~ the Town from enforcing its Code by any other means. The enforcement procedures outlined herein are

cumulative to all others and shall not be deemed to be prerequisites to filing suit for the enforcement of any Section of this Code.

(2) It shall be unlawful for a named violator found guilty of a code violation pursuant to Section ~~8CC-5~~(c) or Section ~~8CC-6~~ to fail to correct the violation as set forth in the uniform civil violation notice and said failure shall be a separate offense punishable as set forth in ~~Section 1-5~~ of the Code of ~~Miami-Dade County~~ The Town of Cutler Bay, Florida.

Sec. ~~8CC-10~~. Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended. The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section may carry different civil penalties. For each Code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this chapter ~~8CC~~, regardless of whether all activities proscribed or required within that particular section are described in the "Description of Violation" column. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined.

TABLE INSET:

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
	<u>Maintaining any sign in violation of Town Ordinance 06-13 as subsequently amended.</u>	<u>\$1000</u>
***	***	***
33-95(e)	Maintaining a fence or wall sign in a residential district	\$200 <u>\$500</u>
**	***	***
33-107	Exceeding maximum Class C Sign Size	\$1,000
33-107	Exceeding the maximum height for a Class C sign	\$1,000
33-107	Failure to meet setback or spacing requirements for Class C sign	\$1,000
	<u>All sections of this Code not specifically listed in this schedule</u>	<u>\$500</u>
***	***	***

Sec. 8CC-10.1. Code Enforcement Technology Trust Fund.

~~Ten (10) dollars shall be added to each civil penalty to be placed in a trust fund by the Clerk of Courts to be used for the enhancement of the technological capability of all code enforcement departments. The Clerk of Courts and the County Manager shall jointly appoint a committee of five (5) people to determine the priority for use of the fund.~~

Sec. 8CC-11. Enforcement procedure for municipalities.

~~(a) Municipalities within Miami Dade County shall be entitled to enforce the applicable provisions of this chapter within their municipal boundaries subject to compliance with the provisions of this section.~~

~~(b) As a condition to enforcing the applicable provisions of this chapter, a municipality shall enter into an interlocal agreement with Miami Dade County. The interlocal agreement shall contain, at a minimum, the following:~~

~~(1) The section or sections of this Code which the municipality wishes to enforce through this chapter;~~

~~(2) The job title of the agents or employees of the municipality authorized to perform the enforcement functions and the number of agents or employees so authorized;~~

~~(3) The amount reimbursable to Miami Dade County for administrative costs relating to the conduct of hearings on appeals from violations issued by the municipality, including but not limited to attorneys' fees and costs, costs of transcription and clerical costs;~~

~~(4) The amount of revenue reimbursable to the municipality from any fine collected pursuant to this chapter;~~

~~(5) An agreement to indemnify and save the County harmless from and against any and all liability, actions and causes of action relating to the municipality's enforcement of the provisions of this chapter; and~~

~~(6) A term not to exceed three (3) years.~~

~~(c) With respect to laws and ordinances of County wide application, the provisions of this section shall be supplemental to and not in derogation of any authority of Miami Dade County to enforce the provisions of those laws and ordinances.~~

~~(d) Nothing contained in this section is intended to extend the substantive effect or application of any County law or ordinance to any municipal area where such County law or ordinance is not effective or applicable.~~

~~(e) Nothing contained in this section shall prohibit any municipality from enforcing provisions of its municipal code or this Code by any lawful and authorized means.~~

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

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

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

PASSED AND ADOPTED on first reading this 21st day of February, 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 Edwards P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____