

TOWN OF BAY HARBOR ISLANDS

March 12, 2018

AGENDA

STATEMENT OF DECORUM

All comments must be addressed to the Council as a body and not to individuals. Any person making a racial or slanderous remark or who becomes boisterous while addressing the Town Council, staff, etc. shall be barred from the audience by the presiding officer. No profanity, shouting, heckling, verbal outbursts or disruptive behavior in support of or opposition to a speaker or his/her remarks is permitted. Please mute or turn off your cell phone or other electronic devices at the start of the meeting. Failure to do so may result on being barred from the meeting. Persons exiting the Chambers shall do so quietly.

CALL TO ORDER: 7:00 p.m.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

SPECIAL PRESENTATION:

1. The St. Regis Bal Harbour Resort

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

TOWN MANAGER'S REPORT:

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

2. **Consideration and Approval** of a request by Miami Dade County League of Cities to designate a Director and an alternate Director to serve on the Board of Directors for a period of one year.

PUBLIC COMMENT:

*There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. **A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment.** Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.*

COMMITTEE REPORTS:

3. Update from the Planning and Zoning Board Chair Steven Hurwitz.

CONSENT AGENDA: *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)*

4. **Consideration and Approval** of a resolution continuing and extending a temporary moratorium on medical marijuana dispensing facilities with the Town of Bay Harbor Islands for an additional period of one hundred and eighty (180) days. Enclosed is a copy of the proposed resolution.

5. **Consideration** and **approval** of a charity donation requested by Council Member Reid and Council Member Fuller to the Pelican Harbor Seabird Station in the amount of \$1,000 for their annual Fundraising Party to be hosted April 17, 2018. Enclosed is a copy of the funding request form and supporting documents.
6. **Consideration** and **Approval** requested by Council Member Fuller to make a charity donation in the amount of \$1,000 to the Ruth K. Broad Parent Teacher Association (PTA) to help fund an art sculpture to honor the 17 students of the Florida school shooting at Marjorie Stoneman Douglas High School. Enclosed is a copy of the proposed art sculpture.
7. **Approval** regarding the attendance to the 64th Miami-Dade County League of Cities Annual Installation Gala to be held on Saturday, May 12, 2018. The Silver Sponsorship Package in the amount of \$8,050 will include 3 tables and a full page color advertisement. Enclosed are the sponsorship details for the event.

STAFF RECOMMENDATION: Approval

ORDINANCES ON FIRST READING:

8. **Consideration** and **Approval** of an ordinance on **first** reading amending Section 23-12(6) of the Town Code related to floating vessels platforms and floating boat lifts. Enclosed is a copy of the proposed ordinance and supporting documents.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 23 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED ZONING AND PLANNING; AMENDING SECTION 23-12 ENTITLED GENERAL PROVISIONS TO MODIFY SECTION 23-12(6) RELATED TO FLOATING VESSEL PLATFORMS AND FLOATING BOAT LIFTS; CREATING REGULATIONS FOR SUCH DOCKING FACILITIES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council Discretion

POLL VOTE

9. **Consideration and Approval** of an ordinance on **first** reading amending the Town Code to provide enhanced outdoor lighting requirements. Enclosed is a copy of the proposed ordinance and staff report,

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 10 OF THE TOWN'S CODE OF ORDINANCES ENTITLED HOUSING BY MODIFYING SECTIONS 10-1 AND 10-2; AMENDING CHAPTER 23 ENTITLED ZONING AND PLANNING BY MODIFYING SECTION 23-19 TO PROVIDE ENHANCED OUTDOOR LIGHTING REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council Discretion

POLL VOTE

- 9.1 **Consideration and Approval** of an ordinance on **first** reading requested by Mayor Leonard relating to bicycle parking on sidewalks, streets, right of way and public property in the Town. Enclosed is a copy of the proposed ordinance and Memorandum from the office of the Town Attorney.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 18 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED STREETS AND SIDEWALKS, BY ADDING SECTION 18-11 ENTITLED BICYCLE PARKING; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council Discretion

POLL VOTE

- 9.2 **Consideration and Approval** of an ordinance on **first** reading requested Mayor Leonard to prohibit unattended personal property upon public property. Enclosed is a copy of the ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 18 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED STREETS AND SIDEWALKS, BY ADDING SECTION 18-10 ENTITLED PROHIBITION OF UNATTENDED PERSONAL PROPERTY UPON PUBLIC PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council Discretion

POLL VOTE

DEFERRED ITEMS:

10. **Discussion and possible action** requested by Council Member Fuller to explore the option of acquiring the property located on the southwest corner of Bay Harbor Terrace and 97 Street (currently being utilized as a parking lot for 1111 Kane Concourse) through eminent domain. Enclosed is a copy of Memorandum provided by Town Attorneys Craig Sherman and Frank Simone.

STAFF RECOMMENDATION: Council Discretion

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

11. **Consideration and Approval** of Contract Award BHI-192 to Arrow Asphalt Inc. in the amount of \$83,725.50 for Resurfacing and Re-striping the Municipal Parking Lot on 95th Street. Enclosed is a copy of the bid results and supporting documents.

STAFF RECOMMENDATION: Approval

POLL VOTE

12. **Consideration and Approval** of a proposal from Chen Moore and Associates in the amount of \$96,250.00 to perform an inspection and assessment report of the seawalls around the East and West Island.

STAFF RECOMMENDATION: Approval

POLL VOTE

DISCUSSION ITEMS:

13. **Discussion** requested by Council Member Yaffe regarding mechanical parking lifts regulations.
14. **Discussion and possible action** requested by Council Member Fuller regarding having a closed meeting to discuss the Town's security systems and plans in connection with an active shooter.

ADJOURNMENT: Set for 11:00 p.m. *(Any items not addressed by 11:00 PM, will be continued to the following day at 7:00 PM)*

Pursuant to Florida Statutes 286.0105, the Town hereby advises the public that should any person decide to appeal any decision of the Town Council with respect to any matter to be considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AGENDA ITEM REPORT

March 12, 2018

ITEM NUMBER: 2.

ITEM: Consideration and Approval of a request by Miami Dade County League of Cities to designate a Director and an alternate Director to serve on the Board of Directors for a period of one year.

DESCRIPTION:

At March 13, 2017, Regular Council Meeting, the Town Council designated Council Member Robert Yaffe to serve as Director and Council Member Kelly Reid as an alternate Director.

Enclosed is a letter from Miami Dade County League of Cities.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1.	MDCLC - BOD Designation	MDCLC - BOD Designation.pdf
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Richard Kuper, Esq.
Executive Director

OFFICERS

President
Hon. Oliver G. Gilbert, III
Mayor, Miami Gardens
First Vice President
Hon. Jordan W. Leonard
Mayor, Bay Harbor Islands
Second Vice President
Hon. George Vallejo
Mayor, North Miami Beach
Secretary
Hon. Claudia Cubillos
Mayor, El Portal
Treasurer
Hon. Keon Hardemon
Chairman, Miami

BOARD OF DIRECTORS

Hon. Howard Weinberg
Commissioner, Aventura
Hon. Seth E. Salver
Assistant Mayor, Bal Harbour Village
Hon. Robert Yaffe
Councilman, Bay Harbor Islands
Hon. Tracy Truppmann
Mayor, Biscayne Park
Hon. Vince Lago
Commissioner, Coral Gables
Hon. Peggy R. Bell
Mayor, Cutler Bay
Hon. Juan Carlos Bermudez
Mayor, Doral
Hon. Harold Mathis
Councilman, El Portal
Hon. R.S. Shiver
Vice Mayor, Florida City
Hon. Jaime Mendal
Councilman, Golden Beach
Hon. Yisot De La Cruz
Mayor, Hialeah Gardens
Hon. Jeff Porter
Mayor, Homestead
Hon. Bernard Klepach
Mayor, Indian Creek
Hon. Mayra Peña Lindsay
Mayor, Key Biscayne
Hon. Roberto Martell
Mayor, Medley
Hon. Wifredo "Willy" Gort
Commissioner, Miami
Hon. Esteban Bovo, Jr.
Chairman, Miami-Dade County
Hon. Susie Castillo
Board Member
Miami-Dade County School Board
Hon. Micky Steinberg
Commissioner, Miami Beach
Hon. Felicia Robinson
Councilwoman, Miami Gardens
Hon. Nelson Rodriguez
Councilman, Miami Lakes
Hon. Steven Zelkowitz
Councilman, Miami Shores
Hon. Mara Zapata
Councilwoman, Miami Springs
Hon. Connie Leon-Kreps
Mayor, North Bay Village
Hon. Alix Desulme
Councilman, North Miami
Hon. Anthony DeFillipo
Commissioner, North Miami Beach
Hon. Myra L. Taylor
Mayor, Opa-Locka
Hon. Eugene Flinn
Mayor, Palmetto Bay
Hon. James E. McDonald
Councilmember, Pinecrest
Hon. Gabriel Edmond
Commissioner, South Miami
Hon. Isaac Aelion
Commissioner, Sunny Isles Beach
Hon. Michael Karukin
Commissioner, Surfside
Hon. Orlando Lopez
Mayor, Sweetwater
Hon. Richard Block
Councilman, Virginia Gardens
Hon. Eduardo Muñiña
Mayor, West Miami

February 15, 2018

The Honorable Jordan W. Leonard
Mayor, Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Dear Mayor Leonard:

Allow me this opportunity to first thank you for your continued participation in and support of the Miami-Dade County League of Cities (MDCLC). President Oliver Gilbert, III, and myself are well aware that MDCLC's success is a direct result of the hard work and dedication of its members. For this reason, we need your cooperation in making appointments to the Board.

Each member municipality designates one of its elected officials to serve as a **Director** and one as an **alternate Director** of the League for a period of one year. The term commences at the date of the Annual Meeting in the month of May, and runs until the following May.

Allow this letter to serve as a kind reminder that you are required to designate a Director and an alternate to represent your municipality on the MDCLC's Board preferably before the **April 5th, 2018 Board Meeting**. Please send us a note to the League office naming your appointments.

Thank you for your continued cooperation and support.

Sincerely,

Richard Kuper, Esq.
Executive Director

RK/mr

Immediate Past President

Hon. Francis X. Suarez
Mayor, Miami

Past Presidents

Hon. Jon Burgess
Councilman, Homestead
Hon. Juan Carlos Bermudez
Mayor, City of Doral
Hon. Isaac Salver
Councilman, Town of Bay Harbor Islands
Hon. R.S. Shiver
Commissioner, City of Florida City
Hon. Wifredo "Willy" Gort
Commissioner, City of Miami

AGENDA ITEM REPORT

March 12, 2018

ITEM NUMBER: 4.

ITEM: Consideration and Approval of a resolution continuing and extending a temporary moratorium on medical marijuana dispensing facilities with the Town of Bay Harbor Islands for an additional period of one hundred and eighty (180) days. Enclosed is a copy of the proposed resolution.

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
Isaac Salver, Council Member

ATTACHMENTS

1.	Moratorium - Medical Marijuana Dispensing Facilities	Moratorium - Medical Marijuana Dispensing Facilities.pdf
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RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA CONTINUING AND EXTENDING THE TEMPORARY MORATORIUM ON MEDICAL MARIJUANA TREATMENT CENTERS AND MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES WITHIN THE TOWN OF BAY HARBOR ISLANDS FOR AN ADDITIONAL PERIOD OF ONE HUNDRED AND EIGHTY (180) DAYS UNLESS RESCINDED, OR FURTHER CONTINUED AND EXTENDED, OR BY A SUBSEQUENT AMENDMENT TO THE TOWN USE REGULATIONS REGARDING THE REGULATION OF MARIJUANA TREATMENT CENTERS AND MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES.

WHEREAS, as provided in Section 2(b), Article VIII of the Constitution of the State of Florida, and Section 166.021(1), Florida Statutes, the Town of Bay Harbor Islands, Florida (the “Town”), a municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, on November 8, 2016, Florida voters approved an amendment to the Florida Constitution, titled “Use of Marijuana for Debilitating Medical Conditions” (“Amendment 2”); and

WHEREAS, Amendment 2 legalized the medical use of Marijuana throughout the State of Florida for individuals with certain medical conditions as determined by a licensed Florida physician and authorize the registration and regulation of centers that acquire, produce and distribute Marijuana for medical purposes; and

WHEREAS, Section 381.986, Florida Statutes, authorizes qualified physicians to prescribe Marijuana for qualified patients diagnosed with certain conditions; and

WHEREAS, due to the historic and longstanding legal prohibition of Marijuana prior to enactment of Section 381.986, Florida Statutes, and approval of Amendment 2, the land used regulations of the Town do not address the use of real property for purposes of Medical

Marijuana Treatment Centers and Medical Marijuana Treatment Center Dispensing Facilities and such uses of real property have historically not existed within the Town;

WHEREAS, in order to promote effective and responsible land use planning within the Town, the Town Council, on September 18, 2017, approved a temporary moratorium to allow sufficient time to research, study and analyze the potential impact of Medical Marijuana Treatment Centers and Medical Marijuana Treatment Center Dispensing Facilities uses and the surrounding areas, traffic, congestion, surrounding properties values, demand for Town services and other aspects of the public safety and welfare; and

WHEREAS, the Town Council finds that a continuance and extension of the temporary moratorium on the operation of Medical Marijuana Treatment Centers and Medical Marijuana Treatment Center Dispensing Facilities is needed to allow the Town a sufficient period of time to determine what uses are best suited to particular zoning categories and how best to formulate land development regulations that appropriately govern the use of real property for purposes of cultivation, processing, distributing or selling marijuana or related activities or whether to ban the same as authorized by Florida, Statute Sec. 381.996 (11)(b).

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Bay Harbor Islands that:

Section 1. Recitals. The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Section 2. Moratorium Continued and Extended. The temporary moratorium imposed on September 18, 2017, is hereby continued and extended on the submittal, processing, approval and issuance of any licenses, local business tax receipts, development orders or permits for any use that involve the cultivation, processing, dispensing or retail sale of marijuana including, but not limited to, Medical Marijuana Treatment Centers and Medical Marijuana Treatment Center Dispensing Facilities for an additional period of one hundred eighty (180) days from the date of adoption of this Resolution. Nothing in this temporary moratorium shall be construed to prohibit the medical use of Marijuana by a qualifying patient, pursuant to Section 381.986, Florida Statutes, or other Florida law.

Section 3. Definitions. For purposes of the temporary moratorium:

- A) “Marijuana” shall mean all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.
- B) “Low-THC-Cannabis” means a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed from a medical marijuana treatment center.
- C) “Medical Marijuana Treatment Center” means a licensee that may cultivate, process, transport and dispense Marijuana for medical use pursuant to Section 381.986, Florida Statutes.

Section 4. Conflicts. In the event that the provisions of this Resolution are in conflict with any other resolution or ordinance, then the provisions of this Resolution shall prevail.

Section 5. Report. The Town Manager shall bring the counsel a report within 120 days providing recommendations as to the uses and the zoning districts where Marijuana Treatment Centers and Medical Marijuana Treatment Center Dispensing Facilities may be permitted in order to research the impact these uses may have on the area and determine whether permitting these uses protects against negative impact that may be created by permitting these uses or whether such Medical Marijuana Treatment Centers and Medical Marijuana Treatment Center Dispensing Facilities shall be banned as authorized by Florida, Statute Sec. 381.996 (11)(b).

Section 6. Effective Date. This Resolution shall become effective immediately upon its adoption. The temporary moratorium enacted by prior resolution and extended by the instant Resolution shall terminate one hundred and eighty (180) days from the effective date of this Resolution, unless rescinded or extended, or by an amendment to the Town’s Land Development Regulations or use regulation addressing the use of real property for purposes of cultivating, processing, transporting, and dispensing medical Marijuana activities.

PASSED AND ADOPTED this _____ day of March, 2018.

By: _____
Jordan W. Leonard, Mayor

ATTEST:

Marlene Siegel
Town Clerk

APPROVED AS TO FORM:

Frank C. Simone, Esq.
Assistant Town Attorney

AGENDA ITEM REPORT

March 12, 2018

ITEM NUMBER: 5.

ITEM: Consideration and approval of a charity donation requested by Council Member Reid and Council Member Fuller to the Pelican Harbor Seabird Station in the amount of \$1,000 for their annual Fundraising Party to be hosted April 17, 2018. Enclosed is a copy of the funding request form and supporting documents.

DESCRIPTION:

The Pelican Harbor Seabird Station requests that the Town Council consider a \$1,000 sponsorship this year for their annual Pelican Party Fundraiser Event to be held April 18, 2018. In the last three (3) years the Station has rescued and treated a total of 43 pelicans and other native wildlife from Bay Harbor Islands.

Enclosed are the supporting documents of the fundraising event and request form.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
Kelly Reid, Council Member
Joshua Fuller, Council Member

ATTACHMENTS

1.	Pelican Party- Funding Request	Pelican Party- Funding Request.pdf
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TOWN OF BAY HARBOR ISLANDS

FUNDING REQUEST FORM

Name of Organization: Pelican Harbor Seabird Station	Amount Requested: \$1,000
Address: 1279 NE 79th Street Causeway Miami, FL 33138	Phone Number: (305) 762-7633
Mission Statement: Pelican Harbor Seabird Station is dedicated to the rescue, rehabilitation and release of sick, injured or orphaned brown pelicans, seabirds and other native wildlife; and the preservation and protection of these species through educational and scientific means.	
Tax Status: 501(c)3 Nonprofit	Employer ID Number:

Purpose of Request (Name of the project this request fill fund): Pelican Party Sponsorship	
Anticipated Project Start Date:	Completion Date: Event Date 04/17/2018
Total Cost of the Project (a detailed budget must be attached): \$580,000 Operating Budget	

Have other cities or private entities donated money to this project? ☒ Yes ☐ No

If yes, please list the cities/entities with the amount donated by each:

Surfside- \$1,000, North Miami Beach- \$500, South Miami- \$500, Miami Beach- \$15,000, others pending

Will this request have a direct impact on the Town of Bay Harbor Islands? ☒ Yes ☐ No

If yes, explain how?

Our organization's mission contributes directly to preserving the native wildlife and natural beauty of Bay Harbor Islands

Will this be a recurring request (Is a future donation request likely)? ☒ Yes ☐ No

If yes, please explain why?

This is an annual event that raises almost 20% of our annual operating budget.

Christopher Boykin, Executive Director
Name and Title of Individual Filing Request (printed)

Christopher Boykin
Signature

2/8/2018
Date

Please note: All organizations that are awarded funding will be required to provide a follow-up report no later than two weeks after project completion.

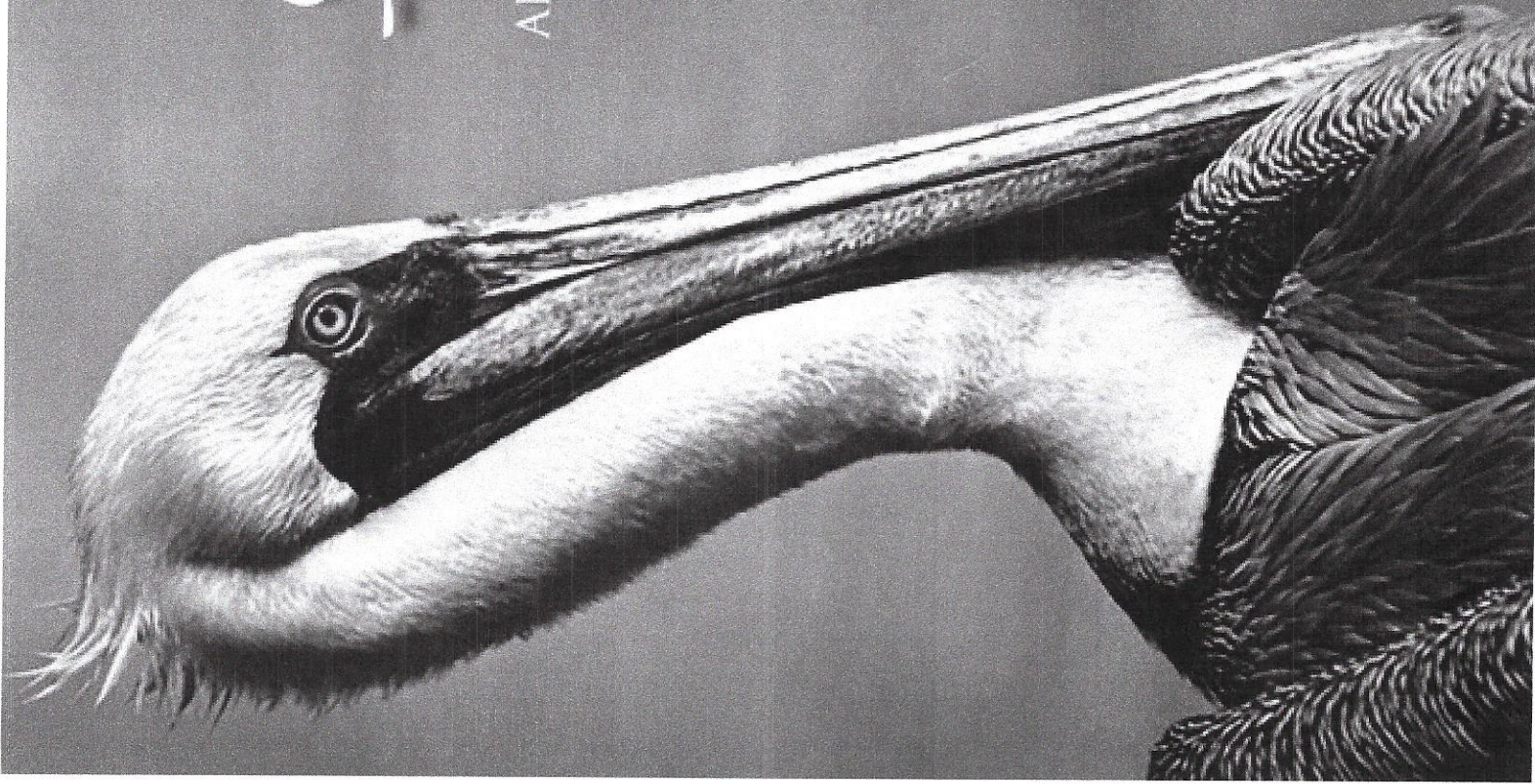
PELICAN HARBOR SEABIRD STATION PRESENTS ...

Pelican Party

APRIL 14, 2018 @ MIAMI SHORES COUNTRY CLUB

SPONSORSHIP
OPPORTUNITIES

It's for the birds!



ABOUT US



Pelican Party 2018

Our Mission

Pelican Harbor Seabird Station is dedicated to the rescue, rehabilitation and release of sick, injured or orphaned brown pelicans, seabirds and other native wildlife; and the preservation and protection of these species through educational and scientific means.

Our Story

In 1980, Harry and Darlene Kelton began caring for injured brown pelicans in a small shed in the Pelican Harbor marina. Today, PHSS is the only fully operational wildlife hospitals within Miami-Dade County. It has grown from a single volunteer to a staff of 6 that is supported by more than 30 weekly volunteers and interns.

PHSS is a non-profit 501(c)(3) charity that operates solely on donations. We are grateful for the support of the Miami-Dade Parks Department for the land lease and water use that make our facility possible. But our operating budget it dependent on the generosity of organizations, businesses, and individuals ... like you.

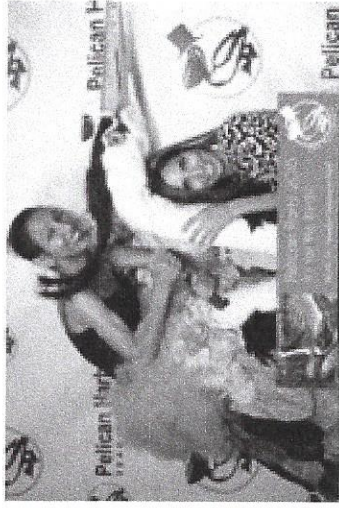
Our Patients

PHSS has treated more than 30,000 wildlife patients of 200+ species since our inception in 1980. As the population of Miami has grown, so has the need for our services, as more and more native wildlife patients are treated each year. In 2017, we treated 1,484 patients of 105 different native species.



Pelican Harbor
SEABIRD STATION

THE ANNUAL PELICAN PARTY FUNDRAISER



The Pelican Party is our largest, most successful annual fundraising event. Each year, approximately 300 supporters, including elected officials, philanthropists, and diverse members of the local community, come together for a celebration of PHSS's accomplishments. This year, festivities will include music, elegant food and an open bar, plus our fantastic silent auction and several ambassador animals.

Pelican Party 2018

Benefits to Sponsors

- Reach over 35,000 potential customers in target demographic area through event marketing and advertising.
- Achieve brand exposure at an appealing and well-attended community event.
- Enhance your reputation as outstanding corporate citizens through affiliation with a beloved charitable cause.

Reach & Attendee Demographics

- PHSS has 14,000 Facebook followers.
- Our mailing lists (both email and postal mail) reach over 14,000 local supporters.
- Pelican Party attendees are community-oriented, civic-minded, and well- connected individuals and families from Coconut Grove, Key Biscayne, Miami Beach, Miami Shores, North Bay Village, North Miami Beach, Aventura and beyond.

Fundraising Goal

Our fundraising goal for this year's Pelican Party and 38th Year Anniversary is \$125,000. This would amount to roughly 25% of our annual operating budget!



Pelican Harbor
SEABIRD STATION

SPONSORSHIP OPPORTUNITIES



Brown Pelican

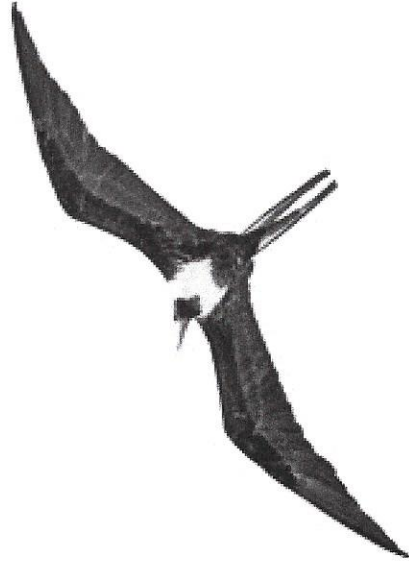
\$10,000

- 10 event tickets for you and your guests
- VIP table
- Corporate logo and company name on print invitation
- Corporate logo and company name on banners and slideshow at event
- Corporate logo and company name on PHSS website
- Special social media thanks before and after event
- Special pre-event Sponsor's Reception
- Commemorative artwork

Magnificent Frigatebird

\$5,000

- 8 event tickets for you and your guests
- VIP table
- Corporate logo and company name on print invitation
- Corporate logo and company name on banners and slideshow at event
- Corporate logo and company name on PHSS website
- Special thanks on social media before and after event
- Special pre-event Sponsor's Reception
- Commemorative artwork



Pelican Party 2018



Pelican Harbor
SEABIRD STATION

SPONSORSHIP OPPORTUNITIES



Yellow-crowned Night Heron

\$2,500

- 6 tickets for you and your guests
- VIP table seating
- Corporate logo and company name on print invitation
- Corporate logo and company name on banners and slideshow at event
- Corporate logo and company name on PHSS website
- Special thanks on social media before and after event
- Special pre-event Sponsor's Reception



White Ibis

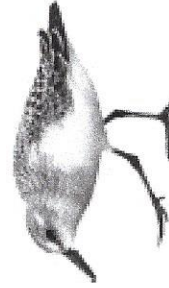
\$1,000

- 4 tickets for you and your guests
- Corporate logo and company name on banners and slideshow at event
- Corporate logo and company name on PHSS website
- Social media special thanks after
- Special pre-event Sponsor's Reception

Sanderling

\$500

- 2 tickets for you and your guests
- Logo on banner slideshow at event
- Logo on website
- Social media special thanks after
- Special pre-event Sponsor's Reception



Pelican Party 2018



Pelican Harbor
SEABIRD STATION

Pelican Harbor Seabird Station

BUDGET OVERVIEW: 2018 BUDGET - FY18 P&L

January - December 2018

	TOTAL
Income	
1600 Donations - General	183,963.00
1610 Special Events 1	102,108.00
1625 Donations from Patient Intakes	7,500.00
1630 Grants 1	228,022.00
1635 Fish Drive	25,812.00
1640 Donations received from educational programming	6,000.00
1645 Donations Cash Box	5,000.00
1650 Donations related to Promo Items 1	5,331.00
1660 PayPal Income	26,029.00
1670 Adopt a Bird	1,000.00
1675 Sponsor a Release	1,000.00
Total Income	\$591,765.00
GROSS PROFIT	\$591,765.00
Expenses	
1000 Advertising/Promotional	18,500.00
1200 Patient Food	20,419.00
1270 Occupancy 1	10,490.00
1280 Insurance 1	11,226.00
1320 Office Expenses	21,513.00
1360 Labor Costs	340,067.00
1380 Administrative Expenses	4,675.00
1390 Professional Services	18,224.00
1420 Special Event Expenses	38,120.00
1440 Staff Expense	9,950.00
1480 Auto & Boat Expense	7,500.00
1490 Veterinary Clinic Expenses	33,598.00
1520 Fund raising	1,500.00
1550 Educational Programming	35,308.00
Total Expenses	\$571,090.00
NET OPERATING INCOME	\$20,675.00
Other Income	
1700 Interest Income 1	5,000.00
Total Other Income	\$5,000.00
Other Expenses	
1720 Depreciation 1	11,500.00
Total Other Expenses	\$11,500.00
NET OTHER INCOME	\$ -6,500.00
NET INCOME	\$14,175.00

AGENDA ITEM REPORT

March 12, 2018

ITEM NUMBER: 6.

ITEM: Consideration and Approval requested by Council Member Fuller to make a charity donation in the amount of \$1,000 to the Ruth K. Broad Parent Teacher Association (PTA) to help fund an art sculpture to honor the 17 students of the Florida school shooting at Marjorie Stoneman Douglas High School. Enclosed is a copy of the proposed art sculpture.

DESCRIPTION:

Council Member Fuller request funding in the amount of \$1,000 to help cover the costs to build a 6 foot memorial sculpture to honor the seventeen (17) students that were victims to the Florida school shooting in Parkland.

The Ruth K. Broad Upper Art Academy students will be working on the art sculpture which will be gifted to the Marjorie Stoneman Douglas High School.

Enclosed is a copy of the proposed sculpture.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
Joshua Fuller, Council Member

ATTACHMENTS

1.	Art Sculpture- Memorial	Art Sculpture- Memorial.pdf
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Marjorie Stoneman Douglas High School Memorial Sculpture



Dear Bobcat Family,

Mrs. Vidal-Santos, and her Upper Academy art students are working on a 6-foot memorial sculpture that will be gifted to Marjorie Stoneman Douglas High School.

To cover costs, we have designed a **#Never Again** T-shirt that students may wear on Wednesdays. Adult sizes are also available.

We are asking our Bobcat family to unite and donate money. Our PTA will be collecting cash/checks donations.

AGENDA ITEM REPORT

March 12, 2018

ITEM NUMBER: 7.

ITEM:

Approval regarding the attendance to the 64th Miami-Dade County League of Cities Annual Installation Gala to be held on Saturday, May 12, 2018. The Silver Sponsorship Package in the amount of \$8,050 will include 3 tables and a full page color advertisement. Enclosed are the sponsorship details for the event.

DESCRIPTION:

This year Miami Dade County League of Cities will honor Mayor Jordan W. Leonard as the incoming president for the Miami Dade County League of Cities. Staff is requesting approval of the Silver Sponsorship Package in the amount of \$5,000 plus an additional \$3,050 to accommodate the additional seating for the Town Council and Staff to attend the Installation Gala and a full page ad.

Details of the Sponsorship Package are attach.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1.	MDCLC 1	MDCLC 1.pdf
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64th Annual Gala

Saturday, May 12, 2017

Title Sponsor

\$20,000

2 tables of twelve with Royal table seating

Full page recognition in the event program (color)

Recognition night of the event and on website

GOBO recognition displayed night of the event

Award recognition night of the event during VIP reception

Company representative to deliver program welcome during VIP reception

Champagne Bottle Sparklers Table Service

Platinum Sponsor

\$15,000

2 tables of ten with premium seating

Full page recognition in the event program (color)

Recognition night of the event and on website

GOBO recognition displayed night of the event

Award recognition night of the event during VIP reception

4 tickets to the MDCLC Best Practices Conference

Champagne Bottle Sparklers Table Service

Gold Sponsor

\$10, 000

1 table of twelve with premium seating

Full page recognition in the event program (color)

Recognition night of the event and on website

Award recognition night of the event during VIP reception

2 tickets to the MDCLC Best Practices Conference

Champagne Bottle Sparklers Table Service

Silver Sponsor

\$5,000

1 table of ten with quality seating

Half page recognition in the event program (color)

Recognition night of the event and on website

Award recognition night of the event during VIP reception

Champagne Bottle Sparklers Table Service

Bronze Sponsor

\$3, 000

1 table of ten with quality seating

Quarter page recognition in the event program (color)

Recognition night of the event and on website

Award recognition night of the event during VIP reception

Tickets

Individual Tickets - \$175

Tables of Ten - MEMBERS- \$1,500

Tables of Ten - NON-MEMBERS- \$1,700

Advertising Opportunities

Full Page Color (5.5 X 8.5)
\$1,250

Half Page Color(5.5 X 4.25)
\$750

Half Page B/W (5.5 X 4.25)
\$500

Quarter Page Color (2.75 X 4.25)
\$600

Quarter Page B/W (2.75 X 4.25)
\$250

RSVP FORM ATTACHED.

MDCLC@bellsouth.net (305) 416-4155

PosterMyWall.com

AGENDA ITEM REPORT

March 12, 2018

ITEM NUMBER: 8.

ITEM: Consideration and Approval of an ordinance on **first** reading amending Section 23-12(6) of the Town Code related to floating vessels platforms and floating boat lifts. Enclosed is a copy of the proposed ordinance and supporting documents.

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1.	Draft Ord Floating Docks	Draft Ord Floating Docks.pdf
2.	TC Staff Report Floating Docks Feb 26 2018	TC Staff Report Floating Docks Feb 26 2018.pdf
3.	BHI FDEP Submerged Lands Docs	BHI FDEP Submerged Lands Docs.pdf

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 23 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED ZONING AND PLANNING; AMENDING SECTION 23-12 ENTITLED GENERAL PROVISIONS TO MODIFY SECTION 23-12(6) RELATED TO FLOATING VESSEL PLATFORMS AND FLOATING BOAT LIFTS; CREATING REGULATIONS FOR SUCH DOCKING FACILITIES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Bay Harbor Islands adopted the first Zoning and Planning Code for the community in June 1957; and

WHEREAS, the Town Council periodically studies various land development trends and issues and amends the Zoning and Planning Code accordingly; and

WHEREAS, much of the existing land development in the Town was constructed prior to the enactment of the Zoning and Planning Code, including the installation of seawalls in the late 1940's; and

WHEREAS, the Town has adopted standards for the construction of docks, mooring piles and seawalls in the waterways adjoining the east and west islands; and

WHEREAS, the current regulations do not address floating vessel platforms or floating boat lifts; and

WHEREAS, Section 403.813 of the Florida Statutes exempts floating vessel platforms and floating boat lifts from certain federal or state permitting or environmental review but allows local governments to reasonably regulate such facilities and require permits prior to installation, and

WHEREAS, several upland land owners have installed floating vessel platforms or floating boat lifts within the Town-owned waterways abutting the islands of the community, without obtaining Town review or permits, and

WHEREAS, the Town recognizes some of these facilities have been installed over the years and is willing to grandfather certain floating vessel platforms and floating boat lifts under certain circumstances or with modifications, and

WHEREAS, the Town Council held duly advertised public meetings to consider the proposed modifications to the Town's Zoning and Planning Code.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA:

Section 1: That the Town of Bay Harbor Islands Zoning and Planning Code is hereby amended to amend Section 23-12 entitled "General Provisions" to modify subsection 23-12(6) related to floating vessel platforms and floating boat lifts, as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

Section 2. That if any section, paragraph, sentence or word of this Ordinance or the application thereof to any person or circumstance is held invalid, that the invalidity shall not affect the other sections, paragraphs, sentences, words or application of this Ordinance.

Section 3: That it is the intention of the Town Council of the Town of Bay Harbor Islands, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of the Town of Bay Harbor Islands' Code of Ordinances, that 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 4: That all Ordinances, parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 5: That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

PASSED on First Reading this ____ day of _____, 2018.

PASSED AND ADOPTED on Second Reading this ____ day of _____, 2018.

JORDAN W. LEONARD
Mayor

ATTEST:

MARLENE SIEGEL
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG SHERMAN, ESQ.
Town Attorney

EXHIBIT A
Amendments to the Town of Bay Harbor Islands
Zoning and Planning Code – Chapter 23

Sec. 23-12. General provisions.

- (6) (a) No boathouse or dock building shall be erected on or adjoining any of the lots in the town, but a dock extending such as distance from the line of the outside face of the seawall cap of the waterfront lots as may be approved by the town manager may be permitted, provided:
- (i) No deck of any dock shall be higher than the existing height of the seawall cap, or a retaining wall attached directly to the seawall cap, or a retaining wall abutting the seawall; provided, however, if a property has a deck and/or walkway in the adjacent yard and wishes to carry the same material across the seawall cap onto the dock so that there is an unbroken appearance between the deck and/or walkway and dock with respect to materials, the dock may be higher than the seawall cap, but not to exceed 6.5 feet above Mean Sea Level (MSL);
 - (ii) No dock or deck constructed within the town shall bear any weight upon the seawall or seawall cap unless structural calculations (including vertical and lateral) are presented to the town by a licensed professional engineer. The engineer shall certify that the additional loading (including vertical and lateral) presented by the proposed dock is within the design loading calculations of the seawall;
 - (iii) No dock shall extend more than 25 feet beyond the outside face of the seawall cap, except as provided hereinafter;
 - (iv) As to those docks projecting into the Bay Harbor Waterway between the east island and the west island, none shall extend more than 15 feet beyond the outside face of the seawall cap. This restriction specifically applies to lots one through 12 in block two; lots one through 32 in block three; and lots one through 28 and lots 96 through 104 in block 23.
 - (v) No dock which extends more than eight feet beyond the outside face of the seawall cap shall have a width of more than four feet, and shall have no obstructions to such width such as storage bins, benches, etc.;
 - (vi) No cover shall be permitted to be erected in connection with any dock;
 - (vii) No part of any dock shall be placed nearer than ten feet to a line formed by the projection of the sidelines of the dock;

- (viii) No boat landing, dock or pier shall be constructed until the plans and specifications therefore shall have been approved in writing by the town manager, and
 - (ix) No portion of any vessel shall extend more than 30 feet beyond the outside face of the seawall cap in the Bay Harbor Waterway.
 - (x) Notwithstanding the above provisions as related to the allowable projection of docks from the outside face of a seawall, because of shifting underwater land elevations and/or environmental characteristics in Biscayne Bay and the Bay Harbor Waterway, the Miami-Dade Department of Environmental Resource Management (DERM) may require alterations to the above stated criteria. Any variation from the above criteria shall require an owner to request and receive a variance from the town council prior to any construction commencing on a dock structure. Such variances shall be on a case-by-case basis, the application shall be accompanied by an environmental assessment from DERM of the waterway adjacent to the subject property, and any town approval shall be limited to the minimal variation of the criteria necessary to meet the unique environmental characteristics of the site.
 - (xi) The minimum height of a dock surface (top) extending seaward of a seawall shall be at least 5 feet above Mean Sea Level (MSL), unless otherwise approved by the applicable regulatory agency (Miami-Dade DERM / US Corp of Army Engineers).
- (b) Boat lifts and/or davits shall be permitted to be constructed and/or installed on or upon adjoining waterfront properties, subject to the following provisions:
- (i) Boat lifts and/or davits: Any device used to raise and/or lower a boat, or other water vehicle to and/or from the surface of the water.
 - (ii) Boat lifts and/or davits shall not be constructed nor installed in such a manner which would allow any portion of the boat lift or davit or watercraft lifted or suspended from same to be any closer than ten feet to a line formed by the projection of the side property lines of the lot.
 - (iii) No portion of a boat lift or davit shall extend more than 25 feet beyond the outside face of the seawall cap.
 - (iv) No boat lift or davit shall be constructed or installed with any attachment or fastening to the seawall or seawall cap. Boat lifts and davits shall be structurally self-supporting and not dependent upon the seawall or seawall cap for structural integrity.
 - (v) No cover or canopy shall be permitted to be erected in connection with any boat lift or davit.

- (vi) No boat lift or davit shall be constructed or installed until the plans and specifications therefore shall have been approved in writing by the town manager.

(c) Floating vessel platforms and floating boat lifts.

- (i) Floating vessel platforms and floating boat lifts shall have the same meaning as set forth in § 403.813(1)(s) of the Florida Statutes.
- (ii) Floating vessel platforms and floating boat lifts shall be allowed in the waterways of the town adjoining platted upland lots; provided a permit is obtained from the town prior to installation.
- (iii) All floating vessel platforms and floating boat lifts must be owned and maintained by the adjoining upland land owner. Such facilities shall not be leased to others or used for commercial purposes.
- (iv) Floating vessel platforms and floating boat lifts must be attached to a dock, finger pier, or mooring pile. No floating vessel platform floating boat lift shall be attached to a seawall or seawall cap.
- (v) At the time a permit application is made to the town for a floating vessel platform or floating boat lift, the applicant must retain an engineer to perform and submit an inspection report noting the condition of the existing seawall. If repairs or replacement of the seawall is warranted as noted in the engineer's report, the permit for the floating vessel platform or floating boat lift may be delayed and contingent upon the seawall being repaired.
- (vi) Floating vessel platforms and floating boat lifts shall not be constructed nor installed in such a manner which would allow any portion of the floating vessel platform, floating boat lift, or watercraft lifted or suspended from same to be any closer than ten feet to a line formed by the projection of the side property lines of the lot.
- (vii) No portion of a floating vessel platform or floating boat lift shall extend more than 25 feet beyond the outside face of the seawall cap; provided however, within the Bay Harbor Waterway no floating vessel platform or floating boat lift shall extend more than 15 feet beyond the outside face of the seawall cap.
- (viii) Floating vessel platforms and floating boat lifts shall not obstruct any navigable waterways.
- (ix) The provisions of subsection 23-12(6)(a)(xi) shall not apply to floating vessel platforms and floating boat lifts.

(x) Any floating vessel platform or floating boat lift that legally existed prior to the enactment of these regulations (April XX, 2018) shall be grandfathered as is; provided however, that the floating vessel platform or floating boat lift complies with the ten foot side setback requirement, and provided if the floating vessel platform or floating boat lift is replaced, it must be modified to meet the current Town Code requirements, except for complete removal.

- (7) No boat canal or other waterway shall be dug or excavated into any of the waterfront lots. No ramp for aircraft shall be built without the approval in writing of the town. The town shall have the right to regulate the size and types of boats, yachts, or vessels which may be moored to any dock or mooring along the waters adjacent to the town, regardless of the location.
- (8) No mooring piles shall be placed more than 40 feet beyond the outside face of the seawall cap of any lot, provided however, no mooring piles shall be placed more than 30 feet beyond the outside face of the seawall cap of any lot on the Bay Harbor Waterway between the east and west island, and no mooring pile shall be nearer than seven and one-half feet to a line formed by the projection of the side lot lines to the lot. Notwithstanding the above provisions, because of shifting underwater land elevations and/or environmental characteristics in Biscayne Bay and the Bay Harbor Waterway, the Miami-Dade Department of Environmental Resource Management (DERM) may require alterations to the above stated criteria. Any variation from the above criteria shall require an owner to request and receive a variance from the town council prior to any construction commencing on a dock structure. Such variances shall be on a case-by-case basis, the application shall be accompanied by an environmental assessment from DERM of the waterway adjacent to the subject property, and any town approval shall be limited to the minimal variation of the criteria necessary to meet the unique environmental characteristics of the site.
- (9) No lot or parcel shall be increased in size by filling in the waters on which it abuts.
- (10) No seawall shall be erected, constructed or repaired in the town or adjacent thereto unless and until its location, design, materials, structures, strength, etc. shall have been approved in writing by the town.
 - (a) Seawall permit for use of municipal seawall. Any person needing to access a municipal seawall shall first obtain a permit and register with the town. In addition to a permit fee, the town might require the posting of a bond.
 - (b) Damaging municipal seawall. Any person injuring or damaging a municipal seawall shall be liable and shall immediately reimburse the town in an amount equal to the cost of repairing such damage or injury. The town shall have a specific lien on any vessel and its equipment that shall damage a municipal seawall due to the negligence in its operation or handling.

- (c) Height of seawalls. The elevation at the top of any seawall cap shall be 5.50 feet above Mean Sea Level (MSL). Notwithstanding the above, the following properties that experience more frequent and turbulent wave action from Biscayne Bay may elect to raise the top of a seawall cap to 6.0 feet above MSL: Lots 11 through 29 of Block 2; Lots 1 through 4 of Block 3; Lots 1 through 5 of Block 4; Lots 29 through 95 of Block 23; and Tracts C through F, as denoted on the plat of "Bay Harbor Island" according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the public records of Miami-Dade County.
- (d) Design, construction of seawalls. All seawalls shall be designed and certified by a registered engineer and constructed by a licensed contractor.
- (e) Completion of construction, approval. Seawalls, when completed and backfilled to grade shall be plumb and the coping straight before its final acceptance and release of bond by the Town.
- (f) Extension of seawall into waterways. No part of any seawall, including slabs, may extend beyond any lot line into any waterway. Piles and the cap beam may encroach into the adjoining waterway, if approved by the Town and regulatory agency having jurisdiction.
- (g) Construction methods. Seawalls shall be constructed of reinforced concrete, with a cap beam and supported on concrete pilings driven to bedrock. Seawalls shall penetrate into the soil at least 2 feet. No rip-rap shall be permitted in place of a seawall; however, rip-rap may be installed adjoining a seawall if approved by the Town and regulatory agencies having jurisdiction. If a seawall is replaced all existing tie backs shall be removed. Property owners are encouraged to remove failed tie backs when possible due to frequent system failures and damage caused on upland lands.
- (h) Non-conforming Seawalls - Existing seawalls and construction methods other than specified herein shall be allowed to remain as non-conforming structures and may continue to be repaired. Property owners are strongly encouraged to reconstruct and/or raise older low elevation seawalls to the heights specified in subsection (c) above and remove failed tie back systems as opportunities occur to increase flood protection and safeguard properties.
- (11) It shall be unlawful and a public nuisance for any property owner in the town to permit, or fail to repair or reconstruct, any failed seawall upon his property. It is further declared unlawful and a public nuisance for any property owner to fail to remove from his property or an adjacent body of water the debris and rubble of any failed seawall.

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Mayor and Town Council Members
Town of Bay Harbor Islands

From: Michael J. Miller, AICP 
Consultant Town Planner

Date: February 26th, 2018

Subject: Town of Bay Harbor Islands
Land Development Code Analysis
Floating Vessel Platforms / Floating Boat Lifts
MMPA Acct. No. 01-0702-0800

ISSUE

The Town has an extensive section of the Zoning Code devoted to boat docks, mooring pilings and similar facilities. The regulations are very comprehensive and address the unique geography / waterways of the Town (Biscayne Bay / Indian Creek / Bay Harbor Waterway). During the last major review / update of the section of the Code addressing docks in 2007, the Town was fortunate to have a Mayor at that time (Peter Lynch) who profession was a charter boat captain, which afforded detailed knowledge of these facilities. The Town Code specifies that boat docks be not less than five (5) feet above the water surface (due to environmental issues), cannot be within a certain distance of property lines (setbacks) and cannot extend more than specified distances into adjoining waterways. Provisions are included to allow variations based on environmental issues such as shallow bottom, seagrasses, etc. that DERM or other permitting agencies review. From time to time the Town receives inquiries about floating docks for jet skis, wave runners, etc. As a matter of information, the Town owns all adjoining waters to the upland islands via the Town Charter.

ANALYSIS

The Town Code is silent as to floating vessel platforms and floating boat lifts. In 2016 an inquiry led to MMPA being asked to research the applicable laws governing such docks and locating municipal codes that address these types of docks. Our research found that a majority of codes do not have any or minimal regulations for floating docks. Some communities ban them entirely for various reasons. State law exempts floating docks from certain environmental permits, but not local regulatory control (Sec. 403.813 F.S.)

Town of Bay Harbor Islands
Town Council Staff Report
Floating Vessel Platforms and Floating Boat Lifts
February 26, 2018
Page 2

MMPA was requested to provide backup materials on this subject for the Town Council's information which may lead future Code amendments. A memo / backup material was prepared and provided to the Town in late January 2018. Town staff assembled a photo catalog of examples of existing floating docks in the Town. The Town Council discussed this matter at the February 12th, 2018 meeting and instructed MMPA to prepare draft regulations for consideration.

As instructed our approach was to be somewhat minimal and allow for existing floating docks to remain, unless there were problems. MMPA generally followed the basic setbacks / waterway encroachments allowed for permanent docks (10-foot setback from side property lines / 25-foot waterway encroachment in wider water / 15-foot encroachment in the Bay Harbor Waterway due to the narrowness of the waterway. Floating vessel platforms and floating boat lifts come in a wide variety of designs. For jet skis / wave-runners the size of floating docks are quite nominal as the vessels are small (15'+/- long). However, for larger vessels they can be quite large. In our opinion, floating docks should not be larger than permanent docks or allow vessels larger than normally allowed. MMPA believes that if there is an existing floating vessel platform or lift that violates the Town's current setbacks or waterway encroachments the owners should be notified, and they should be modified to meet the new standards within a time certain. Paramount to all of this discussion is the fact that the waterways within the Town Limits are owned by the Town – no upland land owner has any right to use these waterways without Town consent. While this may be late due to the quantity of existing docks in the Town, possibly the Town should require the issuance of a license or agreement to use the waterways.

See the attached draft Ordinance.



Jeb Bush
Governor

Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

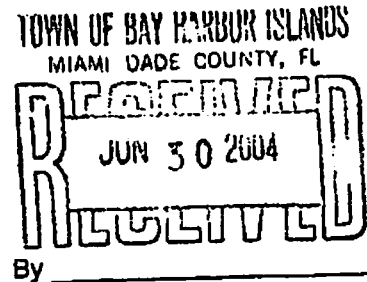
Colleen M. Castille
Secretary

June 21, 2004

Ms. Marlene Marante, Clerk
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

Dear Ms. Marante:

Re: Ruth and Shepard Broad Conveyance, et al
At Monterey Condominium, Dade County



Thank you for your recent inquiry requesting a determination of whether the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida claims any interest in the submerged lands lying adjacent Lots 21 and 22, Block 2, Bay Harbor Island, in Plat Book 46, at Page 5, in Section 34, Township 52 South, Range 42 East.

Records on file in this office indicate that Board of Trustees Deed No. 19145 (copy attached) conveyed submerged lands in question. Therefore, proprietary authorization from the Board of Trustees would not be required prior to the construction of dock and pilings. However, an environmental resource permit may be required. You may submit this letter to the appropriate agency processing the permit application. The submerged lands are subject to the Biscayne Bay – Card Sound Aquatic Preserve.

For this opinion we have relied only on records in our central repository. Additional records will be reviewed if provided. This opinion is not a disclaimer of state owned lands.

Thank you again for your inquiry. If this office can be of any further assistance regarding this determination, please address your questions to Sandra Harris, Planning Manager, mail station No. 108 at the above letterhead address, or by telephone at (850) 245-2788.

Sincerely,


Terry E. Wilkinson, Chief
Bureau of Survey and Mapping
Division of State Lands

TEW/sh
Attachment
F:\TITLE\SANDRA\2ndqtr2004\BayHarborIslands2.doc

"More Protection, Less Process"

Printed on recycled paper.

Internal Improvement Fund, State of Florida

DEED NO. 19145

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the Trustees of the Internal Improvement Fund of the State of Florida, under and by virtue of the authority of Section 258.12 Florida Statutes, 1941, and according to the provisions and procedure provided for in Section 258.12, Florida Statutes, 1941, and for and in consideration of the sum of Ten and 00/100 - - - - -
- - - - - Dollars, to them in hand paid by RAY HARBOR ISLAND, INC., a
Florida Corporation of Miami, Florida,

Dade County, Florida, receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed to the said RAY HARBOR ISLAND, INC.
and its ^{successors} ~~heirs~~ and assigns, forever, the following described lands, to-wit:

A tract of submerged land located in Fractional Sections 26, 27, 34 and 35, Township 52 South, Range 42 East, Dade County Florida described as follows, to-wit:

The submerged lands lying between the high water line of Government Lots 1 and 2, the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 27, Government Lot 4, Section 26, Government Lot 2, Section 35, Government Lots 1 and 2, the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 34, all in Township 52 South, Range 42 East, Tallahassee Meridian, in Florida AND the perimeter description of the following described tract of submerged lands:

Commence at a monument marking the Southeast Corner of Fractional Section 34, Township 52 South, Range 42 East, Dade County Florida, which said monument bears South 87 degrees, 22 minutes, 30 seconds West from and is 1,633.04 feet West of a concrete monument located in the South line of Township 52 South, Range 42 East, Dade County Florida; thence North 1 degree, 49 minutes, 55 seconds West along the East boundary line of said Fractional Section 34 for a distance of 2,816.38 feet to a point; thence due West for a distance of 361.01 feet to a point; thence North 29 degrees 19 minutes 03 seconds East for a distance of 448.13 feet on a tangential circular curve and the point of beginning of the tract of submerged land herein described; thence Southwesterly and Westerly along said tangential circular curve having a radius of 200 feet through a central angle of 101 degrees 21 minutes 00 seconds for an arc distance of 353.78 feet to a point; thence North 49 degrees 19 minutes 57 seconds West for a distance of 528.52 feet to the beginning of a tangential circular curve; thence along said tangential circular curve having a radius of 3,580.12 feet through a central angle of 24 degrees 02 minutes 59 seconds for an arc distance of 1,502.74 feet to the end of said curve; thence North 73 degrees 22 minutes 56 seconds West for a distance of 352.15 feet to the beginning of a tangential circular curve; thence Northwesterly and Northerly along said tangential circular curve having a radius of 1,313.18 feet through a central angle of 98 degrees 02 minutes 28 seconds for an arc distance of 2,247.04 feet to the end of said curve; thence North 24 degrees 39 minutes 32 seconds East tangent to the aforesaid curve for a distance of 960.86 feet to the beginning of a tangential circular curve; thence Northeasterly along a tangential circular curve having a radius of 1,250.30 feet through a central angle of 33 degrees 57 minutes 55 seconds for an arc distance of 741.18 feet to the

(continued)

end of said curve; thence North 58 degrees 37 minutes 27 seconds East tangent to the aforesaid curve for a distance of 454.03 feet to the beginning of a tangential circular curve; thence Northeasterly along a tangential circular curve having a radius of 3,722.72 feet through a central angle of 8 degrees 00 minutes 30 seconds for an arc distance of 520.33 feet to the point of compound curve; thence Northeasterly and Southeasterly along a circular curve having a radius of 553.84 feet through a central angle of 52 degrees 10 minutes 28 seconds for an arc distance of 504.34 feet to a point of compound curve; thence Southeasterly along a circular curve having a radius of 1,190.14 feet through a central angle of 33 degrees 11 minutes 10 seconds for an arc distance of 689.34 feet to a point of compound curve; thence Southerly along a circular curve having a radius of 1,113.44 feet through a central angle of 32 degrees 13 minutes 54 seconds for an arc distance of 626.36 feet to a point of reverse curve; thence Southeasterly along a circular curve having a radius of 885.97 feet through a central angle of 39 degrees 50 minutes 34 seconds for an arc distance of 616.09 feet to a point of reverse curve; thence Southeasterly along a circular curve having a radius of 2,096.24 feet through a central angle of 19 degrees 59 minutes 44 seconds for an arc distance of 731.56 feet to the end of said curve; thence South 15 degrees 37 minutes 21 seconds East tangent to the aforesaid curve for a distance of 550.00 feet to a point; thence South 4 degrees 54 minutes 30 seconds East for a distance of 993.69 feet to the beginning of a tangential circular curve; thence Southerly and Southwesterly along a tangential circular curve having a radius of 800.00 feet through a central angle of 34 degrees 13 minutes 33 seconds for an arc distance of 477.88 feet to the end of said curve; thence South 29 degrees 19 minutes 03 seconds West tangent to the aforesaid curve for a distance of 547.90 feet to the point of beginning, containing 32.91 acres, more or less, lying and being in the County of Dade, State of Florida, all in accordance with the plat hereto attached.

BAY HARBOR ISLAND, INC.

SAVING AND RESERVING unto the Trustees of the Internal Improvement Fund of Florida, and their successors, an undivided three-fourths interest in and title in and to an undivided three-fourths interest in all the phosphate, minerals and metals that are or may be in, on or under the said above described lands, and an undivided one-half interest in and title in and to an undivided one-half interest in all the petroleum that is or may be in or under the said above described land, with the privilege to mine and develop the same.

of Tallahassee, on this the 23rd day of April, A. D. Nineteen

Millard E. Caldwell (SEAL)
Governor.

J. Edwin Larson (SEAL)
Treasurer.

Attorney-General. (SEAL)

Nathan Mayo (SEAL)
Commissioner of Agriculture.



April 7, 2004

Town Council

Linda Zilber
Mayor

Isaac Solver
Vice-Mayor

Peter G. Lynch
Councilman

George C. Reycraft
Councilman

Gay Royse
Councilwoman

Jill R. Serfaty
Councilwoman

Robert H. Yaffe
Councilman

Town Officials

Greg Tindle
Town Manager

Marlene Marante
Town Clerk

Craig B. Sherman
Town Attorney

John S. Ross
Chief of Police

Alan K. Short
Finance Officer

Mr. Donald Keim, Environmental Specialist
Submerged Land and Environmental Resources Program
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Southern District
400 N. Congress Avenue, Suite 200
West Palm Beach, Florida 33401

**RE: TEMPORARY USE AGREEMENT - DOCKING FACILITIES
BAY HARBOR ISLANDS, FLORIDA**

Dear Mr. Keim:

I'm writing this letter on behalf of The Monterey Condominium located at 9240 W. Bay Harbor Drive and many other property owners in the Town of Bay Harbor Islands. They have received the above mentioned lease for the use of submerged land contiguous to their property for a docking facility. The ownership of the submerged land in question is the issue that I'm addressing with this letter.

It is the Town's position that a portion of submerged lands surrounding Bay Harbor Islands are owned by the Town. I have enclosed for your review a copy of a deed conveying this property to the Town dated December 1986. The property was previously owned by Ruth and Shepard Broad. I'm also enclosing for your review a copy of Resolution 618 accepting the donation of the submerged lands to the Town, and a copy of an appraisal dated December 23, 1986 which fully described the 46.1 acres of submerged land abutting the islands.

The Monterey Condominium and many other waterfront multi-family buildings are located within this area and, therefore, should not be subject to the lease requirements being sought by your office.

I would ask that you respond to my letter in writing to confirm the information I have provided is accepted by your agency. Please contact my office if you have any questions or need additional information, 305-866-6241 x 103.

Sincerely,

Marlene Marante
Town Clerk

Idi

cc: Craig B. Sherman, Town Attorney
Greg H. Tindle, Town Manager
Verdi Fox, Building and Zoning Assistant
The Monterey Condominium Association



Department of Environmental Protection

Jeb Bush
Governor

Southeast District
400 N. Congress Ave. Suite 200
West Palm Beach, Florida 33401

David B. Struhs
Secretary

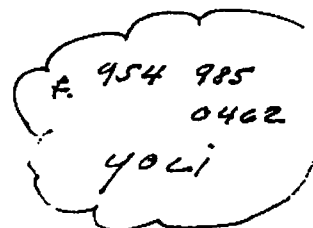
MAR 15 2004

CERTIFIED MAIL 7602-0360-6006-8781-0382
RETURN RECEIPT REQUESTED

The Monterey
c/o Mr. Fred Singer, President
9240 W. Bay Harbor Drive, Apt. 3-C
Bay Harbor Islands, FL 33154

CHOROSKI

305 866 3517 T.



TUA No.: 130034606
Lease Application No.: 130034606
Applicant: The Monterey

Dear Mr. Singer:

I have enclosed the Temporary Use Agreement (TUA) for your review and signature. This TUA, once properly executed and finalized, will grant the temporary authority for the structures depicted in Exhibit A to remain on sovereign, submerged land, operating as a 7-slip residential docking facility in conjunction with the upland condominium development. The TUA instrument reflects that a payment of \$5,451.57 is required for the lease fees in arrears, for the period of September 30, 1984 to December 31, 2004. Do not fill in the blanks on the first page of the instrument. Please execute the form on page 5 of 5 as indicated and return to the undersigned, with a check for the indicated amount, made payable to the Department of Environmental Protection. Additionally, please submit two separate checks in the amount of \$ 381.61, representing the required sales tax. Staff will return the instrument and have you record the finalized document, which will then be returned to us.

I have received the revised sketch of surveys that will work well for the TUA, but since they are labeled as TUA drawings, I must ask that this reference be removed to allow me to use them for the lease approval package. The revision of the drawings and completion of the TUA process will complete the lease application and the application will be processed upon receipt of the executed and recorded TUA. We appreciate your cooperation. If you have any questions, please contact me at the letterhead address, at 561/681-6645 or electronically at don.keirn@dep.state.fl.us.

Sincerely,

Donald H. Keirn 3/15/04
Donald Keirn Date

Environmental Specialist
Submerged Lands & Environmental
Resources Program

Enclosure

"More Protection, Less Process"

Printed on recycled paper.

A RESOLUTION OF THE TOWN OF BAY HARBOR ISLANDS, DADE COUNTY, FLORIDA, EXPRESSING FOR ITSELF AND FOR ALL ITS CITIZENS AND RESIDENTS, EVERLASTING GRATITUDE TO MAYOR EMERITUS SHEPARD BROAD AND RUTH K. BROAD, HIS WIFE, FOR THE SUBSTANTIAL AND VERY GENEROUS GIFT OF INVALUABLE PIECES AND PARCELS OF LANDS AND PROPERTIES DEEDED BY THEM IN FEE SIMPLE TO THE TOWN OF BAY HARBOR ISLANDS BY DEED DATED THE 23rd DAY OF DECEMBER, 1986 AND CAUSED TO BE RECORDED BY THE TOWN AMONG THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA ON THE 24th DAY OF DECEMBER, 1986, UNDER CLERK'S FILE NO. 86-R451036, IN OFFICIAL RECORDS BOOK 13127, PAGE 91.

WHEREAS, but for the vision, courage, faith and industry of Shepard and Ruth K. Broad, his wife, the Town of Bay Harbor Islands, Dade County, Florida, together with the magnificent Bay Harbor Waterway and Broad Causeway as they now exist, would never have come into being, and

WHEREAS, Mayor Emeritus Shepard Broad and Ruth K. Broad, his wife, have given to the Town a most generous and invaluable gift by deed in fee simple dated the 23rd day of December, 1986 and caused to be recorded by the Town among the Public Records of Dade County, Florida on the 24th day of December 1986, under Clerk's File No. 86-R451036, in Official Records Book 13127, Page 91, said lands owned by them in the Town and which lands are legally described in said deed as follows:

PARCEL 1: Tract M of Bay Harbor Islands according to the plat thereof as recorded in Plat Book 46, Page 5 of the Public Records of Dade County, Florida.

PARCEL 2: Bay bottom or submerged lands as described in Deed Book 4480, Page 140 of the Public Records of Dade County, Florida, which by reference is made a part hereof as though fully and at length set forth herein; including but not limited to the Bay Harbor Waterway bounded on the north by Biscayne Bay; on the east by the East Island; on the south by Indian Creek Lake and on the west by the West Island, all in the Town of Bay Harbor Islands, Dade County, Florida; and

WHEREAS, the aforementioned gift provides to the Town in perpetuity urgently needed park lands as described in Parcel 1 above and open air space, indispensable to its safe and secure boundaries, as described in Parcel 2 above,

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS:

1. The Town of Bay Harbor Islands, Dade County, Florida, for itself and its citizens and residents, present and future, are and shall remain everlastingly grateful to Mayor Emeritus Shepard Broad and Ruth K. Broad, his wife, for the precious and priceless gift hereinabove described.
2. Tract H of Bay Harbor Islands as described in Parcel 1 above, is hereby designated in perpetuity as open park lands and forever after be known as The Shepard and Ruth K. Broad Circle.
3. Parcel 2 hereinabove described is hereby designated in perpetuity as open air space and shall be and forever remain so.

PASSED AND ADOPTED THIS 12th day of January, 1987.


MAYOR

ATTEST:


TOWN CLERK

FEE SIMPLE DEED

OFF REC 13127 PG 91

RAMCO FORM 34

This Indenture Made the 23rd day of December A. D. 1986 by RUTH K. BROAD joined by her husband, SHEPARD BROAD,

hereinafter called the grantor, to the Town of Bay Harbor Islands, a municipal corporation organized and existing under the laws of the State of Florida

whose postoffice address is 9660 Bay Harbor Terrace, Dade County, Florida 33154 Bay Harbor Islands,

hereinafter called the grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth: That the grantor, for and in consideration of a gift to the said Grantee ~~valuable consideration~~ hereby grants, bargains, sells, aliens, releases, and transfers unto the grantee, all that certain land situate in Dade County, Florida, viz:

PARCEL 1: Tract H of Bay Harbor Island according to the plat thereof as recorded in Plat Book 46, Page 5 of the Public Records of Dade County, Florida, also known as "The Ruth K. Broad Circle";

PARCEL 2: Bay bottom or submerged lands as described in Deed Book 3380, Page 140 of the Public Records of Dade County, Florida, which by reference is made a part hereof as though fully and at length set forth herein; including but not limited to the Bay Harbor Waterway bounded on the north by Biscayne Bay; on the east by the East Island; on the south by Indian Creek Lake and on the west by the West Island, all in the Town of Bay Harbor Islands, Dade County Florida

RECORDED IN THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA.
RECORD VERIFIED
RICHARD P. BRINKER
CLERK CIRCUIT COURT

Together with all the tenements, hereditaments and appurtenances thereto belonging or in any-wise appertaining.

To Have and to Hold, the same in fee simple forever.

In Witness Whereof, the said grantor has hereunto set her hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

A. JEFFREY BARASH

MARION L. HARRIS

RUTH K. BROAD

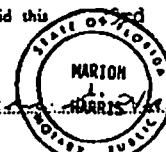
SHEPARD BROAD

STATE OF FLORIDA
COUNTY OF DADE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared RUTH K. BROAD and joined by her husband, SHEPARD BROAD

to me known to be the person s described in and who executed the foregoing instrument and they acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this December 23rd A. D. 1986.

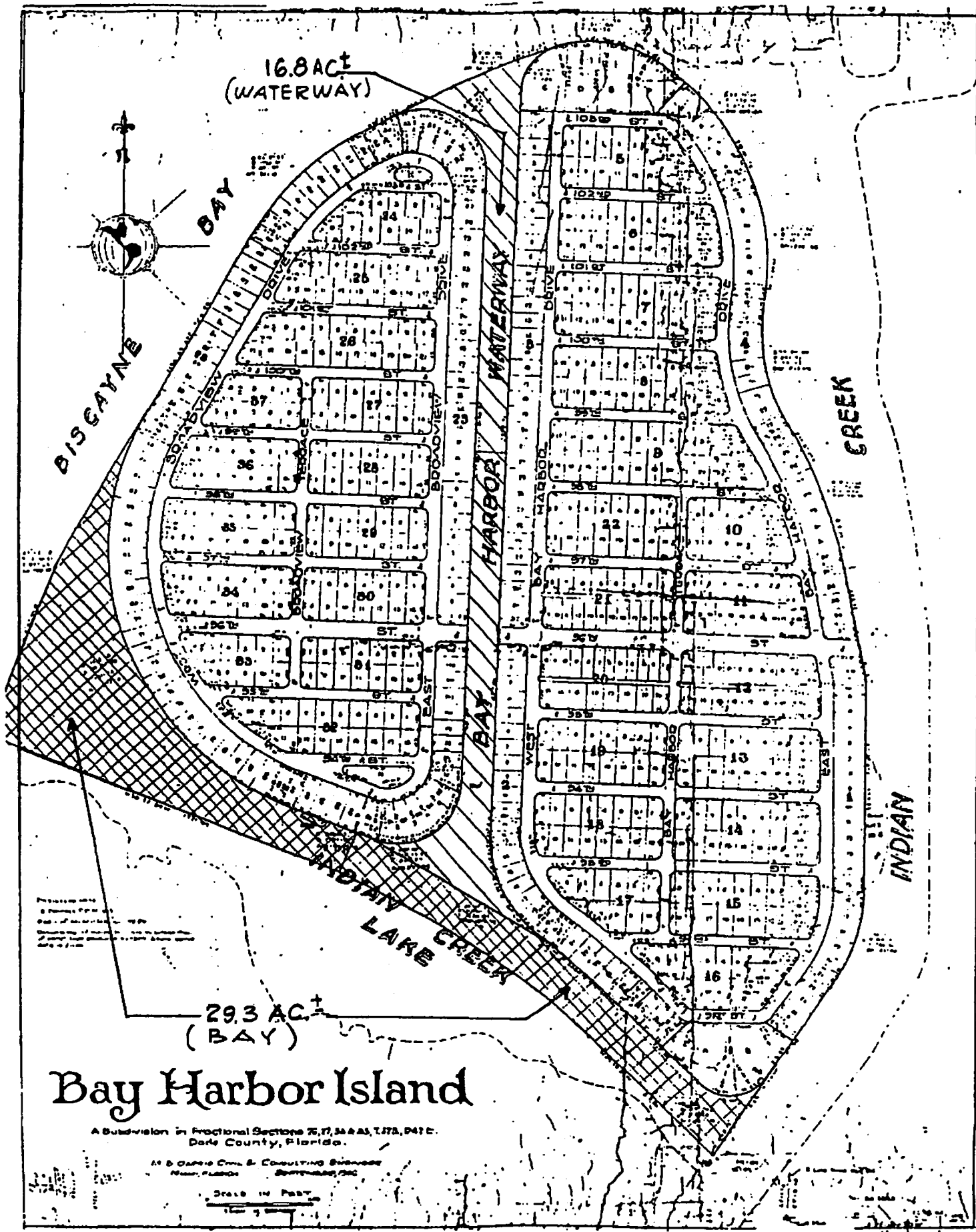


SHEPARD BROAD

MY COMM EXP MAY 8, 1990

This Instrument prepared by: 9405 East Broadview Drive Bay Harbor Islands, Dade County, Florida 33154

Address





Memorandum

To: Mayor and Town Council
From: Marlene Marante, Town Clerk *MM*
Subject: Ownership of Submerged Lands
Date: June 30, 2004

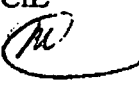
Enclosed is a copy of the memorandum sent to the Town Council on April 9th regarding the above mentioned matter. Also enclosed is a copy of a letter from Terry E. Wilkinson from the Department of Environmental Protection in response to my inquiry. Although his letter doesn't directly addressed all my questions, it seems clear that they have acknowledged the Town's ownership of the submerged lands.

I have sent a copy of this letter to the Monterrey Condominium so they can proceed with their dock repairs.

cc: Greg H. Tindle, Town Manager
Craig B. Sherman, Town Attorney

Idi

MEMORANDUM

To: MAYOR AND TOWN COUNCIL
From: Marlene Marante, Town Clerk 
Date: April 9, 2004
Subject: Ownership of Submerge Lands

It has come to my attention that the Department of Environmental Protection has been in contact with The Monterey Condominium to negotiate a lease for their docking facility. Enclosed is a letter to Mr. Donald Keim regarding this issue. Attached to my letter I sent information regarding the Town's ownership of submerged lands and asked for a response from the department. Approximately 40% of the town's waterfront lots are located within this area. I have spoken with Mr. Keim and corresponded by e-mail. They have been referring to Chapter 28899, Senate Bill No. 865 which gives the Town limited (for municipal purposes only) control of its bay bottoms, waterways and water bottoms. Their argument has been that private docking facilities is obviously not municipal purposes.

My letter puts forth a different argument since we have a deed for submerged lands donated to the Town in 1986 by the late Shepard Broad; however this area does not cover the entire island (see attached map). DEP is questioning Broad's ownership and is investigating who was the previous owner. Mr. Keim has forwarded my letter and deed to their title staff for review. I have no record of who owned the land prior to Bay Harbor Inc. (Shepard Broad), but I suspect that it was part of the original "swamp swap". I'm continuing to research this issue and as soon as I hear from DEP, or I find new information I will distribute it to the Council.

cc: Greg H. Tindle, Town Manager
Craig B. Sherman, Town Attorney



Jeb Bush
Governor

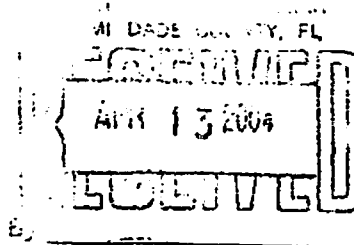
Department of Environmental Protection

Southeast District
400 N. Congress Ave. Suite 200
West Palm Beach, Florida 33401

Colleen M. Castille
Secretary

APR 12 2004

Ms. Marlene Marante, Clerk
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154



Re: Ruth and Shepard Broad conveyance et al
At Monterey Condominium
Bay Harbor Islands, Dade County

Dear Ms. Marante:

I have received your letter concerning the conveyance to the Town by Ruth K. and Shepard Broad, among others. I am, by copy of this letter, forwarding this package to Mr. Rod Maddox and requesting that he, or his staff, review the issue and determine if this changes our claim of ownership to all lands lying waterward of the current Mean High Water line.

I would also note that the package does not identify how ownership to the submerged land was conveyed to these parties. Normally, this would have been issued from the Trustees. This may be significant, but I am certain that Mr. Maddox or his staff will request this information from you if it is deemed relevant. He will respond to you directly. Also, he can be reached at 850-245-2788.

If you have any questions on any other issues, please contact me at 561/681-6645 or electronically at Don.Keim@dep.state.fl.us.

Sincerely,


Donald Keim Date

Environmental Specialist
Compliance & Enforcement Section
Submerged Lands & Environmental
Resources Program

cc: Mr. Rod Maddox, DSL (Mail Station 108) w/enclosure

"More Protection, Less Process"

Printed on recycled paper.

AGENDA ITEM REPORT

March 12, 2018

ITEM NUMBER: 9.

ITEM: Consideration and Approval of an ordinance on **first** reading amending the Town Code to provide enhanced outdoor lighting requirements. Enclosed is a copy of the proposed ordinance and staff report,

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1.	TC Staff Report Outdoor Lighting Feb 28 2018	TC Staff Report Outdoor Lighting Feb 28 2018.pdf
2.	BHI Lighting Draft Ord Feb 26 2018	BHI Lighting Draft Ord Feb 26 2018.pdf

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Mayor and Town Councilmembers
Town of Bay Harbor Islands

From: Michael J. Miller, AICP
Consultant Town Planner

Date: February 26th, 2018

Subject: Town of Bay Harbor Islands
Outdoor Lighting Regulations
Analysis of Existing Regulations / Proposed Modifications
MMPA Acct. No. 01-0702-0500

ISSUE

Recently the Town received several complaints about several new multi-family residential building complexes exterior lighting. One such complex (Sereno East) has open pedestrian corridors facing East Bay Harbor Drive. This brought attention to the inadequacies of the Town's existing regulations for outdoor lighting. At the January 8th, 2018 Town Council meeting, the need for enhanced outdoor lighting regulations was discussed and MMPA was requested to research this issue and provide new regulations for consideration. MMPA researched the matter and prepared a draft Ordinance for consideration. At the February 12th, 2018 Town Council meeting, the issue was discussed but action was deferred, pending review and comment from the Planning and Zoning Board (PZB). The PZB discussed this issue on February 20th, 2018 and requested several modifications to the draft Ordinance, including broadening the Code application to all land uses in the Town (single-family homes are exempt under the current Code and original MMPA draft). Based on the comments made at the Town Council and PZB meetings, MMPA revised the draft Ordinance text to include as many of the requested revisions as possible.

BACKGROUND/ANALYSIS

As previously discussed, the existing Code provisions regulating outdoor lighting in Chapter 10 entitle "Housing" are outdated and were written at a time when the initial development of the Town occurred (1969). Modern development designs and lighting technology (LED) has changed significantly. MMPA has prepared the accompanying Code modification which:

- Creates broader / separate land development regulations for exterior lighting;

- Sets more specific / modern foot-candle minimums / maximums for single-family development, multifamily development and commercial development (SFR areas now included per PZB request);
- Sets foot-candle minimums / maximums for the Town's public lands (Town Hall / Community Center / Parks / Roadways) so safe lighting levels exist;
- Addresses rooftop activity areas that could be a distraction to neighbors;
- Addresses parking lot areas (minimum safe lighting level);
- Addresses decorative "up lighting" for buildings / landscaping that showcase the item;
- Provides a mechanism to address older existing developments by requiring compliance with any expansion or remodeling of existing non-residential or residential development. The PZB did not like the proposed "50% of the structures' assessed valuation" retrofit / upgrade threshold. Rather, they desired that an amortization period be instituted for all exterior lighting – MMPA has inserted a 5-year amortization period for discussion purposes;
- Requires more detailed plans to be prepared for applications subject to review by the Planning and Zoning Board. The PZB requested that as part of future site plan applications an additional illustrative rendering at "night-time" be included. They know it will be illustrative at the PZB review time but may help flag design features that have bright lighting.
- MMPA verified the allowable hours of illuminating tennis courts and adjusted the hours accordingly from 11 pm to 10 pm. The "Tauber" commercial site was given special operational hours for future rooftop activities a few years ago – an exception was added.

SUMMARY / RECOMMENDATION

In response to recent concerns about excessing lighting on recently constructed developments and an observation that the existing regulations in the Town's Code are felt to be inadequate, the proposed Ordinance to enhance the regulations has been prepared. After researching the issue (numerous other municipal Codes / professional publications), MMPA feels that amending the Code as proposed will adequately address outdoor lighting concerns in future in the Town. As requested the original MMPA draft Ordinance was reviewed by the PZB on 2/20/18. A number of suggestions were provided by the PZB to incorporate into the draft Ordinance. MMPA has attempted to incorporate as many of the TC / PZB suggestions as possible. A Town Council policy decision is necessary to include single-family homes – the PZB noted problems with single-family home security lighting, accent lighting (houses / landscaping) and occasionally rear yard (neighboring) lighting levels.

MMPA recommends the Town Council review and discuss the proposed revised Ordinance (changes in yellow) and, if found to be acceptable, move forward with the adoption of the Ordinance on first reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 10 OF THE TOWN'S CODE OF ORDINANCES ENTITLED HOUSING BY MODIFYING SECTIONS 10-1 AND 10-2; AMENDING CHAPTER 23 ENTITLED ZONING AND PLANNING BY MODIFYING SECTION 23-19 TO PROVIDE ENHANCED OUTDOOR LIGHTING REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Bay Harbor Islands adopted the first Zoning and Planning Code for the community in June 1957; and

WHEREAS, the Town Council periodically studies various land development trends and issues and amends the Zoning and Planning Code accordingly; and

WHEREAS, the Town has retained the services of urban planning professionals to periodically study land development activities and land development regulations, and to recommend strategies and/or Code modifications to address identified problems; and

WHEREAS, the Town recently became aware that the application of the existing Code provisions for the lighting of outside areas may produce undesirable effects, has studied the matter and desires to modify the existing Code provisions to rectify the issue; and

WHEREAS, the Town's Comprehensive Plan includes Objectives and Policies that identify the need to periodically study and modify the Town's Land Development Regulations to reflect current trends and community desires; and

WHEREAS, the Town Council desires to amend the Town's Code of Ordinances to implement said Comprehensive Plan provisions; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) for the Town to review the proposed modifications to the Town's Code of Ordinances; and

WHEREAS, the Town Council held duly advertised public meetings to consider the proposed modifications to the Town's Zoning and Planning Code.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA:

Section 1: That the Town of Bay Harbor Islands Code of Ordinances is hereby amended to modify Chapter 10, Sections 10-1 and Section 10-2, and Chapter 23 Zoning and Planning Section 23-19 to modify provisions related to the lighting of outside areas of the Town; as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

Section 2: That is any section, paragraph, sentence or word of this Ordinance or the application thereof to any person or circumstance is held invalid, that the invalidity shall not affect the other sections, paragraphs, sentences, words or application of this Ordinance.

Section 3: That it is the intention of the Town Council of the Town of Bay Harbor Islands, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of the Town of Bay Harbor Islands' Code of Ordinances, that 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 4: That all Ordinances, parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 5: That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

PASSED on First Reading this ____ day of _____, 2018.

PASSED on Second Reading this ____ day of _____, 2018.

JORDAN W. LEONARD
Mayor

ATTEST:

MARLENE M. SIEGEL, CMC
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG SHERMAN, ESQ.
Town Attorney

Exhibit "A"

Amendments to the Town of Bay Harbor Islands Code of Ordinances

Chapter 10 Housing

Sections 10-1 and 10-2 is hereby amended to read as follows:

Sec. 10-1. - ~~Lighting of outside areas of multiple dwelling buildings on East Island—Required. Reserved.~~

~~All entrances, exits, hallways, balconies, stairways, outside walkways between street property lines and stairways, and patio areas that are contiguous to such walkways or are a part of such walkways of all multiple dwelling buildings on the East Island of the Town of Bay Harbor Islands shall be provided by the owner and manager of such buildings with electric lights so situated and arranged as to produce an approximately uniform light of proper intensity for safe seeing. Such lights shall be caused by the owner and manager of such building to burn continuously during such times as the building is in use or occupied and natural light sufficient for safe seeing is unavailable. Lights installed for outside entrances and exits of individual apartments may at the option of the owner and manager be controlled by a light switch within that particular individual apartment. If the lights installed for outside entrances and exits of individual apartments are controlled by a light switch within that particular individual apartment, the owner and manager of that building are exempt from the requirement of this section that the lights for outside entrances and exits of individual apartments be caused to burn continuously, but in all other respects such lights are subject to the provisions of this section. Owners and managers of the buildings referred to in this section are jointly and severally subject to the provisions of this chapter.~~

~~Sec. 10-2. — Same — Test of sufficiency. Reserved.~~

~~The test of light sufficient for safe seeing shall be a minimum value of 15 footcandles in service values measured at the floor level.~~

Chapter 23 Zoning and Planning

Section 23-19 is hereby amended to read as follows:

~~Sec. 23-19. - Reserved. Outdoor Site Lighting Requirements.~~

~~(a) *Purpose and intent.* Nonresidential and multiple-family residential (single-family and multiple-family) buildings and projects shall be designed to provide safe, convenient, and efficient lighting for pedestrians and vehicles. Lighting shall be designed in a consistent and coordinated manner for the entire site. The lighting and lighting fixtures shall be integrated and designed so as to enhance the visual impact of the project on the community and/or should be designed to blend into the surrounding landscape. Lighting design and installation shall ensure that lighting accomplishes on-site lighting needs without intrusion on adjacent properties.~~

(b) Applicability.

(1) New development. These regulations shall apply to all new nonresidential or ~~multiple-family residential~~ (single-family and multiple-family) development. A site lighting plan (photometric plan) shall be required to demonstrate compliance with these regulations. Such site lighting photometric plan shall include ground level, building mounted and any rooftop recreational facilities.

(2) Expansion and remodeling. These regulations shall apply to any expansion or remodeling of existing nonresidential or ~~multiple-family residential~~ (single-family and multiple-family) development that ~~exceeds 50 percent of the structure's assessed valuation~~ that involves outdoor lighting alterations. Existing development sites shall have up to five (5) years from the date of adoption of this Code to retrofit the site lighting. A site lighting photometric plan shall be required to demonstrate compliance with these regulations. Such site lighting photometric plan shall include ground level, building mounted and any rooftop recreational facilities. Assessed valuation shall be determined by reference to the official property tax assessment rolls of the year the structure(s) is to be remodeled.

(3) Repair and maintenance. These regulations shall apply to replacement of individual lighting fixtures in any nonresidential or ~~multiple-family residential~~ (single-family and multiple-family) development.

(c) Site lighting design requirements.

(1) Fixtures (luminaires). The light source shall be completely concealed within an opaque housing and shall not be visible from any street right-of-way or adjacent properties.

(2) Fixture height. Lighting fixtures shall be a maximum of 20 feet in height within the parking lot and shall be a maximum of 15 feet in height within non-vehicular pedestrian areas.

(3) Light source (lamp). Only Incandescent, fluorescent, metal halide, single-color light emitting diode (LED), or color-corrected high-pressure sodium, or other lighting types invented in the future approved by the Town may be used. The same light source type must be used for the same or similar types of lighting on any one site throughout any development.

(4) Mounting. Fixtures shall be mounted in such a manner that the cone of light primarily directed towards the earth's surface or otherwise shielded, such that lighting is contained on-site and does not cross any property line of the site.

(5) Limit lighting to periods of activity.

a. The use of sensor technologies, timers or other means to activate lighting during times shall be provided by business uses with exterior or garage parking facilities to illuminate the facility from 30 minutes prior to sunset until at least 30 minutes after the closing of any establishment served by the parking facility.

b. Any parking facility that serves a residential use must maintain the minimum levels of illumination established by this section through the use of natural or artificial light 24 hours per day.

c. No outdoor recreational facility shall be illuminated after ~~11:00~~ 10:00 p.m. except to conclude a scheduled and sanctioned recreational or sporting event by the Town or other authorized agency in progress prior to ~~11:00~~ 10:00 p.m. The hours of illumination listed herein shall not retroactively apply to previously approved land development projects that included rooftop recreational facilities in the B-1 Business District prior to the adoption of this Code provision. The luminaries shall be extinguished after outdoor recreational events are completed and the site has been vacated. All such facilities shall be equipped with automatic timer switches to ensure the illumination timeframes are adhered to. Public recreational facilities that operate or are open to the public on a 24-hour basis are exempt.

(6) Illumination levels.

a. All site lighting shall be designed so that the level of illumination as measured in foot-candles at any one point meets the standards in the table below. Lighting levels up to 25 percent higher may be allowed by the Town Manager subject to the applicant demonstrating that higher lighting levels are necessary to meet objectives for environmental programs such as Crime Prevention Through Environmental Design (CPTED) and Leadership in Energy and Environmental Design (LEED) and will not conflict with subsection (d) concerning excessive illumination below:

Exterior Lighting and Parking Lots

<u>Type of Lighting</u>	<u>Lighting Level (foot-candles)</u>		
	<u>Minimum</u>	<u>Average</u>	<u>Maximum</u>
<u>Architectural lighting</u>	<u>0.0</u>	<u>1.0</u>	<u>5.0</u>
<u>Canopy area lighting</u>	<u>2.0</u>	<u>10.0</u>	<u>15.0</u>
<u>Entrances to buildings</u>	<u>0.3</u>	<u>0.75</u>	<u>3</u>
<u>Rooftop lighting</u>	<u>0.3</u>	<u>1.0</u>	<u>5.0</u>
<u>Multiple-family parking lots</u>	<u>0.2</u>	<u>1.0</u>	<u>8.0</u>
<u>Nonresidential parking lots and garages</u>	<u>0.2</u>	<u>1.5</u>	<u>10.0</u>
<u>Public Streets and sidewalks</u>	<u>1</u>	<u>12:1 uniformity ratio</u>	<u>4:1 uniformity ratio</u>
<u>Storage areas (security lighting)</u>	<u>0.2</u>	<u>1.0</u>	<u>10.0</u>
<u>Walkways, landscape or decorative lighting</u>	<u>0.2</u>	<u>0.8</u>	<u>5.0</u>

Nonresidential and Multifamily Residential Parking Garages

<u>Type of Lighting</u>	<u>Lighting Level (foot-candles)</u>		
	<u>Minimum</u>	<u>Average</u>	<u>Maximum</u>
<u>Garage entrance</u>	<u>No daytime min. 1.0 nighttime</u>	<u>10:1 uniformity ratio</u>	<u>No daytime max. 15.0 nighttime</u>
<u>Garages with openings to outside</u>	<u>0.2</u>	<u>10:1 uniformity ratio</u>	<u>10.0</u>
<u>Enclosed garages</u>	<u>0.2</u>	<u>10:1 uniformity ratio</u>	<u>None</u>

b. Minimum and maximum levels are measured on the pavement within the lighted area. Average level is the overall, generalized ambient light level, and is measured as a none-to-exceed value calculated using only the area of the site intended to receive illumination.

c. Lighting for automated teller machines shall be required to meet the standards of F.S. § 655.962.

d. Roadway lighting provided by the Florida Department of Transportation is exempt from these regulations.

e. Lighting levels shall be limited to not more than one (1) foot-candle along the waterways and on dock facilities adjoining the Town's islands for environmental and neighborhood intrusion reasons.

f. Security lighting. All security lighting installations shall include timers, dimmers, and/or sensors to reduce the overall energy consumption and eliminate unneeded lighting.

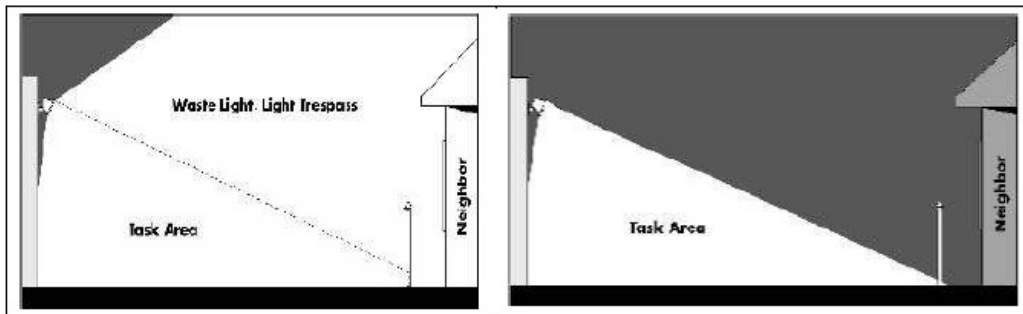
g. Decorative lighting for building and landscaping.

(1) Upwardly-directed lighting used to illuminate all or part of a structure or building facade shall use low-wattage architectural or decorative lighting so that direct light emissions are contained by the structure or facade and not be visible above the building roof line.

(2) Light fixtures used to illuminate flags, landscaping, statues, or other objects mounted on a pole, pedestal, or platform shall use a narrow cone beam of light that does not extend beyond the illuminated object and shall not be obtrusive or cause glare.

(3) Any light source forming a linear pattern shall be recessed within the structure in which it is located.

(4) Any light source or lamp that emits more than 900 lumens shall be concealed or shielded with full cut-off style fixture with an angle not exceeding 90 degrees to minimize glare and unnecessary light diffusion onto adjacent properties and streets. No light source or lamp may produce more than 1,800 lumens.



Noncompliant – Light diffusion onto adjacent property

Compliant – No light diffusion onto adjacent property

Note: Figure illustrating shielding of light source to avoid light diffusion onto adjacent property. Measurement to be taken 5 feet above grade.

(h) *Flickering or Flashing Lights.* No flickering or flashing exterior lights shall be allowed except for temporary decorative seasonal lighting.

(d) *Excessive illumination.*

(1) Lighting within any lot that unnecessarily illuminates and substantially interferes with the use or enjoyment of any other lot, or which unnecessarily illuminates the night sky or neighboring properties is prohibited. Lighting unnecessarily illuminates another lot if it clearly exceeds the requirements of this section. Lighting unnecessarily illuminates the night sky if it directly projects into the night sky or if it clearly exceeds average lighting levels when measured at a height above the lighting fixture or its shield.

(2) All outdoor lighting shall be designed and located such that the maximum illumination measured in foot-candles at the property line does not exceed one (1) adjacent residential sites, adjacent commercial sites, the waterways adjoining the islands, and public road rights-of-way.

(3) Lighting shall not be oriented so as to direct glare or excessive illumination onto streets in a manner that may distract or interfere with the vision of drivers on such streets.

(4) Fixtures used to accent architectural features, landscaping or art shall be located, aimed or shielded to minimize light spill into the night sky and neighboring properties.

(5) Illumination using illuminated tubing or strings of lights that completely outline or define property lines, sales areas, roofs, doors, windows or similar areas in a manner that is not primarily for safety purposes, as determined by the Town Manager, is prohibited. However, this shall not be construed to preclude holiday/seasonal light displays.

(6) Rooftop deck or rooftop patio lighting shall be shielded to prevent light from spilling over the side of the building or any glare projecting upward or to neighboring properties; and all light sources shall be installed so as not be visible from the right-of-way and neighboring properties. Low-scale / low intensity type lights are required such as bollards or building mounted fixtures. Rooftop lighting systems shall be designed with timer switches to shut off all lighting during the restricted hours set forth in subsection (5) herein, except for pedestrian safety lighting installed not exceeding four (4) feet in height above the roof deck.

(7) All wiring for lighting fixtures and conduits shall be hidden from view, preferably enclosed in building components. No loose wiring shall be permitted.

(e) *Lighting plans.* Plans for illumination of buildings and lighting zones shall be submitted at the time a building permit is submitted or with an application for site plan approval. At the time of submission of a site development plan preliminary site lighting photometric plans for the proposed ground level lighting, exterior building lighting and any rooftop recreational facility lighting shall be submitted. As part of a building permit submission an updated site lighting photometric plan shall be required, as well as fixture details noting lighting levels. The Lighting plans shall comply with the standards listed below:

(1) *Design.* Plans shall be prepared and sealed by an engineer registered in the State of Florida.

(2) *Plans.* Lighting plan or plans, including photometric plans, shall include the following information:

a. Overall site plan.

b. Vehicular and pedestrian access and circulation.

c. Location of parking stalls.

d. Adjacent property lines, including existing uses and future land use map and zoning district designations.

e. Plan view of all fixtures, including pole and wall-mounted.

f. Height of all fixtures.

g. Photometric data and statistical analysis, including foot-candle values, the maximum to minimum uniformity ratio, the average initial or average maintained foot-candles, the minimum foot-candles, the maximum foot-candles, points of calculation for foot-candles, and similar information required by the Town Engineer.

h. The location and description, including the mature height of all existing and proposed trees, and the location of light fixtures on both adjacent properties and the street rights-of-way within ten feet of the subject property.

i. Light fixture data, including height, manufacturer, wattage, and lighting type.

j. All plans shall be certified by a registered architect or engineer as providing illumination in accordance with the applicable minimum standards set forth in this section and that subsequent construction will comply with the approved lighting plan.

k. Lighting installation shall not be placed in permanent use until a letter of compliance from a registered professional architect or engineer has been provided stating that the installation has been field checked and meets the specification set forth on the approved photometric plan.

(f) *Method of measurement.* The light meter sensor shall be read at ground level or the established grade in a horizontal position, or from adjoining sites at equivalent heights. Readings shall be taken only after the light source has been exposed long enough to provide a constant reading. Measurements shall be taken after dark with the light sources to be measured on and subsequently off. The difference of the two readings shall be compared to the permitted illumination level for each lighting zone.

AGENDA ITEM REPORT

March 12, 2018

ITEM NUMBER: 1

ITEM: Consideration and Approval of an ordinance on **first** reading requested by Mayor Leonard relating to bicycle parking on sidewalks, streets, right of way and public property in the Town. Enclosed is a copy of the proposed ordinance and Memorandum from the office of the Town Attorney.

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
Jordan Leonard, Mayor

ATTACHMENTS

1.	2018.03.08 Memorandum on Bicycle Sharing Bill with Bill	2018.03.08 Memorandum on Bicycle Sharing Bill with Bill.pdf
2.	2018.03 Bicycle Parking Ordinance	2018.03 Bicycle Parking Ordinance.pdf
3.	F.S. 705	F.S. 705.pdf

SHERMAN & SHERMAN P.A.

Attorneys at Law

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TELEFAX (305) 357-2510

WEBSITE: ShermansLaw.com

To: Ronald Wasson, Town Manager

**From: Craig B. Sherman, Esq., Town Attorney and
Frank C. Simone, Esq., Assistant Town Attorney**



Date: March 8, 2018

Re: Bicycle Sharing Bill

This memo discusses whether the Town of Bay Harbor Islands ("Town") may pass an ordinance regulating bicycles, whether owned by bicycle sharing companies or otherwise, in light of a proposed bill on bicycle sharing that would create Section 341.851 Florida Statutes (the "Bill"). A copy of the latest version of the Bill is attached hereto.

The Legislator's intent of the Bill is to provide Florida residents with access to innovative, environmentally friendly transportation options to ensure the safety and reliability of bicycle sharing services within the state. *See* Section 341.851(1) of the Bill.

Pursuant to the Bill, bicycle sharing companies must provide to users that bicycles **must be operated in compliance with state and local law**. *See* Section 341.851(4)(b)(1) of the Bill.

The Bill also provides that a municipality may not take any action or adopt any local ordinance, policy, or regulation that is designed to limit or prevent a bicycle sharing company or any company engaged in the rental of bicycles from operating within its jurisdiction, **provided that the company has demonstrated compliance with all local laws and regulations applicable to other similar businesses seeking to do business or presently doing business within that municipality**. *See* Section 341.851(5)(a) of the Bill.

Because the Bill mandates that bicycles must be operated in compliance with all local laws, a Town ordinance prohibiting or restricting bicycles from being left or abandoned on Town property or within specified area(s) within the Town may be valid and enforceable.

Moreover, notwithstanding the language in the Bill, zoning is the exclusive function of the appropriate zoning authorities and not the courts, because questions of zoning policy, of benefit or detriment, of what is good or bad for the city and the public, involve an

exercise of police power and are matters within the legislative orbit of the city. *City of Coral Gables v. Sakolsky*, 215 So.2d 329, 333 (Fla. 3d DCA 1968) (a city's zoning ordinance which created height restrictions for buildings within the city was valid and constitutional because zoning is the exclusive function of the city and the ordinance was specific and promoted the health, welfare, safety, and morals of the public).

A bill to be entitled
 An act relating to bicycle sharing; creating s.
 341.851, F.S.; providing legislative intent; providing
 definitions; providing requirements for bicycles made
 available for rental or lease by a bicycle sharing
 company; requiring bicycle sharing companies, users,
 or operators to comply with certain regulations;
 providing company responsibilities; authorizing a
 local governmental entity to issue certain fines to a
 bicycle sharing company; prohibiting a local
 governmental entity, under certain circumstances, from
 limiting or preventing a bicycle sharing company or
 any company engaged in the rental of bicycles from
 operating within its jurisdiction; providing
 construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 341.851, Florida Statutes, is created
 to read:

341.851 Bicycle sharing.—

(1) LEGISLATIVE INTENT.—It is the intent of the
Legislature to provide Florida residents with access to
innovative, environmentally friendly transportation options and
to ensure the safety and reliability of bicycle sharing services

within the state.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Bicycle" means a bicycle as defined in s. 316.003.

(b) "Bicycle sharing company" means a person who makes bicycles available for immediate, self-service rental or lease at automated docking stations or through an online application, software, or website.

(c) "Docking station" means a bicycle rack where bicycles may be parked which is controlled by a bicycle sharing company.

(d) "Local governmental entity" means a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision.

(e) "User" means a person who reserves a bicycle through a bicycle sharing company's online application, software, or website.

(3) BICYCLE REQUIREMENTS.—

(a) Each bicycle made available for rental or lease by a bicycle sharing company must:

1. Meet the requirements for bicycles set forth in 16 C.F.R. part 1512.

2. Prominently display the bicycle company's name or trade dress.

3. Display an e-mail address or a telephone number at which a user or operator may contact the bicycle sharing company for customer support.

4. Be lawfully parked when not in use.

(b) A bicycle sharing company, user, or operator must comply with the requirements of s. 316.2065.

(4) COMPANY RESPONSIBILITIES.—

(a) A bicycle sharing company must register with the Division of Corporations of the Department of State and must provide such registration upon request to any local governmental entity in whose jurisdiction the company operates. A local governmental entity may issue a bicycle sharing company a fine of up to \$1,000 for failure to comply with this paragraph.

(b) A bicycle sharing company must provide to users:

1. Notification that bicycles must be operated in compliance with state and local law.

2. Contact information that enables a user to notify the bicycle sharing company of an issue relating to the safety or maintenance of a bicycle.

(c) A bicycle sharing company is responsible for the maintenance and rebalancing of each bicycle made available for rental or lease and for the removal of any such bicycle that is for any reason inoperable or does not comply with paragraph

(3) (a) .

(d) A bicycle sharing company is responsible for securing all company bicycles located within any area of the state where an active tropical storm or hurricane warning has been issued. A local governmental entity may issue a bicycle sharing company a

fine of up to \$1,000 for failure to comply with this paragraph.

(5) PREEMPTION.—

(a) A local governmental entity may not take any action or adopt any local ordinance, policy, or regulation that is designed to limit or prevent a bicycle sharing company or any company engaged in the rental of bicycles from operating within its jurisdiction, provided that the company has demonstrated compliance with all local laws and regulations applicable to other similar businesses seeking to do business or presently doing business within that jurisdiction.

(b) This subsection does not prohibit:

1. An airport or seaport from designating locations for staging, pickup, and other similar operations relating to bicycles at the airport or seaport;

2. A local governmental entity from entering into agreements with bicycle sharing companies for the placement of docking stations on public land; or

3. A local governmental entity from enforcing uniform traffic laws and ordinances under chapter 316.

Section 2. This act shall take effect upon becoming a law.

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 18 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED STREETS AND SIDEWALKS, BY ADDING SECTION 18-11 ENTITLED BICYCLE PARKING; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council is charged with the protection of the health, safety and welfare of the Town's residents; and

WHEREAS, the Town Council of the Town of Bay Harbor Islands is charged with preserving and maintaining the high quality and standards and aesthetic beauty contained within the Town;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA:

Section 1: That Section 18-11 of the Town of Bay Harbor Islands Code of Ordinances is hereby added as set forth in the attached Exhibit "A," and by reference is made a part hereof.

Section 2: That if any section, paragraph, sentence or word of this Ordinance or the application thereof to any person or circumstance is held invalid, that the invalidity shall not affect the other sections, paragraphs, sentences, words or application of this Ordinance.

Section 3: That it is the intention of the Town Council of the Town of Bay Harbor Islands, Florida, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of the Town of Bay Harbor Islands' Code of Ordinances, that 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 4: That all Ordinances, parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 5: That this Ordinance shall be in full force and take effect upon its passage and adoption.

PASSED on First Reading this _____ day of _____ 2018.

PASSED AND ADOPTED on Second Reading this _____ day of _____ 2018.

JORDAN W. LEONARD
Mayor

ATTEST:

MARLENE SIEGEL
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG SHERMAN, ESQ.
Town Attorney

EXHIBIT A

Sec. 18-11. Bicycle Parking.

- a. Purpose. The Purpose of this section is to restrict interference with the flow of pedestrian and vehicular traffic and to ensure the safety of all persons traversing sidewalks, streets, rights of way, and public property in the Town.
- b. Bicycle parking. All bicycles, when parked within the Town, shall be parked in areas or zones designated and marked by the Town for such purpose or otherwise by agreement between the Town and the bicycle owner, unless parked within private property by the property owner or with the consent of the property owner.
- c. Removal of bicycles improperly parked. Town employees are hereby authorized to remove bicycles improperly parked and bring them to an impoundment area, such other place of safety, or to an area designated or maintained by the Town for bicycles. Abandoned and lost bicycles shall be administered pursuant to Chapter 705, Florida Statutes.
- d. Charges to be paid before property released from impoundment. No property retained in an impoundment area as herein provided shall be released therefrom until the charges for notice, transportation of such property into an impoundment area, and storage charges have been paid. Such charges shall be fixed by Resolution based upon a computation of all actual expenses entered into the notice, removal, and storage of the same. Such charge or charges shall be available for public inspection in the office of the Town Clerk.

Select Year: 2017 ▼ Go

The 2017 Florida Statutes

[Title XL](#)

REAL AND PERSONAL PROPERTY

[Chapter 705](#)

LOST OR ABANDONED PROPERTY

[View Entire Chapter](#)

CHAPTER 705

LOST OR ABANDONED PROPERTY

705.101 Definitions.

705.1015 County or municipal code inspectors or code enforcement officers; duties.

705.102 Reporting lost or abandoned property.

705.103 Procedure for abandoned or lost property.

705.104 Title to lost or abandoned property.

705.105 Procedure regarding unclaimed evidence.

705.106 Recovery from person wrongfully in possession.

705.17 Exceptions.

705.18 Disposal of personal property lost or abandoned on university or Florida College System institution campuses; disposition of proceeds from sale.

705.182 Disposal of personal property found on the premises of public-use airports.

705.183 Disposal of derelict or abandoned aircraft on the premises of public-use airports.

705.184 Derelict or abandoned motor vehicles on the premises of public-use airports.

705.19 Abandonment of animals by owner; procedure for handling.

705.101 Definitions.—As used in this chapter:

(1) “Local government” means the board of county commissioners of a county or the commission or council of any municipality in the county.

(2) “Lost property” means all tangible personal property which does not have an identifiable owner and which has been mislaid on public property, upon a public conveyance, on premises used at the time for business purposes, or in parks, places of amusement, public recreation areas, or other places open to the public in a substantially operable, functioning condition or which has an apparent intrinsic value to the rightful owner.

(3) “Abandoned property” means all tangible personal property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels as defined in s. 823.11.

(4) “Law enforcement officer” means any person who is elected, appointed, or employed full time by any sheriff, any municipality, or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

(5) “Public property” means lands and improvements owned by the Federal Government, the state, the county, or a municipality and includes sovereignty submerged lands located adjacent to the county or municipality, buildings, grounds, parks, playgrounds, streets, sidewalks, parkways, rights-of-way, and other similar property.

has filed a lien on the vehicle or vessel as provided in s. 319.27(2) or (3) or s. 328.15(1). On receipt of this information, the law enforcement agency shall mail a copy of the notice by certified mail, return receipt requested, to the owner and to the lienholder, if any, except that a law enforcement officer who has issued a citation for a violation of s. 823.11 to the owner of a derelict vessel is not required to mail a copy of the notice by certified mail, return receipt requested, to the owner. If, at the end of 5 days after posting the notice and mailing such notice, if required, the owner or any person interested in the lost or abandoned article or articles described has not removed the article or articles from public property or shown reasonable cause for failure to do so, the following shall apply:

(a) For abandoned property, the law enforcement agency may retain any or all of the property for its own use or for use by the state or unit of local government, trade such property to another unit of local government or state agency, donate the property to a charitable organization, sell the property, or notify the appropriate refuse removal service.

(b) For lost property, the officer shall take custody and the agency shall retain custody of the property for 90 days. The agency shall publish notice of the intended disposition of the property, as provided in this section, during the first 45 days of this time period.

1. If the agency elects to retain the property for use by the unit of government, donate the property to a charitable organization, surrender such property to the finder, sell the property, or trade the property to another unit of local government or state agency, notice of such election shall be given by an advertisement published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the property was found if the value of the property is more than \$100. If the value of the property is \$100 or less, notice shall be given by posting a description of the property at the law enforcement agency where the property was turned in. The notice must be posted for not less than 2 consecutive weeks in a public place designated by the law enforcement agency. The notice must describe the property in a manner reasonably adequate to permit the rightful owner of the property to claim it.

2. If the agency elects to sell the property, it must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned property is held or stored. The advertisement must include a description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale. Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

(3) If the property is sold at public sale pursuant to subparagraph (2)(b)2., the agency shall deduct from the proceeds the costs of transportation, storage, and publication of notice, and any balance of proceeds shall be deposited into an interest-bearing account not later than 30 days after the date of the sale and held there for 1 year. The agency shall provide a bill of sale clearly stating that the sale is subject to any and all liens. The rightful owner of the property may claim the balance of the proceeds within 1 year from the date of the above stated deposit by making application to the agency. If no rightful owner comes forward with a claim to the property within the designated year, the balance of the proceeds shall be deposited into the State School Fund.

(4) The owner of any abandoned or lost property who, after notice as provided in this section, does not remove such property within the specified period shall be liable to the law enforcement agency for all costs of removal, storage, and destruction of such property, less any salvage value obtained by disposal of the property. Upon final disposition of the property, the law enforcement officer shall notify the owner, if known, of the amount owed. In the case of an abandoned vessel or motor vehicle, any person who neglects or refuses to pay such amount is not entitled to be issued a certificate of registration for such vessel or motor vehicle, or any other vessel or motor vehicle, until such costs have been paid. The law enforcement officer shall supply the Department of Highway Safety and Motor Vehicles with a list of persons whose vessel registration privileges or whose motor vehicle

city attorney, if within a municipality, when required to do so by the sheriff, shall enter a suit for said property and prosecute it to a final recovery. All moneys derived from these sources shall be paid by the sheriff into the State Treasury for the benefit of the State School Fund.

History.—ss. 4, 5, ch. 344, 1850; RS 2015; GS 2537; RGS 3892; CGL 5799; s. 4, ch. 63-267.

Note.—Former s. 705.06.

705.17 Exceptions.—The provisions of ss. 705.101-705.106 of this chapter shall not be applied to any personal property lost or abandoned on the campus of any institution in the State University System or on premises owned or controlled by the operator of a public-use airport having regularly scheduled international passenger service.

History.—s. 1, ch. 71-75; s. 6, ch. 87-82; s. 22, ch. 91-110; s. 61, ch. 96-323.

705.18 Disposal of personal property lost or abandoned on university or Florida College System institution campuses; disposition of proceeds from sale.—Whenever any lost or abandoned personal property is found on a campus of an institution in the State University System or a campus of a Florida College System institution, the president of the institution or the president's designee shall take charge of the property and make a record of the date such property was found. If the property is not claimed by the owner within 30 days after it is found, or a longer period of time as may be deemed appropriate by the president, the president or his or her designee shall dispose of or make use of the property in accordance with established policies and procedures that best meet the needs of the university or the Florida College System institution and its students. The rightful owner of the property may reclaim the property at any time prior to the disposition, sale, or use of the property in accordance with this section and the established policies and procedures of the university or the Florida College System institution.

History.—s. 1, ch. 71-75; s. 1, ch. 77-131; s. 62, ch. 96-323; s. 1762, ch. 97-102; s. 44, ch. 2010-225; s. 2, ch. 2011-177

705.182 Disposal of personal property found on the premises of public-use airports.—

(1) Whenever any personal property, other than an aircraft or motor vehicle, is found on premises owned or controlled by the operator of a public-use airport, the director of the airport or the director's designee shall take charge of the property and make a record of the date such property was found.

(2) If, within 30 calendar days after such property is found or for a longer period of time as may be deemed appropriate by the director or the director's designee under the circumstances, the property is not claimed by the owner, the director or the director's designee may:

- (a) Retain any or all of the property for use by the airport or for use by the state or the unit of local government owning or operating the airport;
- (b) Trade such property to another unit of local government or a state agency;
- (c) Donate the property to a charitable organization;
- (d) Sell the property; or
- (e) Dispose of the property through an appropriate refuse removal company or a company that provides salvage services for the type of personal property found or located on the airport premises.

(3) The airport shall notify the owner, if known, of the property found on the airport premises and that the airport intends to dispose of the property as provided in subsection (2).

(4) If the airport elects to sell the property under paragraph (2)(d), the property must be sold at a public auction either on the Internet or at a specified physical location after giving notice of the time and place of sale, at least 10 calendar days prior to the date of sale, in a publication of general circulation within the county where the airport is located and after written notice, via certified mail, return receipt requested, is provided to the owner, if known. Any such notice shall be sufficient if the notice refers to the airport's intention to sell all then-accumulated found property, and there is no requirement that the notice identify each item to be sold. The rightful owner of such property may reclaim the property at any time prior to sale by presenting acceptable evidence of ownership to the airport director or the director's designee. All proceeds from the sale of the property shall be retained by the airport for use by the airport in any lawfully authorized manner.

Such notice shall be not less than 8 inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the weather. If, at the end of 30 calendar days after posting the notice, the owner or any person interested in the described derelict or abandoned aircraft has not removed the aircraft from the airport upon payment in full of all accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft, or shown reasonable cause for failure to do so, the director or the director's designee may cause the use, trade, sale, or removal of the aircraft as described in s. 705.182(2)(a), (b), (d), or (e).

(4) Such aircraft shall be removed within the time period specified in the notice provided under subsection (2) or subsection (3). If, at the end of such period of time, the owner or any person interested in the described derelict or abandoned aircraft has not removed the aircraft from the airport upon payment in full of all accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft, or shown reasonable cause for the failure to do so, the director or the director's designee may cause the use, trade, sale, or removal of the aircraft as described in s. 705.182(2)(a), (b), (d), or (e).

(a) If the airport elects to sell the aircraft in accordance with s. 705.182(2)(d), the aircraft must be sold at public auction after giving notice of the time and place of sale, at least 10 calendar days prior to the date of sale, in a publication of general circulation within the county where the airport is located and after providing written notice of the intended sale to all parties known to have an interest in the aircraft.

(b) If the airport elects to dispose of the aircraft in accordance with s. 705.182(2)(e), the airport shall be entitled to negotiate with the company for a price to be received from such company in payment for the aircraft, or, if circumstances so warrant, a price to be paid to such company by the airport for the costs of disposing of the aircraft. All information pertaining to the establishment of such price and the justification for the amount of such price shall be prepared and maintained by the airport, and such negotiated price shall be deemed to be a commercially reasonable price.

(c) If the sale price or the negotiated price is less than the airport's then current charges and costs against the aircraft, or if the airport is required to pay the salvage company for its services, the owner of the aircraft shall remain liable to the airport for the airport's costs that are not offset by the sale price or negotiated price, in addition to the owner's liability for payment to the airport of the price the airport was required to pay any salvage company. All costs incurred by the airport in the removal, storage, and sale of any aircraft shall be recoverable against the owner of the aircraft.

(5) The airport shall have a lien on a derelict or abandoned aircraft for all fees and charges for the use of the airport by such aircraft and for all fees and charges incurred by the airport for the transportation, storage, and removal of the aircraft. As a prerequisite to perfecting a lien under this section, the airport director or the director's designee must serve a notice in accordance with subsection (2) on the last registered owner and all persons having an equitable or legal interest in the aircraft. Serving the notice does not dispense with recording the claim of lien.

(6)(a) For the purpose of perfecting its lien under this section, the airport shall record a claim of lien which shall state:

1. The name and address of the airport.
 2. The name of the last registered owner of the aircraft and all persons having a legal or equitable interest in the aircraft.
 3. The fees and charges incurred by the aircraft for the use of the airport and the fees and charges for the transportation, storage, and removal of the aircraft.
 4. A description of the aircraft sufficient for identification.
- (b) The claim of lien shall be signed and sworn to or affirmed by the airport director or the director's designee.
- (c) The claim of lien shall be sufficient if it is in substantially the following form:

CLAIM OF LIEN

State of
County of

the airport premises. If the motor vehicle is to be removed from airport premises by the airport's wrecker, the airport must follow the procedures in subsections (2)-(8). The procedures in subsections (2)-(8) do not apply if the motor vehicle is removed from the airport premises by a licensed independent wrecker company, and the licensed wrecking company shall comply with s. 713.78.

(2) The airport director or the director's designee shall contact the Department of Highway Safety and Motor Vehicles to notify that department that the airport has possession of the abandoned or derelict motor vehicle and to determine the name and address of the owner of the motor vehicle, the insurance company insuring the motor vehicle, notwithstanding the provisions of s. 627.736, and any person who has filed a lien on the motor vehicle. Within 7 business days after receipt of the information, the director or the director's designee shall send notice by certified mail, return receipt requested, to the owner of the motor vehicle, the insurance company insuring the motor vehicle, notwithstanding the provisions of s. 627.736, and all persons of record claiming a lien against the motor vehicle. The notice shall state the fact of possession of the motor vehicle, that charges for reasonable towing, storage, and parking fees, if any, have accrued and the amount thereof, that a lien as provided in subsection (6) will be claimed, that the lien is subject to enforcement pursuant to law, that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (4), and that any motor vehicle which, at the end of 30 calendar days after receipt of the notice, has not been removed from the airport upon payment in full of all accrued charges for reasonable towing, storage, and parking fees, if any, may be disposed of as provided in s. 705.182(2)(a), (b), (d), or (e), including, but not limited to, the motor vehicle being sold free of all prior liens after 35 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are more than 5 years of age or after 50 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are 5 years of age or less.

(3) If attempts to notify the owner or lienholder pursuant to subsection (2) are not successful, the requirement of notice by mail shall be considered met and the director or the director's designee, in accordance with subsection (5), may cause the motor vehicle to be disposed of as provided in s. 705.182(2)(a), (b), (d), or (e), including, but not limited to, the motor vehicle being sold free of all prior liens after 35 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are more than 5 years of age or after 50 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are 5 years of age or less.

(4)(a) The owner of, or any person with a lien on, a motor vehicle removed pursuant to subsection (1), may, within 10 calendar days after the time he or she has knowledge of the location of the motor vehicle, file a complaint in the county court of the county in which the motor vehicle is stored to determine if his or her property was wrongfully taken or withheld.

(b) Upon filing a complaint, an owner or lienholder may have his or her motor vehicle released upon posting with the court a cash or surety bond or other adequate security equal to the amount of the fees for towing, storage, and accrued parking, if any, to ensure the payment of such fees in the event he or she does not prevail. Upon the posting of the bond or other adequate security and the payment of any applicable fee, the clerk of the court shall issue a certificate notifying the airport of the posting of the bond or other adequate security and directing the airport to release the motor vehicle. At the time of such release, after reasonable inspection, the owner or lienholder shall give a receipt to the airport reciting any claims he or she has for loss or damage to the motor vehicle or the contents of the motor vehicle.

(5) If, after 30 calendar days after receipt of the notice, the owner or any person claiming a lien has not removed the motor vehicle from its storage location upon payment in full of all accrued charges for reasonable towing, storage, and parking fees, if any, or shown reasonable cause for the failure to do so, the airport director or the director's designee may dispose of the motor vehicle as provided in s. 705.182(2)(a), (b), (d), or (e). If the airport elects to sell the motor vehicle pursuant to s. 705.182(2)(d), the motor vehicle may be sold free of all prior liens after 35 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are more than 5 years of age or after 50 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are 5 years of age or less. The sale shall be a public auction either on the Internet or at a specified physical location. If the date of the sale was not included in the notice required in subsection (2), notice

(e) The claim of lien shall be recorded with the clerk of court in the county where the airport is located. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The lien shall attach at the time of recordation and shall take priority as of that time.

(8) A purchaser or recipient in good faith of a motor vehicle sold or obtained under this section takes the property free of the rights of persons then holding any legal or equitable interest thereto, whether or not recorded.

History.—s. 47, ch. 2010-225.

705.19 Abandonment of animals by owner; procedure for handling.—

(1) Any animal placed in the custody of a licensed veterinarian or bona fide boarding kennel for treatment, boarding, or other care, which shall be abandoned by its owner or the owner's agent for a period of more than 10 days after written notice is given to the owner or the owner's agent at her or his last known address may be turned over to the custody of the nearest humane society or dog pound in the area for disposal as such custodian may deem proper.

(2) The giving of notice to the owner, or the agent of the owner, of such animal by the licensed veterinarian or kennel operator as provided in subsection (1) shall relieve the veterinarian or kennel operator and any custodian to whom such animal may be given of any further liability for disposal. Such procedure by a licensed veterinarian shall not constitute grounds for disciplinary procedure under chapter 474.

(3) For the purpose of this section, the term "abandonment" means to forsake entirely or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner or the owner's agent. Such abandonment shall constitute the relinquishment of all rights and claim by the owner to such animal.

History.—ss. 1, 2, ch. 79-228; ss. 1, 2, ch. 81-157; s. 3, ch. 81-318; s. 792, ch. 97-102.

AGENDA ITEM REPORT

March 12, 2018

ITEM NUMBER: 2

ITEM: Consideration and Approval of an ordinance on **first** reading requested Mayor Leonard to prohibit unattended personal property upon public property. Enclosed is a copy of the ordinance.

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
 Jordan Leonard, Mayor

ATTACHMENTS

1.	Ordinance - personal property on Public property	Ordinance - personal property on Public property.pdf
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ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 18 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED STREETS AND SIDEWALKS, BY ADDING SECTION 18-10 ENTITLED PROHIBITION OF UNATTENDED PERSONAL PROPERTY UPON PUBLIC PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council is charged with the protection of the health, safety and welfare of the Town's residents; and

WHEREAS, the Town Council of the Town of Bay Harbor Islands is charged with preserving and maintaining the high quality and standards and aesthetic beauty contained within the Town;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA:

Section 1: That Section 18-10 of the Town of Bay Harbor Islands Code of Ordinances is hereby added as set forth in the attached Exhibit "A," and by reference is made a part hereof.

Section 2: That if any section, paragraph, sentence or word of this Ordinance or the application thereof to any person or circumstance is held invalid, that the invalidity shall not affect the other sections, paragraphs, sentences, words or application of this Ordinance.

Section 3: That it is the intention of the Town Council of the Town of Bay Harbor Islands, Florida, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of the Town of Bay Harbor Islands' Code of Ordinances, that 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 4: That all Ordinances, parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 5: That this Ordinance shall be in full force and take effect upon its passage and adoption.

PASSED on First Reading this _____ day of _____ 2018.

PASSED AND ADOPTED on Second Reading this _____ day of _____ 2018.

JORDAN W. LEONARD
Mayor

ATTEST:

MARLENE SIEGEL
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG SHERMAN, ESQ.
Town Attorney

EXHIBIT A

Sec. 18-10. –Prohibition of Unattended Personal Property on Public Property.

- a. Purpose. The Purpose of this section is to restrict interference with the flow of pedestrian and vehicular traffic and to ensure the safety of all persons traversing sidewalks, streets, rights of way, and public property.
- b. Personal Property shall not be left unattended on public property. It shall be unlawful for any person or business entity to leave (or permit to be left) any personal property (whether owned or in his, her, or its possession, custody or control) unattended upon any sidewalk, street, right of way, or upon public property, unless otherwise provided for in the Town Code of Ordinances or by agreement of the Town and the personal property owner.
- c. Removal of unattended personal property. Town employees are hereby authorized to remove unattended personal property located on any sidewalk, street, right of way, or upon public property and bring such personal property to an impoundment area, such other place of safety, or to an area designated or maintained by the Town for such personal property. Abandoned and lost property shall be administered pursuant to Chapter 705, Florida Statutes.
- d. Charges to be paid before property released from impoundment. No property retained in an impoundment area as herein provided shall be released therefrom until the charges for notice, transportation of such property into an impoundment area, and storage charges have been paid. Such charges shall be fixed by Resolution based upon a computation of all actual expenses entered into the notice, removal, and storage of the same. Such charge or charges shall be available for public inspection in the office of the Town Clerk.
- e. This Section 18-10 is not applicable to and shall not preempt Section 23-11(c)(16) entitled Sidewalk cafes/outdoor seating for restaurants.

AGENDA ITEM REPORT

March 12, 2018

ITEM NUMBER: 10.

ITEM: Discussion and possible action requested by Council Member Fuller to explore the option of acquiring the property located on the southwest corner of Bay Harbor Terrace and 97 Street (currently being utilize as a parking lot for 1111 Kane Concourse) through eminent domain. Enclosed is a copy of Memorandum provided by Town Attorneys Craig Sherman and Frank Simone.

DESCRIPTION:

Enclosed is a memorandum with information on the process to follow to initiate eminent domain procedures. The Town attorneys are requesting direction from the Town Council and a determination as to whether the the Council wishes to commence the eminent domain process, and if so, how.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
Joshua Fuller, Council Member

ATTACHMENTS

1.	2018.02.26 Memo Eminent Domain (2)	2018.02.26 Memo Eminent Domain (2).pdf
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SHERMAN & SHERMAN P.A.

Attorneys at Law

701 BRICKELL AVENUE
SUITE 1550
MIAMI, FLORIDA 33131

TELEPHONE (305) 221-8000

TELEFAX (305) 357-2510

WEBSITE: ShermansLaw.com

To: Ronald Wasson, Town Manager

**From: Craig B. Sherman, Esq, Town Attorney and
Frank C. Simone, Assistant Town Attorney**



Date: February 26, 2018

Re: Eminent Domain

The instant Memorandum addresses the recent question asked, to wit: whether the Town of Bay Harbor Islands ("Town") may acquire privately owned real property located adjacent to Town Hall by eminent domain in order to build a new Town Hall within a parking garage (or for other Town use) for a public purpose.

I. Standard for the Municipal Taking of Private Property.

The United States and Florida Constitutions both contain public purpose provisions for the taking of private property by a municipality. The provisions are substantially the same, except that the Florida Legislature requires that private property may be taken only for a public use. The Fifth Amendment to the US Constitution prohibits the taking of private property for public use without just compensation. Article X, Section 6(a) of the Florida Constitution states that "[n]o private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner." (emphasis added).

In 2006, the Florida Legislature made numerous changes to the eminent domain law, to reinforce the constitutional requirement that private property be taken only for a public use. Section 73.013, Florida Statutes was created to prohibit the conveyance of property taken by eminent domain to be given to a private entity, except as provided for by statute. Among other things, the statute provides that property acquired by eminent domain "may not be conveyed by the condemning authority or any other entity to a natural person or private entity by lease or otherwise, except if it "occupies, pursuant to a lease, an incidental part of a public property or a public facility for the purpose of providing goods or services to the public." Section 73.013(1)(e), Florida Statutes.

Where the particular facts show a coexistence of public and private benefits, the determination of whether a public use has been established may depend on whether the public benefits are of a

primary rather than a merely incidental character. *Demeter Land Co. v. Florida Public Service Co.*, 99 Fla. 954, 128 So. 402 (1930).

As a general rule, the exercise of the power of eminent domain for a primary and paramount public purpose may not be defeated by the fact that a private use or benefit will result that, itself, would not warrant exercise of the power. *Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale*, 315 So. 2d 451 (Fla. 1975). Thus, the fact that incidental benefits will inure to private individuals or corporations is immaterial where the use to be made of the condemned property is fixed and definite, and the control of such use is retained by the condemning authority for a public purpose. *Grubstein v. Urban Renewal Agency of City of Tamoa*, 115 So.2d 745 (Fla. 1959). The public purpose must be the dominant and primary purpose of the enactment, and the use of the property by private parties must be merely a subordinate purpose that is linked to the primary. *Id.*

A public purpose has been found to exist in the following cases: *Spafford v. Brevard County*, 92 Fla. 617, 110 So. 451 (1926) (taking for public roads); *West Gate Shopping Center Inc. v. Division of Administration, State Dept. of Transportation*, 363 So.2d 407 (Fla. 1st DCA 1978) (taking for pedestrian and bicycle ways); *Salfi v. Division of Administration, State, Dept. of Transportation*, 312 So.2d 781 (Fla. 4th DCA 1975) (taking for a rest area next to limited access highway); *Demeter Land Co. v. Florida Public Service Co.*, 99 Fla. 954, 128 So. 402 (1930) (taking for power lines); *State v. City of Tallahassee*, 142 Fla. 476 (1940) (taking for a state office building); *City of Miami v. Coconut Grove Marine Properties, Inc.*, 358 So.2d 1151 (Fla. 3d DCA 1978) (taking for the purpose of a public recreational facility that included the incidental private use of concession facilities and private shops); *Gate City Garage v. City of Jacksonville*, 66 So.2d 653 (Fla. 1953) (taking authority's lease to a private gas station when the remainder of the property was used as a downtown public parking area).

In contrast, a public purpose has not been found to exist in the followings cases: *City of Jacksonville v. Moman*, 290 So.2d 105 (Fla. 1st DCA 1974) (taking of a slum to establish a cohesive neighborhood); *Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale*, 315 So.2d 451 (Fla. 1975) (taking of downtown property to construct a shopping center above a proposed municipal parking facility when there would have been no public need for the parking facilities in the absence of the shopping center); *Osceola County v. Triple E Development Co.*, 90 So.2d 600 (Fla. 1956) (taking of the right-of way for private, nonnavigable private lakes).

Based on the foregoing, a court may determine that the Town has the right to take the adjacent private property by eminent domain for the public purpose of building a new Town Hall and providing a parking garage for public use, provided that any private use is only incidental to the Town's public use.

II. If an Eminent Domain Action is Initiated, a Declaratory Judgment Action is the Recommended First Step.

If the Town wishes to proceed with an eminent domain action, it is advised that the Town file an action for declaratory judgment first in order to determine the parties who may have ownership

of the property. Based upon information and belief, one or more persons/entities may claim to own the subject adjacent land, including those who may claim ownership of development/air rights. It would be advisable, and is recommended, to serve all putative land owners and have the court adjudicate who the actual land owners are, including any person/entity that may own any air/development rights.

A declaratory judgment action would seek a judgment by the court, declaring the rights of the Town and land owners, including any development/air rights owners. Here, an action for declaratory judgment would determine whose interests will be affected by the Town's possible taking of the property via eminent domain, so that an accurate appraisal of the property and all ownership interests may be determined. An action for declaratory judgment in the trial court will likely cost between \$25,000.00 and \$35,000.00.

III. An Appraisal is the Recommended Second Step

After the property ownership rights are adjudicated and determined by the court through a declaratory judgment, an appraisal of the property will be necessary to estimate the amount of compensation the Town will have to pay the property owners in order to take the property. Separate appraisals of the land rights and air rights (if any) will be needed. The cost of the appraisal for the land rights and air rights (if any) can be ascertained only after the determination of the rights in the property are adjudicated. A rough estimate is between \$30,000.00 and \$50,000.00.

IV. Eminent Domain by Slow Take Or Quick Take

Once the property is appraised and if the Court determines that the Town has the right to take the property, the Town may take the property by either a "slow take," pursuant to Chapter 73, Florida Statutes, or a "quick take," pursuant to Chapter 74, Florida Statutes. In a Chapter 73 proceeding ("slow take"), the title of the property would not pass to the Town until after a jury verdict determining the amount of compensation due to the property owners. Therefore, under a Chapter 73 slow take proceeding, the Town would be free to abandon the taking of the property if the jury returns an unfavorable judgment amount (value of the land) and would only be subject to the payment of the property owners' reasonable attorneys' fees.

On the other hand, in a Chapter 74 proceeding ("quick take"), the Town would have the right to take possession and title of the property in advance of a verdict by the jury. However, a good faith estimate of value, based upon a valid appraisal of the property, would have to be deposited to the court registry in order for the title of the property to vest in the Town. Once the deposit is made, the Town would be committed to the taking of the property and would be obligated to pay the full amount of the jury verdict even if the jury verdict exceeds the amount of the deposit (and the Town's appraisal). *See Miami v. Florida East Coast Railway Co.* 428 So.2d 674 (Fla. 3d DCA 1983) (the City of Miami was obligated to pay a verdict of \$23.3 million even though the verdict exceeded the city's deposit of \$14.5 million pursuant to its appraisal).

Therefore, it is advised that, if the Town were to engage in an eminent domain taking of the property, the Town proceed to take the property by a "slow take" rather than a "quick take" so

that the Town may abandon the eminent domain process and avoid paying an inflated price for the property if there is an unfavorable verdict by the jury (and only pay the property owners' reasonable attorneys' fees).

We look forward to discussing this matter with the Town Council and determining whether the Town Council wishes to commence the foregoing eminent domain process, and if so, how.

AGENDA ITEM REPORT

March 12, 2018

ITEM NUMBER: 11.

ITEM: Consideration and Approval of Contract Award BHI-192 to Arrow Asphalt Inc. in the amount of \$83,725.50 for Resurfacing and Re-stripping the Municipal Parking Lot on 95th Street. Enclosed is a copy of the bid results and supporting documents.

DESCRIPTION:

Seven Bids were received on February 20th in response to the bid advertisement on January 31st 2018 to resurface and re-stripe the Municipal Parking lot on 95th Street. The bid results and a comprehensive bid evaluation report is attached.

The apparent low bidder is Arrow Asphalt Inc. whose bid was submitted in the amount of \$83,725.50. The bid from Arrow Asphalt was the lowest bid received, and Arrow Asphalt was deemed to be the lowest responsive bidder.

The budget for this project is \$80,000.00.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

The budgeted amount for this project was \$80,000, it is recommended that an amount of \$3,725.50, that is over the budgeted figure be appropriated from the Parking Reserves Fund.

BUDGET IMPACT:

Submitted By: Randy Daniel, Town Engineer

ATTACHMENTS

1.	BHI-192 BID RESULTS	BHI-192 BID RESULTS.pdf
2.	Bid Evaluation for BHI 192	BHI 192 Municipal Lot 95th Street.doc

Town of Bay Harbor Islands

BID CLOSING

Tuesday, February 20, 2018 @ 3:00 PM

BHI-192- Municipal Parking Lot - 95th Street Resurfacing and re-striping

1.		Bid Bond	Bid Amount \$
Company Name Contractor Name Address/ Phone #	V. Engineering	✓	\$217,420.00
	2929 SW 3rd Ave		
	Ste 340, Miami, FL 33129		
2.			
Company Name Contractor Name Address/ Phone #	Team Contracting Inc	✓	\$144,790.00
	13911 SW 42 St		
	#209, Miami, FL 33175		
3.			
Company Name Contractor Name Address/ Phone #	Miguel Lopez Jr. Inc	✓	\$102,844.91
	21065 Tuck St		
	Pembroke Pines, FL		
	33029		
4.			
Company Name Contractor Name Address/ Phone #	Stone Concept Miami	✓	\$107,513.50
	1239 Robin Ave		
	Miami Springs, FL		
	33166		

5.		Bid Bond	Bid Amount \$
Company Name Contractor Name Address/ Phone #	Arjcd Group, Inc	✓	\$129,717.50
	10101 SW 35 terr		
	Miami, FI 33165		

6.		Bid Bond	Bid Amount \$
Company Name Contractor Name Address/ Phone #	Annow Asphalt	✓	\$83,725.50
	3051 NW 129 St		
	Opalock 33054		

7.		Bid Bond	Bid Amount \$
Company Name Contractor Name Address/ Phone #	ABC Constructur	✓	\$146,743.40
	7215 NW 7 St		
	Miami, FI. 33126		

8.		Bid Bond	Bid Amount \$
Company Name Contractor Name Address/ Phone #			

9.		Bid Bond	Bid Amount \$
Company Name Contractor Name Address/ Phone #			

Town of Bay Harbor Islands

BID CLOSING – SIGN IN SHEET

February 20, 2018 @ 3:00PM

BHI 192 – Municipal Parking Lot
Resurfacing and re-striping

NAME/COMPANY	MAILING ADDRESS	PHONE NUMBER AND FAX NUMBER	EMAIL
Marlene Siegel Town Clerk Town of BHI	9665 Bay Harbor Terrace, BHI, FL	305-866-6241	Msiegel@bayharborislands-fl.gov
Alba Chang Deputy Town Clerk Town of BHI	9665 Bay Harbor Terrace, BHI, FL	305-866-6241	achang@bayharborislands-fl.gov
Anjed Group Inc.	10101 SW 35 Terr Miami FL 33165	(305) 297-4883	abalsinde@hotmail.com
ABC CONSTRUCTION	7215 NW 75T MIAMI FL 33126	305 663 0322	RICK E ABCCONSTRUCTION.CC

NAME/COMPANY	MAILING ADDRESS	PHONE NUMBER AND FAX NUMBER	EMAIL
Stone Concept Miami Inc	1239 Robin Ave Miami Springs FL 33166	786-337-3425	ali@scmiami.com
Miguel Lopez Jr inc	21005 Taft St Pembroke Pines FL	786-337-3425 305 884 0967	Miguel@Lopezinc.com
V Engineering	2929 SW 3rd Ave, Miami, FL 33129	786-420-5950	justin@veccorp.net
Yusnielky Ruiz	Admin. Assist	(305) 846-6241	yPalacio@bayharbor islands - FL.gov.

interoffice
MEMORANDUM



From: Randy Daniel, P.E. - Town Engineer/Director of Public Works

To: Ron Wasson - Town Manager

Copy: J.C. Jimenez - Assistant Town Manager
Mellissa Cruz – Finance Officer

Date: February 22, 2018

Subject: BHI 192 Municipal Parking Lot on 95th Street
Bid Evaluation for Contract Award

1.0 BACKGROUND

Resurfacing Municipal Parking Lots is performed on a routine basis to ensure continued serviceability and to comply with new codifications with respect to handicap parking.

This Project to Resurface the Municipal lot on 95th Street was advertised on January 31st 2018 and bids were due on February 20th 2018. A non-mandatory pre-bid meeting was convened at Town Hall on February 13th at 11:00 A.M, and five (5) contractors were in attendance. A site visit followed the pre-bid meeting.

Bids were opened publicly by the Town Clerk's office and in addition to the Town Clerk, the Assistant Town Clerk and the Administrative Assistant for Public Works five (5) contractors were present for the opening. A total of seven (7) bids were received.

2.0 ANALYSIS OF BIDS

The bids received are illustrated in the Table 1 below.

TABLE 1: SUMMARY OF BID RESULTS

NO.	CONTRACTOR	BID AMOUNT	BID BOND
1	V. Engineering & Consulting Corp.	\$217,420.00	YES
2	Team Contracting, Inc.	\$144,790.00	YES
3	Miguel Lopez Jr. Inc.	\$102,844.91	YES
4	Stone Concept Miami	\$107,513.50	YES
5	ABC Construction	\$146,743.40	YES

6	Arrow Asphalt	\$83,725.50	YES
7	Anjed Group, Inc.	\$129,717.50	YES

The Bids ranged from a low of \$83,725.50, submitted by Arrow Asphalt to a high of \$217,420.00, (V. Engineering and Consulting Group). A difference of \$133,694.50 separated these two bids.

The budget for this project is \$80,000.00.

All bidders appear to be duly qualified and capable of performing the work. They all submitted Bid Bonds with their Bids, which was a requirement of the bid process. Based on the spread of submissions, the highest bid was considered to be unreasonable as it is \$133,694.50 above the low bid, and was consequently dropped from further analysis.

The amount of \$63,017.90 separates the next high bid from the low bid. The second low bid was submitted by Miguel Lopez Jr. Inc. and is in the amount of \$102,844.91, or \$19,119.41 higher than the low bid. A comparison of the bid items for these two bidders is illustrated in Table 2.

Table 2
Comparison of lowest two bids

No.	Bid Item Description	Arrow Asphalt	Miguel Lopez Jr. Inc.
1	Maintenance of Traffic	\$500.00	\$6,821.41
2	Topographic Surveys	\$750.00	\$5,100.00
3	Excavate failed base course to maximum depth 24" and replace with compacted Lime rock (95% Mod Proctor)	\$4,950.00	\$3,375.00
4	Remove and dispose of parking meter poles	\$2,700.00	\$4,050.00
5	Remove old asphalt	\$11,812.50	\$16,875.00
6	Bituminous Prime Coat	\$1,687.50	\$2,025.00
7	1-1/2" Asphaltic Concrete	\$45,562.50	\$48,937.50
8	Supply and install 6" x 72" concrete wheel stops	\$3,115.00	\$2,848.00
9	4" Solid white stall marking	\$1,250.00	\$1,813.00
10	Regular handicap parking	700.00	\$500.00
11	Van accessible parking marking & signage	700.00	\$500.00
12	Contingency	10,000.00	10,000.00
	Total	\$83,727.50	\$102,844.91

From inspection of the numbers above it is seen that that Bid Items 1, 2 and 5 account for \$15,733.50 out of the total difference (\$19,199.41) between the two bids. This suggests that both bids are competitive and the low bid is the lowest responsive bid.

The low bidder, Arrow Asphalt, Inc. has worked with the Town on numerous asphalt repair projects. Arrow asphalt, Inc. has been an extremely reliable vendor and very cooperative with the Town of Bay Harbor Islands.

3.0 DISCUSSION

Although Arrow Asphalt, Inc. has performed smaller projects than the subject project of this evaluation, I am of the view that Arrow Asphalt has the financial and technical capabilities to perform a contract that is over \$100,000.00. In this regard, Arrow Asphalt, Inc. has provided supporting documentation.

4.0 RECOMMENDATION

It is recommended that the Contract to Resurface and Restripe the 95th Street Municipal Lot be awarded to Arrow Asphalt in the amount of \$83,725.50.

It is also recommended that an amount of \$3,725.50, that is over the budgeted figure be appropriated from the Parking Reserves.

AGENDA ITEM REPORT

March 12, 2018

ITEM NUMBER: 12.

ITEM: Consideration and Approval of a proposal from Chen Moore and Associates in the amount of \$96,250.00 to perform an inspection and assessment report of the seawalls around the East and West Island.

DESCRIPTION:

At the February 12th 2018 Regular Council meeting, The Town Council requested that the Seawall Inspection Report that was performed by Hardesty and Hanover LLP. in the year 2006 be updated.

In this regard, Chen Moore and Associates submitted a proposal, in the amount of \$96,250.00. In addition to the physical inspection of the seawall, the inspection report will address seawall cap elevations to determine the current level of resiliency to seasonal tidal flooding.

A copy of the proposal is attached.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Randy Daniel, Town Engineer

ATTACHMENTS

1.	Chen Moore Proposal	Chen Moore Proposal.pdf
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2103 Coral Way, Suite 401
Miami, FL 33145
Phone: +1 (786) 497-1500
Fax: +1 (786) 497-2300
www.chenmoore.com

February 28, 2018

SENT VIA E-MAIL (rdaniel@bayharborislands-fl.gov)

Mr. Randy Daniel
Town Engineer / Director of Public Works
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

**Subject: Town of Bay Harbor Islands – Islands Shoreline Assessment – Civil Engineering
CMA Proposal No. P18.326.002**

Dear Mr. Daniel:

Chen Moore and Associates (CMA) are pleased to submit the attached Agreement for Professional Services and Scope of Services to provide civil engineering services for the above referenced project at the perimeter of the three islands comprising the Town of Bay Harbor Islands, Florida.

PROJECT INTRODUCTION

As we understand it, the Town of Bay Harbor Islands desires to have Chen Moore and Associates (CMA) perform a thorough inspection and assessment of the seawall and revetment along the perimeter of the three islands comprising the Town (Broad Islands, West Island and East Island). CMA shall perform the required inspections/assessments and prepare and submit an assessment report with our findings and recommendations. We shall sub-contract this work to our coastal sub-consultants, Cummins Cederberg, Inc. in accordance with our continuing services contract. The following proposal shall address the City's request.

PROJECT STAFFING

Our staff and team are ready and prepared to work on this project. Chen Moore staff project roles shall be as follows:

Principal – Peter Moore, P.E., President
Project Director - Jose L. Acosta, P.E., Vice President
Senior Project Manager – Gregory Mendez, P.E.

Sub-consultants for this Project

- Coastal Engineering – Cummins Cederberg, Inc.



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Miami, FL 33145
Phone: +1 (786) 497-1500
Fax: +1 (786) 497-2300
www.chenmoore.com

SCOPE OF SERVICES

The scope of services that our firm shall provide as per our recent discussions, is as follows:

Task 1 – Islands Shoreline Assessment Report

A. Shoreline Inspection

An engineer team from Cummins Cederberg will perform an above and below water inspection of the seawalls and revetment along the three Bay Harbor Islands (approximately 20,000 feet). The team will be led by a Florida Licensed Professional Engineer with support from a vessel. General observations will be made for each property relative to overall conditions. This will include visual assessment of wall type, material, structural elements to identify cracks, spalling, corrosion or other forms of deterioration, visual inspection of the seawall retaining components for excessive deterioration, damage and/or displacement, as well as visual inspection of the toe of the seawall at a representative location for each property (where accessible) for excessive undermining or sediment transport. The inspection will be limited to elements that can be viewed from the water side – no upland inspection will be performed in order not to enter private property, thus potential anchoring systems will not be assessed.

General field notes will be collected to document observed damage or deterioration, which will be referenced to stationing established along the seawall associated with each property. Representative above and below water photographs will also be obtained to document the assessment and will be included in the engineering report, as applicable. The inspection will be conducted generally following methods provided in the American Society of Civil Engineers Manual No. 130: Waterfront Facilities Inspection and Assessment. Color coded maps illustrating conditions and wall type will be prepared

B. Perimeter Elevation Assessment

Cummins Cederberg will compile available LIDAR survey data to obtain elevations along the perimeter of the islands to understand the level of resiliency relative to seasonal tidal flooding ("king tides") and future published sea level rise. The length of shoreline stabilization at various elevations will be determined for the Town to more readily understand exposure to flooding.

C. Engineering Report

A report will be prepared to summarize the engineer observations and results of the inspection along with the perimeter elevation assessment. The report will include an evaluation of the existing shoreline stabilization structures at the islands. Color copies of photographs to reference observations, -coded condition maps, color coded wall type map and shoreline elevation map will be included.

Deliverables – Shoreline Inspection Report in electronic (.pdf) and hard copy formats.

BASIS OF SCOPE

The basis for the above scope of services and associated fee(s) are based on the following:

- Project shall be completed in one phase.
- The Project is in the Town of Bay Harbor Islands, Florida.
- All project management and communications shall be undertaken by the prime consultant, CMA.



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INFORMATION TO BE PROVIDED BY CLIENT

Information to be provided by City includes the following:

- A letter from the property owner granting access to the site and giving approval for Consultant to perform the services listed above.
- Copies of all relevant data, including correspondence, plans or information in the Town's possession which may be beneficial to the work effort performed by Consultant.
- An official Notice to proceed (NTP) or work order from the Town of Bay Harbor Islands.

SCHEDULE AND FEES

Consultant shall schedule work upon receipt of signed approval and shall provide construction documents, bidding assistance and construction inspection and administrative services in accordance with RFQ2013-06 Professional Services Agreement for General Engineering Services.

The total lump sum and Hourly Not to Exceed fees for this project will be divided on the following page:

<u>Task(s)</u>	<u>Task Description</u>	<u>Lump Sum Fees</u>	<u>Total Fees</u>
1	Islands Shoreline Assessment Report	\$94,750.00	\$94,750.00
	Project Management	\$1,500.00	\$1,500.00
	TOTAL	\$96,250.00	\$96,250.00

Reimbursable expenses for mileage and report preparation have been included in the lump sum fees noted above. Additional reimbursable expenses requested by the Client outside of the items for the tasks above, including delivery of additional copies of items shall be invoiced as defined in our Continuing Services Agreement for Professional Engineering Services

This proposal is based on our understanding of the requirements for engineering services as itemized under the anticipated tasks listed above. Accordingly, we reserve the right to modify this proposal due to any changes in scope.

Should you have any questions, please do not hesitate to contact me at my office at +1 (786) 497-1500, Ext. 1125, my cell phone at +1 (305) 562-4789 or send me an electronic message at gmendez@chenmoore.com.

Respectfully submitted,

CHEN MOORE AND ASSOCIATES
Gregory Mendez, P.E.
Miami Branch Manager / Senior Engineer

Cc: Jose L. Acosta, P.E., Chen Moore and Associates



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AGREEMENT FOR PROFESSIONAL SERVICES - WORK AUTHORIZATION

CMA Project Name: **Islands Shoreline Assessment**
Client Name: **Town of Bay Harbor Islands**
Client Contact: **Mr. Randy Daniel, Town Engineer / Director of Public Works**
Client Address: **9665 Bay Harbor Terrace, Bay Harbor Islands FL 33154**
Client Phone/Mobile: **+1 (305) 886-6241 / M(786) 256-8965**
Client E-mail: **rdaniel@bayharborislands-fl.gov**

CMA Project No. **P18.326.002**
Agreement Date: **February 28, 2018**

FEE: Lump Sum of **\$96,250.00**

RETAINER: **N/A**

Notice to Owner: Town of Bay Harbor Islands is the Owner of the site.

The undersigned agree to the afore-mentioned scope of work. Any additional requested services will be addressed in a separate agreement.

CHEN MOORE AND ASSOCIATES, INC. (CONSULTANT)

Authorized Signature

Print Name/Title

Date

TOWN OF BAY HARBOR ISLANDS (CLIENT)

Authorized Signature

Print Name/Title

Date

AGENDA ITEM REPORT

March 12, 2018

ITEM NUMBER: 13.

ITEM: Discussion requested by Council Member Yaffe regarding mechanical parking lifts regulations.

DESCRIPTION:

Section

23-30(f)

Notwithstanding the above provisions, due the limited land areas in the town, changes in parking requirements over the years and current off-street parking arrangements (including roadway swale parking), the town encourages innovative solutions to provide required parking spaces within lot areas. To that end, required parking spaces may be provided in alternate arrangements other than surface parking, if approved by the town council. This shall include, but is not limited to, tandem parking and mechanically stacked parking. This criteria shall apply in both residential and nonresidential developments.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
Robert Yaffe, Council Member

ATTACHMENTS

AGENDA ITEM REPORT

March 12, 2018

ITEM NUMBER: 14.

ITEM: Discussion and possible action requested by Council Member Fuller regarding having a closed meeting to discuss the Town's security systems and plans in connection with an active shooter.

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
Joshua Fuller, Council Member

ATTACHMENTS

1.	119071 General exemptions from inspection or copying of public records (2)	119071 General exemptions from inspection or copying of public records (2).pdf
2.	2860113 General exemptions from public meetings	2860113 General exemptions from public meetings.pdf
3.	AGO Mr Alan S Zimmet	AGO Mr Alan S Zimmet.pdf
4.	Central Florida Regional Transp Authority v Post-Newsweek Stations Orlando Inc	Central Florida Regional Transp Authority v Post-Newsweek Stations Orlando Inc.pdf

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Florida Statutes Annotated

Title X. Public Officers, Employees, and Records (Chapters 110-123)

Chapter 119. Public Records (Refs & Annos)

West's F.S.A. § 119.071

119.071. General exemptions from inspection or copying of public records

Effective: October 1, 2017

Currentness

(1) Agency administration.--

(a) Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. A person who has taken such an examination has the right to review his or her own completed examination.

(b) 1. For purposes of this paragraph, “competitive solicitation” means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

2. Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.

3. If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

(c) Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d) 1. A public record that was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the conclusion of the litigation or adversarial administrative proceedings. For purposes of capital collateral litigation as set forth in s. 27.7001, the Attorney General's office is entitled to claim this exemption for those public records prepared for direct appeal as well as for all capital collateral litigation after direct appeal until execution of sentence or imposition of a life sentence.

2. This exemption is not waived by the release of such public record to another public employee or officer of the same agency or any person consulted by the agency attorney. When asserting the right to withhold a public record pursuant to this paragraph, the agency shall identify the potential parties to any such criminal or civil litigation or adversarial administrative proceedings. If a court finds that the document or other record has been improperly withheld under this paragraph, the party seeking access to such document or record shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court.

(e) Any videotape or video signal that, under an agreement with an agency, is produced, made, or received by, or is in the custody of, a federally licensed radio or television station or its agent is exempt from s. 119.07(1).

(f) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced data processing software that is sensitive are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The designation of agency-produced software as sensitive does not prohibit an agency head from sharing or exchanging such software with another public agency. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) Agency investigations.--

(a) All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

(c) 1. Active criminal intelligence information and active criminal investigative information are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. a. A request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency and the custodian's response to the request, and any information that would identify whether a law enforcement agency has requested or received that public record are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, during the period in which the information constitutes active criminal intelligence information or active criminal investigative information.

b. The law enforcement agency that made the request to inspect or copy a public record shall give notice to the custodial agency when the criminal intelligence information or criminal investigative information is no longer active so that the request made by the law enforcement agency, the custodian's response to the request, and information that would identify whether the law enforcement agency had requested or received that public record are available to the public.

c. This exemption is remedial in nature, and it is the intent of the Legislature that the exemption be applied to requests for information received before, on, or after the effective date of this paragraph.

(d) Any information revealing surveillance techniques or procedures or personnel is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any comprehensive inventory of state and local law enforcement resources compiled pursuant to part I, chapter 23, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to an emergency, as defined in s. 252.34, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and unavailable for inspection, except by personnel authorized by a state or local law enforcement agency, the office of the Governor, the Department of Legal Affairs, the Department of Law Enforcement, or the Division of Emergency Management as having an official need for access to the inventory or comprehensive policies or plans.

(e) Any information revealing the substance of a confession of a person arrested is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition.

(f) Any information revealing the identity of a confidential informant or a confidential source is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(g) 1. All complaints and other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

a. This exemption does not affect any function or activity of the Florida Commission on Human Relations.

b. Any state or federal agency that is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties.

2. If an alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(h) 1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative

information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

(i) Any criminal intelligence information or criminal investigative information that reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(j) 1. Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any information not otherwise held confidential or exempt from s. 119.07(1) which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, upon written request by the victim, which must include official verification that an applicable crime has occurred. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this section.

2. a. Any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in chapter 800 or in s. 794.011, s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, or s. 847.0145, which reveals that minor's identity, including, but not limited to, the minor's face; the minor's home, school, church, or employment telephone number; the minor's home, school, church, or employment address; the name of the minor's school, church, or place of employment; or the personal assets of the minor; and which identifies that minor as the victim of a crime described in this subparagraph, held by a law enforcement agency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any governmental agency that is authorized to have access to such statements by any provision of law shall be granted such access in the furtherance of the agency's statutory duties, notwithstanding the provisions of this section.

b. A public employee or officer who has access to a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in chapter 800 or in s. 794.011, s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, or s. 847.0145 may not willfully and knowingly disclose videotaped information that reveals the minor's identity to a person who is not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order entered by the court having jurisdiction of the alleged offense. A person who violates this provision commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(k) 1. A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation ceases to be active, or until the agency provides written notice to the

employee who is the subject of the complaint, either personally or by mail, that the agency has either:

- a. Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or
- b. Concluded the investigation with a finding to proceed with disciplinary action or file charges.

2. Subparagraph 1. is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

(l) 1. As used in this paragraph, the term:

a. “Body camera” means a portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.

b. “Law enforcement officer” has the same meaning as provided in s. 943.10.

c. “Personal representative” means a parent, a court-appointed guardian, an attorney, or an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

2. A body camera recording, or a portion thereof, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the recording:

- a. Is taken within the interior of a private residence;
- b. Is taken within the interior of a facility that offers health care, mental health care, or social services; or
- c. Is taken in a place that a reasonable person would expect to be private.

3. Notwithstanding subparagraph 2., a body camera recording may be disclosed by a law enforcement agency:

- a. In furtherance of its official duties and responsibilities; or
- b. To another governmental agency in the furtherance of its official duties and responsibilities.

4. A body camera recording, or a portion thereof, shall be disclosed by a law enforcement agency:

- a. To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person's presence in the recording;
- b. To the personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person's presence in the recording;
- c. To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place.
- d. Pursuant to a court order.

(I) In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court shall consider whether:

- (A) Disclosure is necessary to advance a compelling interest;
- (B) The recording contains information that is otherwise exempt or confidential and exempt under the law;
- (C) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
- (D) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;

(E) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;

(F) Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;

(G) The recording could be redacted to protect privacy interests; and

(H) There is good cause to disclose all or portions of a recording.

(II) In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording shall be given reasonable notice of hearings and shall be given an opportunity to participate.

5. A law enforcement agency must retain a body camera recording for at least 90 days.

6. The exemption provided in subparagraph 2. applies retroactively.

7. This exemption does not supersede any other public records exemption that existed before or is created after the effective date of this exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt.

8. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

(m) 1. Criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, as described in s. 782.04, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 2 years after the date on which the murder is observed by the witness. A criminal justice agency may disclose such information:

a. In the furtherance of its official duties and responsibilities.

b. To assist in locating or identifying the witness if the agency believes the witness to be missing or endangered.

c. To another governmental agency for use in the performance of its official duties and responsibilities.

d. To the parties in a pending criminal prosecution as required by law.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(n) Personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(3) Security.--

(a) 1. As used in this paragraph, the term “security system plan” includes all:

a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;

b. Threat assessments conducted by any agency or any private entity;

c. Threat response plans;

d. Emergency evacuation plans;

e. Sheltering arrangements; or

f. Manuals for security personnel, emergency equipment, or security training.

2. A security system plan or portion thereof for:

a. Any property owned by or leased to the state or any of its political subdivisions; or

b. Any privately owned or leased property

held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption is remedial in nature, and it is the intent of the Legislature that this exemption apply to security system plans held by an agency before, on, or after the effective date of this paragraph.

3. Information made confidential and exempt by this paragraph may be disclosed:

a. To the property owner or leaseholder;

b. In furtherance of the official duties and responsibilities of the agency holding the information;

c. To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or

d. Upon a showing of good cause before a court of competent jurisdiction.

(b) 1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed:

- a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- b. To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or
- c. Upon a showing of good cause before a court of competent jurisdiction.

4. The entities or persons receiving such information shall maintain the exempt status of the information.

(c) 1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development, which records are held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to any such records held by an agency before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to the owner or owners of the structure in question or the owner's legal representative; or upon a showing of good cause before a court of competent jurisdiction.

4. This paragraph does not apply to comprehensive plans or site plans, or amendments thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review.

5. As used in this paragraph, the term:

a. "Attractions and recreation facility" means any sports, entertainment, amusement, or recreation facility, including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility that:

(I) For single-performance facilities:

(A) Provides single-performance facilities; or

(B) Provides more than 10,000 permanent seats for spectators.

(II) For serial-performance facilities:

(A) Provides parking spaces for more than 1,000 motor vehicles; or

(B) Provides more than 4,000 permanent seats for spectators.

b. "Entertainment or resort complex" means a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owners or operators of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity includes an area within a 5-mile radius of the theme park complex.

c. "Industrial complex" means any industrial, manufacturing, processing, distribution, warehousing, or wholesale facility or plant, as well as accessory uses and structures, under common ownership that:

(I) Provides onsite parking for more than 250 motor vehicles;

(II) Encompasses 500,000 square feet or more of gross floor area; or

(III) Occupies a site of 100 acres or more, but excluding wholesale facilities or plants that primarily serve or deal onsite with the general public.

d. "Retail and service development" means any retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite and is operated under one common property ownership, development plan, or management that:

(I) Encompasses more than 400,000 square feet of gross floor area; or

(II) Provides parking spaces for more than 2,500 motor vehicles.

e. "Office development" means any office building or park operated under common ownership, development plan, or management that encompasses 300,000 or more square feet of gross floor area.

f. "Hotel or motel development" means any hotel or motel development that accommodates 350 or more units.

(4) Agency personnel information.--

(a) 1. The social security numbers of all current and former agency employees which are held by the employing agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. The social security numbers of current and former agency employees may be disclosed by the employing agency:

a. If disclosure of the social security number is expressly required by federal or state law or a court order.

b. To another agency or governmental entity if disclosure of the social security number is necessary for the receiving agency or entity to perform its duties and responsibilities.

c. If the current or former agency employee expressly consents in writing to the disclosure of his or her social security number.

(b) 1. Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission or pursuant to court order.

2. a. Personal identifying information of a dependent child of a current or former officer or employee of an agency, which dependent child is insured by an agency group insurance plan, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this exemption, "dependent child" has the same meaning as in s. 409.2554.

b. This exemption is remedial in nature and applies to such personal identifying information held by an agency before, on, or

after the effective date of this exemption.

(c) Any information revealing undercover personnel of any criminal justice agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d) 1. For purposes of this paragraph, the term “telephone numbers” includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2. a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers’ compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation’s Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This

sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of

employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

l. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

(5) Other personal information.--

(a) 1. a. The Legislature acknowledges that the social security number was never intended to be used for business purposes but was intended to be used solely for the administration of the federal Social Security System. The Legislature is further aware that over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

b. The Legislature recognizes that the social security number can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual.

c. The Legislature intends to monitor the use of social security numbers held by agencies in order to maintain a balanced public policy.

2. a. An agency may not collect an individual's social security number unless the agency has stated in writing the purpose for its collection and unless it is:

(I) Specifically authorized by law to do so; or

(II) Imperative for the performance of that agency's duties and responsibilities as prescribed by law.

b. An agency shall identify in writing the specific federal or state law governing the collection, use, or release of social security numbers for each purpose for which the agency collects the social security number, including any authorized exceptions that apply to such collection, use, or release. Each agency shall ensure that the collection, use, or release of social security numbers complies with the specific applicable federal or state law.

c. Social security numbers collected by an agency may not be used by that agency for any purpose other than the purpose provided in the written statement.

3. An agency collecting an individual's social security number shall provide that individual with a copy of the written statement required in subparagraph 2. The written statement also shall state whether collection of the individual's social security number is authorized or mandatory under federal or state law.

4. Each agency shall review whether its collection of social security numbers is in compliance with subparagraph 2. If the agency determines that collection of a social security number is not in compliance with subparagraph 2., the agency shall immediately discontinue the collection of social security numbers for that purpose.

5. Social security numbers held by an agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to social security numbers held by an agency before, on, or after the effective date of this exemption. This exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemption for social security numbers existing prior to May 13, 2002, or created thereafter.

6. Social security numbers held by an agency may be disclosed if any of the following apply:

- a. The disclosure of the social security number is expressly required by federal or state law or a court order.
- b. The disclosure of the social security number is necessary for the receiving agency or governmental entity to perform its duties and responsibilities.
- c. The individual expressly consents in writing to the disclosure of his or her social security number.
- d. The disclosure of the social security number is made to comply with the USA Patriot Act of 2001, Pub. L. No. 107-56, or Presidential Executive Order 13224.
- e. The disclosure of the social security number is made to a commercial entity for the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.; the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq.; or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., provided that the authorized commercial entity complies with the requirements of this paragraph.
- f. The disclosure of the social security number is for the purpose of the administration of health benefits for an agency employee or his or her dependents.
- g. The disclosure of the social security number is for the purpose of the administration of a pension fund administered for the agency employee's retirement fund, deferred compensation plan, or defined contribution plan.
- h. The disclosure of the social security number is for the purpose of the administration of the Uniform Commercial Code by the office of the Secretary of State.

7. a. For purposes of this subsection, the term:

(I) "Commercial activity" means the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.; the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq.; or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., or verification of the accuracy of personal information received by a commercial entity in the normal course of its business, including identification or prevention of fraud or matching, verifying, or retrieving

information. It does not include the display or bulk sale of social security numbers to the public or the distribution of such numbers to any customer that is not identifiable by the commercial entity.

(II) “Commercial entity” means any corporation, partnership, limited partnership, proprietorship, sole proprietorship, firm, enterprise, franchise, or association that performs a commercial activity in this state.

b. An agency may not deny a commercial entity engaged in the performance of a commercial activity access to social security numbers, provided the social security numbers will be used only in the performance of a commercial activity and provided the commercial entity makes a written request for the social security numbers. The written request must:

(I) Be verified as provided in s. 92.525;

(II) Be legibly signed by an authorized officer, employee, or agent of the commercial entity;

(III) Contain the commercial entity’s name, business mailing and location addresses, and business telephone number; and

(IV) Contain a statement of the specific purposes for which it needs the social security numbers and how the social security numbers will be used in the performance of a commercial activity, including the identification of any specific federal or state law that permits such use.

c. An agency may request any other information reasonably necessary to verify the identity of a commercial entity requesting the social security numbers and the specific purposes for which the numbers will be used.

8. a. Any person who makes a false representation in order to obtain a social security number pursuant to this paragraph, or any person who willfully and knowingly violates this paragraph, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

b. Any public officer who violates this paragraph commits a noncriminal infraction, punishable by a fine not exceeding \$500 per violation.

9. Any affected person may petition the circuit court for an order directing compliance with this paragraph.

(b) Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from s. 119.07(1) and s.

24(a), Art. I of the State Constitution. This exemption applies to bank account numbers and debit, charge, and credit card numbers held by an agency before, on, or after the effective date of this exemption.

(c) 1. For purposes of this paragraph, the term:

a. “Child” means any person younger than 18 years of age.

b. “Government-sponsored recreation program” means a program for which an agency assumes responsibility for a child participating in that program, including, but not limited to, after-school programs, athletic programs, nature programs, summer camps, or other recreational programs.

2. Information that would identify or locate a child who participates in a government-sponsored recreation program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. Information that would identify or locate a parent or guardian of a child who participates in a government-sponsored recreation program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

4. This exemption applies to records held before, on, or after the effective date of this exemption.

(d) All records supplied by a telecommunications company, as defined by s. 364.02, to an agency which contain the name, address, and telephone number of subscribers are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(e) Any information provided to an agency for the purpose of forming ridesharing arrangements, which information reveals the identity of an individual who has provided his or her name for ridesharing, as defined in s. 341.031, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(f) Medical history records and information related to health or property insurance provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by an applicant for or a participant in a federal, state, or local housing assistance program are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Governmental entities or their agents shall have access to such confidential and exempt records and information for the purpose of auditing federal, state, or local housing programs or housing assistance programs. Such confidential and exempt records and information may be used in any administrative or judicial proceeding, provided such records are kept confidential and exempt unless otherwise ordered by a court.

(g) Biometric identification information held by an agency before, on, or after the effective date of this exemption is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. As used in this paragraph, the term “biometric identification information” means:

1. Any record of friction ridge detail;
2. Fingerprints;
3. Palm prints; and
4. Footprints.

(h) 1. Personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency before, on, or after the effective date of this exemption.

3. Confidential and exempt personal identifying information shall be disclosed:

- a. With the express written consent of the applicant or recipient or the legally authorized representative of such applicant or recipient;
- b. In a medical emergency, but only to the extent that is necessary to protect the health or life of the applicant or recipient;
- c. By court order upon a showing of good cause; or
- d. To another agency in the performance of its duties and responsibilities.

(i) 1. For purposes of this paragraph, “identification and location information” means the:

a. Home address, telephone number, and photograph of a current or former United States attorney, assistant United States attorney, judge of the United States Courts of Appeal, United States district judge, or United States magistrate;

b. Home address, telephone number, photograph, and place of employment of the spouse or child of such attorney, judge, or magistrate; and

c. Name and location of the school or day care facility attended by the child of such attorney, judge, or magistrate.

2. Identification and location information held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if such attorney, judge, or magistrate submits to an agency that has custody of the identification and location information:

a. A written request to exempt such information from public disclosure; and

b. A written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.

(j) Any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information held by an agency before, on, or after the effective date of this exemption.

(k) 1. For purposes of this paragraph, the term:

a. "Identification and location information" means the:

(I) Home address, telephone number, and date of birth of a servicemember, and the telephone number associated with a servicemember's personal communication device.

(II) Home address, telephone number, date of birth, and place of employment of the spouse or dependent of a servicemember, and the telephone number associated with such spouse's or dependent's personal communication device.

(III) Name and location of a school attended by the spouse of a servicemember or a school or day care facility attended by a dependent of a servicemember.

b. "Servicemember" means a current or former member of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, or the National Guard, who served after September 11, 2001.

2. Identification and location information held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if a servicemember submits to an agency that has custody of the identification and location information:

a. A written request to exempt the identification and location information from public disclosure; and

b. A written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.

3. This exemption applies to identification and location information held by an agency before, on, or after the effective date of this exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Credits

Added by Laws 1979, c. 79-187, § 3; Laws 2001, c. 2001-361, § 1, eff. Dec. 10, 2001. Amended by Laws 1986, c. 1986-21, § 1; Laws 1995, 1995-398, § 25; Laws 2002, c. 2002-256, § 1, eff. May 13, 2002; Laws 2002, c. 2002-391, § 3, eff. May 30, 2002; Laws 2003, c. 2003-16, § 1, eff. May 21, 2003; Laws 2003, c. 2003-157, 2, eff. June 17, 2003. Renumbered from 119.07(6), 119.072, and 119.0721 and amended by Laws 2005, c. 2005-251, §§ 3 to 30, eff. Oct. 1, 2005. Amended by Laws 2005, c. 2005-213, § 4, eff. Oct. 1, 2005; Laws 2005, c. 2005-236, § 41, eff. July 1, 2005; Laws 2006, c. 2006-1, § 14, eff. July 4, 2006; Laws 2006, c. 2006-158, § 1, eff. Oct. 1, 2006; Laws 2006, c. 2006-180, § 1, eff. Oct. 1, 2006; Laws 2006, c. 2006-181, § 1, eff. July 1, 2006; Laws 2006, c. 2006-211, § 1, eff. Oct. 1, 2006; Laws 2006, c. 2006-212, § 1, eff. Oct. 1, 2006; Laws 2006, c. 2006-224, § 13, eff. June 15, 2006; Laws 2006, c. 2006-284, § 1, eff. June 22, 2006; Laws 2006, c. 2006-285, § 1, eff. July 1, 2006; Laws 2007, c. 2007-93, § 1, eff. Oct. 1, 2007; Laws 2007, c. 2007-95, § 1, eff. Oct. 1, 2007; Laws 2007, c. 2007-250, § 1, eff. June 27, 2007; Laws 2007, c. 2007-251, § 1, eff. Oct. 1, 2007; Laws 2008, c. 2008-41, § 1, eff. July 1, 2008; Laws 2008, c. 2008-57, § 2, eff. Oct. 1, 2008. Renumbered from 119.0711(1) and amended by Laws 2008, c. 2008-145, § 1, eff. June 10, 2008. Amended by Laws 2008, c. 2008-234, §§ 1, 3, eff. Oct. 1, 2008; Laws 2009, c. 2009-104, § 1, eff. July 1, 2009; Laws 2009, c. 2009-150, § 1, eff. Oct. 1, 2009; Laws 2009, c. 2009-169, § 1, eff. Oct. 1, 2009; Laws 2009, c. 2009-235, § 1, eff. Oct. 1, 2009; Laws 2009, c. 2009-237, § 1, eff. Oct. 1, 2009; Laws 2010, c. 2010-71, § 1, eff. May 11, 2010; Laws 2010, c. 2010-171, § 1, eff. July 1, 2010; Laws 2011, c. 2011-83, § 1, eff. July 1, 2011; Laws 2011, c. 2011-85, § 1, eff. July 1, 2011; Laws 2011, c. 2011-140, § 1, eff. June 2, 2011; Laws 2011, c. 2011-142, § 48, eff. July 1, 2011; Laws 2011, c. 2011-201, § 1, eff. Oct. 1, 2011; Laws 2011, c. 2011-202, § 1, eff. Oct. 1, 2011; Laws 2012, c. 2012-149, § 1, eff. Oct. 1, 2012; Laws 2012, c. 2012-214, § 1, eff. May 4, 2012; Laws 2012, c. 2012-216, § 1, eff. May 4, 2012; Laws 2013, c. 2013-69, § 1, eff. Oct. 1, 2013; Laws 2013, c. 2013-183, § 119, eff. July 1, 2013; Laws 2013, c.

2013-220, § 1, eff. Oct. 1, 2013; Laws 2013, c. 2013-243, § 1, eff. Oct. 1, 2013; Laws 2013, c. 2013-248, § 1, eff. July 1, 2013; Laws 2014, c. 2014-72, § 1, eff. June 13, 2014; Laws 2014, c. 2014-94, § 1, eff. Oct. 1, 2014; Laws 2014, c. 2014-105, § 1, eff. Oct. 1, 2014; Laws 2014, c. 2014-172, § 1, eff. Oct. 1, 2014; Laws 2015, c. 2015-37, § 1, eff. May 21, 2015; Laws 2015, c. 2015-41, § 1, eff. July 1, 2015; Laws 2015, c. 2015-86, § 1, eff. June 2, 2015; Laws 2015, c. 2015-146, § 1, eff. Oct. 1, 2015; Laws 2016, c. 2016-6, § 1, eff. Oct. 1, 2016; Laws 2016, c. 2016-27, § 1, eff. Oct. 1, 2016; Laws 2016, c. 2016-49, § 1, eff. Oct. 1, 2016; Laws 2016, c. 2016-159, § 1, eff. March 30, 2016; Laws 2016, c. 2016-164, § 1, eff. March 30, 2016; Laws 2016, c. 2016-178, § 1, eff. April 1, 2016; Laws 2017, c. 2017-11, § 2, eff. July 1, 2017; Laws 2017, c. 2017-53, § 1, eff. June 2, 2017; Laws 2017, c. 2017-66, § 1, eff. Oct. 1, 2017; Laws 2017, c. 2017-96, § 1, eff. Oct. 1, 2017; Laws 2017, c. 2017-103, § 1, eff. June 14, 2017.

Editors' Notes

REPEAL

<Subsection (2)(k)1. is repealed by the terms of subsec. (2)(k)2. on October 2, 2018, unless reviewed and saved from repeal by the Legislature.>

<Subsection (4)(d)2.o. is repealed by its own terms on October 2, 2019, unless reviewed and saved from repeal by the Legislature.>

<Subsections (2)(h), (2)(l), (4)(d)2.p., and (5)(k) are repealed by their own terms on October 2, 2020, unless reviewed and saved from repeal by the Legislature.>

<Subsections (1)(f), (4)(d)2.b., (4)(d)2.q., and (4)(d)2.r. are repealed by their own terms on October 2, 2021, unless reviewed and saved from repeal by the Legislature.>

<Subsections (2)(m), (2)(n), (4)(d)2.a., (4)(d)2.c., (4)(d)2.d., (4)(d)2.e., (4)(d)2.g., (4)(d)2.j., (4)(d)2.m., and (4)(d)2.n. are repealed by their own terms on October 2, 2022, unless reviewed and saved from repeal by the Legislature.>

Notes of Decisions (55)

West's F. S. A. § 119.071, FL ST § 119.071

Current through the 2017 First Regular Session and Special "A" Session of the 25th Legislature

End of Document

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KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's Florida Statutes Annotated

Title XIX. Public Business (Chapters 279-290)

Chapter 286. Public Business: Miscellaneous Provisions (Refs & Annos)

West's F.S.A. § 286.0113

286.0113. General exemptions from public meetings

Effective: October 1, 2016

Currentness

(1) That portion of a meeting that would reveal a security system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(2)(a) For purposes of this subsection:

1. "Competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

2. "Team" means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

(b) 1. Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2. Any portion of a team meeting at which negotiation strategies are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(c) 1. A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

2. The recording of, and any records presented at, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.

3. If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

Credits

Added by Laws 2001, c. 2001-361, § 2, eff. Dec. 10, 2001. Amended by Laws 2005, c. 2005-251, § 44, eff. Oct. 1, 2005; Laws 2006, c. 2006-158, § 2, eff. Oct. 1, 2006; Laws 2006, c. 2006-284, § 2, eff. June 22, 2006; Laws 2010, c. 2010-151, § 13, eff. July 1, 2010; Laws 2011, c. 2011-140, § 2, eff. June 2, 2011; Laws 2016, c. 2016-49, § 2, eff. Oct. 1, 2016.

Notes of Decisions (5)

West's F. S. A. § 286.0113, FL ST § 286.0113

Current through the 2017 First Regular Session and Special "A" Session of the 25th Legislature

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Fla. AGO 2015-06 (Fla.A.G.), 2015 WL 1870565

Office of the Attorney General

State of Florida
AGO 2015-06
April 16, 2015

RE: SECURITY SYSTEMS - VIDEO SURVEILLANCE TAPES - PUBLIC RECORDS - video tapes from surveillance cameras are confidential and exempt from public inspection. ss.281.301 and 119.071, Fla. Stat.

*1 Mr. Alan S. Zimmet
General Counsel for Pinellas
Suncoast Transit Authority
One Tampa City Center, Suite 2700
Tampa, Florida 33601

Dear Mr. Zimmet:
The Suncoast Transit Authority (PSTA) asks the following question:

Are surveillance video recordings from PSTA facilities exempt from public disclosure pursuant to sections 119.071(3)(a) and 281.301, Florida Statutes (as part of a security system plan), and section 119.071(2)(d), Florida Statutes (as information revealing the surveillance techniques or procedures of an agency)?

In sum:

Surveillance tapes from a security system for a public building constitute information which reveals a security system which is confidential pursuant to sections 119.071(3)(a) and 281.301, Florida Statutes.

Chapter 119, Florida Statutes, Florida's Public Records Law, provides a right of access to the records of state and local governments as well as private entities acting on their behalf.¹ This right of access applies to all materials made or received in connection with the conduct of official business, when such materials are used to perpetuate, communicate, or formalize knowledge.² All such materials are open for inspection and copying, unless the Legislature has exempted them from disclosure.³

Clearly, video surveillance recordings created in the course of official business of the PSTA would be public records.⁴ Your question, however, implicates the exemptions for security systems and surveillance techniques contained in sections 281.301 and 119.071, Florida Statutes.⁵

Section 281.301, Florida Statutes, provides:

"Security systems; records and meetings exempt from public access or disclosure.—Information relating to the security systems for any property owned by or leased to the state or any of its political subdivisions, and information relating to the security systems for any privately owned or leased property which is in the possession of any agency as defined in s. 119.011(2), including all records, *information*, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or *revealing such systems* or information, and all meetings relating directly to or that would reveal such systems or information are confidential and exempt from ss. 119.07(1) and 286.011 and other laws and rules requiring public access or disclosure." (e.s.)

This exemption was clarified and recreated in section 119.071, Florida Statutes, during the 2001 Legislative Session.⁶ Section 119.071(3)(a) 2., Florida Statutes, provides:

*2 "2. A security system plan or portion thereof for:

- a. Any property owned by or leased to the state or any of its political subdivisions; or
- b. Any privately owned or leased property held by any agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.”

As used in this section, the term a “security system plan” includes “all ... [[r]ecords, *information*, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or *revealing security systems*[.]”² (e.s.)

These provisions were previously addressed by this office when asked whether the names and addresses of applicants for security system permits from a city’s building department, as well as the names and addresses of persons or businesses cited for false alarms and addresses where false alarms were reported, were public records open to inspection and copying. In Attorney General Opinion 2004-28, this office cited the Legislature’s specific finding of a public necessity for the exemption in section 119.071, Florida Statutes, to ensure public safety, before concluding that the names and addresses of applicants for permits to install security systems would be information which would reveal the existence of a security system and, therefore, would be exempt from public disclosure.

The Second District Court of Appeal, in *Critical Intervention Services, Inc. v. City of Clearwater*,⁸ cited with approval the discussion in Attorney General Opinion 2004-28, when it addressed whether the identity of residential and business alarm permit holders was subject to disclosure. The city relied upon sections 281.301 and 119.071, Florida Statutes, to deny access to the information. The court found that the plain language of the statutes makes confidential all records revealing a security system and stated that disclosure of such information “would imperil the safety of persons and property.”⁹

More recently, the Fifth District Court of Appeal in *Central Florida Regional Transportation Authority d/b/a Lynx v. Post-Newsweek Stations, Orlando, Inc.*,¹⁰ considered whether security tapes from cameras installed on transit authority buses were confidential as revealing the security system. Citing the provisions in section 281.301, Florida Statutes, which state records that directly relate to or reveal information about security systems are confidential, the court concluded that the video footage captured by the bus camera “directly relates to and reveals information about a security system.” The court found that the videos “which are records, reveal the capabilities—and as a corollary, the vulnerabilities—of the current system[.]” and, therefore, are confidential and exempt from public inspection.

***3** Similarly, a surveillance tape from the cameras installed at the transit authority’s facilities is information which would reveal the existence of a security system. As such, it is my opinion that the surveillance tapes which are made by a security system, while public records, are confidential and exempt from the disclosure requirements of the Public Records Law pursuant to sections 281.301 and 119.071, Florida Statutes.

Sincerely,

Pam Bondi
Attorney General

Footnotes

- ¹ See s. 119.01(1), Fla. Stat., setting forth the general state policy on public records, and s. 119.011(2), Fla. Stat. defining “[a]gency” to include “any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”
- ² And see *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980) (“public records” encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge).
- ³ See *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).
- ⁴ See s. 119.011(12), Fla. Stat. defining “Public records” as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of

transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁵ While your question includes s. 119.071(2)(d), Fla. Stat., it would appear that the provisions in subsection (2) of the statute relate to undercover law enforcement activities and you have not indicated that the surveillance cameras within the PSTA facility are used for such purposes.

⁶ See s. 1, Ch. 2001-361, Laws of Fla.

⁷ Section 119.071(3)(a) 1., Fla. Stat.

⁸ 908 So. 2d 1195 (Fla. 2d DCA 2005).

⁹ 908 So. 2d at 1197.

¹⁰ Case No. 5D14-360, January 30, 2015.

Fla. AGO 2015-06 (Fla.A.G.), 2015 WL 1870565

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157 So.3d 401
District Court of Appeal of Florida,
Fifth District.

CENTRAL FLORIDA REGIONAL
TRANSPORTATION AUTHORITY, d/b/a Lynx,
Appellant/Cross-Appellee,
v.
POST-NEWSWEEK STATIONS, ORLANDO,
INC., d/b/a WKMG-TV Local 6
Appellee/Cross-Appellant.

No. 5D14-360.

|
Jan. 30, 2015.

|
Rehearing Denied Feb. 26, 2015.

Synopsis

Background: Television station brought declaratory judgment action against bus company under the Florida Public Records Act, seeking to inspect video footage captured by surveillance security system cameras on buses. The Circuit Court, Orange County, A. Thomas Mihok, J., entered judgment in favor of television station. Company appealed.

[Holding:] The District Court of Appeal, Wallis, J., held that footage was confidential and exempt from disclosure under the Act's exemptions for security systems and security-system plans.

Affirmed in part, reversed in part, and remanded.

West Headnotes (8)

[1]

Appeal and Error

🔑 Cases Triable in Appellate Court

The District Court of Appeal reviews an interpretation of a statute de novo.

Cases that cite this headnote

[2]

Statutes

🔑 Plain language; plain, ordinary, common, or literal meaning

When a statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent.

Cases that cite this headnote

[3]

Statutes

🔑 Plain language; plain, ordinary, common, or literal meaning

In instances where the statutory language is clear, the court must read the statute as written and the statute's plain and ordinary meaning must control.

Cases that cite this headnote

[4]

Statutes

🔑 Purpose and intent; determination thereof

Statutes

🔑 Plain, literal, or clear meaning; ambiguity

Only when the statutory language is unclear or ambiguous should the courts apply rules of statutory construction and explore legislative history to determine legislative intent.

Cases that cite this headnote

[5]

Statutes

🔑 What constitutes ambiguity; how determined

A statute is ambiguous when its language is subject to more than one reasonable

interpretation and may permit more than one outcome.

Cases that cite this headnote

Cases that cite this headnote

[6]

Records

🔑 In general; freedom of information laws in general

Records

🔑 Matters Subject to Disclosure; Exemptions

While the Florida Public Records Act is to be liberally construed in favor of open government, exemptions from disclosure are to be narrowly construed. West's F.S.A. § 119.01 et seq.

Cases that cite this headnote

[7]

Records

🔑 Evidence and burden of proof

The agency claiming exemption from disclosure under the Florida Public Records Act bears the burden of proving its right to the claimed exemption. West's F.S.A. § 119.01 et seq.

Cases that cite this headnote

[8]

Records

🔑 Investigatory or law enforcement records

Video footage captured by surveillance security system cameras on buses that was used and accessed in joint training with local and federal law enforcement and in real-world, non-training exercises directly related to and revealed information about a security system, and thus footage was confidential and exempt from disclosure under the Florida Public Records Act's exemptions for security systems and security-system plans; videotapes, which were public records, revealed the capabilities, and as a corollary, the vulnerabilities, of current system. West's F.S.A. §§ 119.011(12), 119.071(3)(a), 281.301.

Attorneys and Law Firms

***402** Carrie Ann Wozniak, Patrick T. Christiansen, and E. Ginnette Childs, of Akerman LLP, Orlando, for Appellant/Cross-Appellee.

Meagan L. Logan and Edward L. Birk, of Marks Gray, P.A., Jacksonville, for Appellee/Cross-Appellant.

Opinion

WALLIS, J.

Appellant/Cross-Appellee, Central Florida Regional Transportation Authority, d/b/a LYNX ("LYNX"), appeals the declaratory judgment in favor of Appellee/Cross-Appellant, Post-Newsweek Stations, Orlando, Inc., d/b/a WKMG-TV Local 6 ("WKMG"). The declaratory judgment held that the Public Records Act's exemptions for security systems and security-system plans do not apply to LYNX buses' camera footage. LYNX argues that the plain language of statutory exemptions¹ to the Public Records Act renders the security footage confidential and exempt from public-record ***403** requests. We address only the declaratory judgment, and reverse.²

¹ See §§ 119(3)(a), 281.301, Fla. Stat. (2014).

² Without discussion, we affirm the cross-appeal, which challenged the trial court's denial of WKMG's second and third counts. The trial court did not rule on the fourth count, which was not advanced at the hearing.

LYNX installed a comprehensive video-surveillance security system using, in part, grant money obtained from the United States Department of Homeland Security. Signs in plain view on the buses indicate the cameras' presence and provide, "For your safety, you may be recorded by a video surveillance system which may also include audio recording." WKMG filed public-records requests seeking to inspect video footage captured by cameras on LYNX's buses. LYNX denied the requests, asserting that the videos captured by the surveillance

system were confidential and exempt from public inspection because the videos fall within the exemptions for security systems. The video footage from this surveillance system was used and accessed in joint training with local and federal law enforcement; the training focused on how to prevent, deter, and when necessary, respond to criminal and terrorist attacks in a mass-transit environment. The cameras are regularly used and accessed by law enforcement in real world, non-training exercises.

After multiple hearings, the trial court ruled for WKMG, holding that the video footage did not fall within an exemption to the Public Records Act, as follows:

18. The video and audio recordings do not fall within the scope of a “security system plan” as defined by section 119.071(3)(a) or within the scope of section 281.301. Moreover, they do not “relat[e] directly to” or “reveal” LYNX’s security systems. Recordings of events that occurred in the past, do not relate directly to the physical security of LYNX buses or their “security system” or “security system plan.”

19. The videos are generally public records and subject to disclosure and they do not disclose or reveal a security system. To the extent that the recordings would “reveal” or “relate to” an open and obvious security system, this Court finds that LYNX’s stated security concerns are *de minimis* and not sufficient to overcome a strong public policy in favor of access to public records.

20. Based upon the plain language of these exemptions, the Court finds that the exemptions relied upon by LYNX, as contained in sections 119.071(3)(a) and 281.301, do not exempt or make confidential the video and audio recordings at issue here.

The trial court limited its order to the video footage captured on buses, noting that the order did not apply to recordings produced from equipment attached to LYNX’s stationary buildings and facilities.

¹¹ ¹² ¹³ ¹⁴ ¹⁵ We review an interpretation of a statute de novo. Rameses, Inc. v. Demings, 29 So.3d 418, 420 (Fla. 5th DCA 2010) (“The issue in this public records litigation involves a matter of statutory construction and is a question of law.” (citing Wagner v. Orange Cnty., 960 So.2d 785 (Fla. 5th DCA 2007))). “When the statute is clear and unambiguous, courts will not look behind the statute’s plain language for legislative intent or resort to rules of statutory construction to ascertain intent.” Ellis v. Hunter, 3 So.3d 373, 383–84 (Fla. 5th DCA 2009) (quoting Daniels v. Fla. Dep’t of Health, 898 So.2d 61,

64 (Fla.2005)). “In instances where the statutory language is clear, [this court] must read the statute as written and the statute’s plain and ordinary meaning must control.” Id. at 384 (citing *404 Daniels, 898 So.2d at 64). “Only when the statutory language is unclear or ambiguous should the courts apply rules of statutory construction and explore legislative history to determine legislative intent.” Nicarry v. Eslinger, 990 So.2d 661, 664 (Fla. 5th DCA 2008) (citing Weber v. Dobbins, 616 So.2d 956, 958 (Fla.1993)). “A statute is ‘ambiguous’ when its language is subject to more than one reasonable interpretation and may permit more than one outcome.” Id. (citing Hess v. Walton, 898 So.2d 1046, 1049 (Fla. 2d DCA 2005)).

¹⁶ ¹⁷ “Chapter 119 of the Florida Statutes, The Florida Public Records Act, was enacted to promote public awareness and knowledge of government actions in order to ensure that governmental officials and agencies remain accountable to the people.” WFTV, Inc. v. Sch. Bd. of Seminole, 874 So.2d 48, 52 (Fla. 5th DCA 2004) (citing Forsberg v. Hous. Auth. of Miami Beach, 455 So.2d 373, 378 (Fla.1984)). “[W]hile The Florida Public Records Act is to be liberally construed in favor of open government, exemptions from disclosure are to be narrowly construed.” Id. at 53 (citing Seminole Cnty. v. Wood, 512 So.2d 1000, 1002 (Fla. 5th DCA 1987)). “The agency bears the burden of proving its right to the claimed exemption.” Id. (citing Woollong v. Lamar, 764 So.2d 765, 767 (Fla. 5th DCA 2000)).

The two exemptions relied on in this case are read together. Marino v. Univ. of Fla., 107 So.3d 1231, 1233 (Fla. 1st DCA 2013) (holding that sections 281.301 and 119.071(3)(a) do not permit the University of Florida to redact the location of university facilities housing primates); Critical Intervention Servs., Inc. v. City of Clearwater, 908 So.2d 1195, 1196–97 (Fla. 2d DCA 2005) (agreeing “with the Attorney General that the plain language of sections 281.301 and 119.071 makes confidential all records revealing a security system” and holding that both sections “prohibit public disclosure of the names and addresses of applicants for security system permits, of persons cited for violations of alarm ordinances, and of individuals who are the subject of law enforcement dispatch reports for verified or false alarms because disclosure would imperil the safety of persons and property”).

Section 119.071(3)(a), Florida Statutes (2014), provides that records, information, photographs, and audio and visual presentations that reveal a security system plan are confidential and exempt, as follows:

(a) 1. As used in this paragraph, the term “security system plan” includes all:

- a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- b. Threat assessments conducted by any agency or any private entity;
- c. Threat response plans;
- d. Emergency evacuation plans;
- e. Sheltering arrangements; or
- f. Manuals for security personnel, emergency equipment, or security training.

2. A security system plan or portion thereof for:

- a. Any property owned by or leased to the state or any of its political subdivisions; or
- b. Any privately owned or leased property

held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption is remedial in nature, and it is the intent of the Legislature that this exemption apply to security system plans held by an agency before, on, or *405 after the effective date of this paragraph.

^[8] Section 281.301, Florida Statutes (2014), provides that information that either relates directly to or reveals security systems is confidential and exempt, as follows:

Information relating to the security systems for any property owned by or leased to the state or any of its political subdivisions, and information relating to the security systems for any privately owned or leased property which is in the possession of any agency as defined in s. 119.011(2), including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information are confidential and exempt from ss. 119.07(1) and

286.011 and other laws and rules requiring public access or disclosure.

Section 281.301 thus provides that any records that directly relate to or reveal information about security systems are confidential and exempt and exempt from public inspection. We agree with LYNX that the video footage captured by the bus camera directly relates to and reveals information about a security system. See *Rhea v. Dist. Bd. of Tr. of Santa Fe Coll.*, 109 So.3d 851, 857 (Fla. 1st DCA 2013) (defining “directly related” as “a close connection” and holding that a student’s email was a record that “directly related to” the student and was therefore an education record not subject to disclosure (citing Merriam–Webster’s Collegiate Dictionary 353–54 (11th ed. 2004))).

The videos, which are records,³ reveal the capabilities—and as a corollary, the vulnerabilities—of the current system. Because the Legislature’s intent is apparent from the plain language, which in this case is free from ambiguity, we find no need to analyze the legislative history.

³ WKMG also argues in its brief that the Legislature did not include “videotape” in either of the exceptions and, therefore, the language is clear that the videotapes do not fall within either section 281.301 or section 119.071(3)(a). Section 119.011(12), Florida Statutes (2012), defines public records to include tapes, films, or other material, as follows:

(12) “Public records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

See also *Rameses, Inc. v. Demings*, 29 So.3d 418, 423 n. 1 (Fla. 5th DCA 2010) (“Videotape recordings fall within the ambit of chapter 119, Florida Statutes.” (citing § 119.011(12), Fla. Stat. (2008) (defining public records to include sound recordings, films, photographs and tapes))); *Tampa Television, Inc. v. Sch. Bd. of Hillsborough Cnty.*, 659 So.2d 331, 331–32 (Fla. 2d DCA 1995) (Parker, J., concurring) (concluding that mounted video bus cameras are “student records and reports” under section 228.093, Florida Statutes (1993)).

The footage falls within an exemption and is therefore confidential and exempt from public inspection. We reverse and remand on the first count, holding the security

40 Fla. L. Weekly D306, 43 Media L. Rep. 1477

footage is not subject to inspection under the Public Records Act.

AFFIRMED in part, REVERSED in part, and REMANDED.

SAWAYA and COHEN, JJ., concur.

All Citations

157 So.3d 401, 40 Fla. L. Weekly D306, 43 Media L. Rep. 1477

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