

TOWN OF BAY HARBOR ISLANDS

June 11, 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:

Student of the Year Awards
Ruth K. Broad Bay Harbor K-8 Center - Christopher Anderson
Miami Beach Senior High School -Ian Krupkin

Introduction of Circuit Court Judge Candidate - Vivianne del Rio
Special Recognition to Former Mayor Linda Zilber

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

TOWN MANAGER'S REPORT:

Parking Update- Terrace

Library Hours

Landscape Improvement Plan - Brightview

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

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:

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.)*

1. **Approval** of a **Resolution** continuing and extending the temporary moratorium on approving registrations and applications for communication facilities, including small wireless facilities and utility poles for collocation of small wireless facilities as defined in Section 337.401(7), Florida Statutes for an additional period of one hundred and eighty (180) days.
2. **Consideration** and **Approval** of a resolution establishing policy for Town Council Members when representing the Town as a voting delegate at meetings and functions before outside organizations. Enclosed is a copy of the proposed resolution.
3. **Approval** to carry-forward appropriations from the 2016-2017 budget year into 2017-2018. Enclosed is a Memorandum from Director of Finance, Melissa Cruz.

STAFF RECOMMENDATION: Approval

ORDINANCES ON FIRST READING:

4. **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 provided by Town Planner Michael Miller.

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

5. **Approval** of an ordinance on **first reading** requested by Council Member Yaffe amending Section 5-23.01 providing for staggered terms for the members of the Planning and Zoning Board. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 5 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED BUILDINGS AND CONSTRUCTION, BY AMENDING SECTION 5-23.01 TO PROVIDE FOR A STAGGERED PLANNING AND ZONING BOARD; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council Discretion

POLL VOTE

6. **Approval** of an ordinance on **first reading** amending Chapter 20 of the town code relating to utility billing and collections. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 20 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED UTILITIES, BY AMENDING SECTIONS 20-7, 20-11, AND 20-15.1 TO PROVIDE FOR UNIFORM BILLING, PAYMENT, COLLECTION, AND THE FILING OF LIENS IN CONNECTION WITH UTILITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council Discretion

POLL VOTE

DEFERRED ITEMS:

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

7. **Request** from the Florida League of Cities to designate one official to be the voting delegate for this year Annual Business Session. Enclosed find correspondence from the Florida League of Cities.

STAFF RECOMMENDATION: Council Discretion

8. **Approval** of an expenditure to M&J Construction Company of Pinellas County in the amount of \$29,897.69, for reimbursement of additional bonding cost associated with the increased contract amount. Enclosed is a copy of the invoice and payment.

STAFF RECOMMENDATION: Approval

POLL VOTE

9. **Approval** of contracts award to Lakes Engineering Inc. and STV Inc. for continuing bridge engineering services. Enclosed are copies of the evaluation sheets and supporting documents.

STAFF RECOMMENDATION: Approval

10. **Approval** of contract award to Brute Proof LLC. in the amount of \$29,750 to purchase a HyperV Terminal Server for the administrative computer network. Enclosed is a copy of the proposal.

STAFF RECOMMENDATION: Approval

POLL VOTE

DISCUSSION ITEMS:

11. **Discussion** and **possible action** requested by Vice Mayor Fuller regarding having a closed meeting to discuss the Town's security systems and plans in connection with an active shooter.
12. **Discussion** requested by Council Member Reid on possible locations to host a Community Garage Sale. Enclosed is a copy of the Section 13-13 of the Town Code relating to Garage Sales.
13. **Discussion** requested by Council Member Reid with regards to Town Council term limits and Election of a Mayor.

14. **Discussion** requested by Council Member Reid regarding an amendment to the code to require noticing for project revisions.

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

June 11, 2018

ITEM NUMBER: 1.

ITEM: Approval of a **Resolution** continuing and extending the temporary moratorium on approving registrations and applications for communication facilities, including small wireless facilities and utility poles for collocation of small wireless facilities as defined in Section 337.401(7), Florida Statutes for an additional period of one hundred and eighty (180) days.

DESCRIPTION:

The proposed resolution is to continue and extend the temporary moratorium on registration and application for communications facilities, including small wireless facilities and utility poles for collocation of small wireless facilities. The extension is for an additional period of one period one hundred and eighty (180) days.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

ATTACHMENTS

1. Resolution Extending the Communications Moritorium

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA CONTINUING AND EXTENDING THE TEMPORARY MORATORIUM ON APPROVING REGISTRATIONS AND APPLICATIONS FOR COMMUNICATION FACILITIES, INCLUDING SMALL WIRELESS FACILITIES AND UTILITY POLES FOR COLLOCATION OF SMALL WIRELESS FACILITIES AS DEFINED IN SECTION 337.401(7), FLORIDA STATUTES FOR AN ADDITIONAL PERIOD OF ONE HUNDRED AND EIGHTY (180) DAYS UNLESS RESCINDED, OR EXTENDED, OR BY A SUBSEQUENT AMENDMENT TO THE TOWN USE REGULATIONS REGARDING THE REGULATION OF COMMUNICATIONS FACILITIES INCLUDING, SMALL WIRELESS FACILITIES AND UTILITY POLES FOR COLLOCATION OF SMALL WIRELESS 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, Section 337.401, Florida Statutes was recently amended to permit communication facilities including small communications facilities and utility poles for collocation of small wireless facilities to be installed upon the Town’s right of way; and

WHEREAS, in order to promote effective and responsible land use planning within the Town, the Town Council, on December 12, 2017, pursuant to Resolution Number 2139, approved a temporary moratorium to allow for sufficient time to research, study and analyze the potential impact of the installation of communication facilities including small wireless facilities and utility poles for collocation of small wireless facilities as defined by Section 337.401(7), Florida Statutes within the Town’s right of way; and

WHEREAS, the Town Council finds that a continuance and extension of the temporary moratorium on approving registrations and applications of communication facilities including small wireless facilities and utility poles for collocation of small wireless facilities as defined in

Section 337.401(7), Florida Statutes in the Town's right of way is needed in order to allow the Town a sufficient period of time to determine what is in the best interest of the Town; and

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 December 12, 2017, pursuant to Resolution Number 2139 is hereby continued and extended on approving registrations and applications for communication facilities including small wireless facilities and utility poles for collocation of small wireless facilities as defined by Section 337.401(7), Florida Statutes is hereby extended for an additional period of one hundred eighty (180) days from the date of adoption of this Resolution.

Section 3. 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 4. Report. The Town Manager shall bring the counsel a report within 120 days providing recommendations on communication facilities including small wireless facilities and utility poles for collocation of small wireless facilities as defined in Section 337.401(7), Florida Statutes and the zoning districts where they may be permitted in order to research their impact on the area, including any negative impact that may be created by such communications facilities including small wireless facilities and utility poles for collocation of small wireless facilities as defined in Section 337.401(7), Florida Statutes within the Town.

Section 5. Effective Date. This Resolution shall become effective immediately upon its adoption. The temporary moratorium enacted by Resolution Number 2139 and extended by this Resolution shall terminate one hundred 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 communication facilities including small wireless

facilities and utility poles for collocation of small wireless facilities and utility poles for collocation of small wireless facilities as defined in Section 337.401(7), Florida Statutes.

PASSED AND ADOPTED this _____ day of June, 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

June 11, 2018

ITEM NUMBER: 2.

ITEM:

Consideration and **Approval** of a resolution establishing policy for Town Council Members when representing the Town as a voting delegate at meetings and functions before outside organizations. Enclosed is a copy of the proposed resolution.

DESCRIPTION:

At the May 11th, Regular Council Meeting, there was a brief discussion on how members of the Town Council represent the Town when voting at meetings and/or other organizations. Based on that discussion, the Town Council instructed staff to draft a resolution to establish policy for the Town Council Members, when representing the Town as a voting delegate for outside organizations.

Enclosed is a copy of the proposed resolution.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1. 2018.05.24 Resolution - Policy for Council members acting as a Voting Delegate

RESOLUTION NO. _____

**A RESOLUTION OF THE TOWN COUNCIL OF THE
TOWN OF BAY HARBOR ISLANDS, FLORIDA,
ESTABLISHING A POLICY FOR TOWN COUNCIL
MEMBERS WHEN REPRESENTING THE TOWN AS A
VOTING DELEGATE AT MEETINGS AND FUNCTIONS
BEFORE OUTSIDE ORGANIZATIONS.**

WHEREAS, the Town Council appoints Council Members as delegates to represent the interests of the Town and to vote on behalf of the Town at various meetings and functions before outside organizations;

WHEREAS, the Town Council expects Council Members, who serve as a voting delegate at meetings and functions before other organizations, to vote in a manner that is consistent with the expressed objectives of the Town Council and in the best interests of the residents of the Town;

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

1. In all instances when a Council Member serves as a voting delegate at meetings and functions before other organizations, the Council Member shall vote in a manner that is consistent with the expressed objectives of the Town Council and in the best interests of the residents of the Town.

PASSED AND ADOPTED this _____ day of _____ 2018.

STEPHANIE BRUDER
Mayor

ATTEST:

MARLENE SIEGEL
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG SHERMAN, ESQ.
Town Attorney

AGENDA ITEM REPORT

June 11, 2018

ITEM NUMBER: 3.

ITEM: Approval to carry-forward appropriations from the 2016-2017 budget year into 2017-2018. Enclosed is a Memorandum from Director of Finance, Melissa Cruz.

DESCRIPTION:

Approval to carry-forward unexpended appropriations from the 2016-2017 budget year into 2017-2018.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Melissa Cruz, Finance Director

ATTACHMENTS

1. Carryforwards 093017

TOWN OF BAY HARBOR ISLANDS MEMORANDUM

DATE: MAY 25, 2018
TO: RONALD J. WASSON, TOWN MANAGER
FROM: MELISSA CRUZ, FINANCE DIRECTOR
RE: CARRYFORWARD OF FUNDING INTO THE 2017/2018 BUDGET

It is recommended that the Council approve the following appropriation carryforwards representing projects funded in 2016/2017 but not completed or deferred until after September 30, 2017. The sum to be carried forward is the total previously approved amount less any amounts expended prior to September 30, 2017. Some of the projects may be substantially complete at this time but were still in process at September 30th. Since final payments will be made in the 2017/2018 fiscal year the funding needs to be brought forward.

Description	Account Number	Amount
Causeway corridor shoulder installation project -	401-541.5-400063.000	\$167,950
West Relief Bridge - Underground overhead telephone facilities	401-541.5-400063.000	19,821
Replacement truck - Causeway	401-541.5-400064.000	24,984
Refurbish Lift Stations	402-535.0-400063.000	27,500
Night flow isolation testing - sewer system	402-535.0-400031.000	18,600
Remote Monitoring System (SCADIA)	402-535.0-400063.000	35,000
Resurface/restripe parking lot	404-545.0-400063.000	15,000
Total		\$308,855

AGENDA ITEM REPORT

June 11, 2018

ITEM NUMBER: 4.

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 provided by Town Planner Michael Miller.

DESCRIPTION:

The ordinance was previously discussed at the 4/16/18 Town Council meeting, but action was deferred for additional editing / fine-tuning. MMPA revised the draft Ordinance again and coordinated with Town officials to solve the remaining issues. The current draft dated 5/22/18 incorporates all the requested changes.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

ATTACHMENTS

1. TC Staff Report Outdoor Lighting May 22 2018
2. BHI Lighting Draft Ord May 22 2018

**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: May 22nd, 2018

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

ISSUE / WORK HISTORY

Recently the Town received complaints about a few new multi-family residential building complexes exterior lighting. One such complex (Sereno East) has open pedestrian corridors facing East Bay Harbor Drive. Another site ("O" Residence) installed spotlights onto a pool area. This brought attention to the inadequacies of the Town's existing regulations for outdoor lighting. At the 1/08/18 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 2/12/18 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 2/20/18 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. At the 3/12/18 Town Council meeting the updated draft Ordinance was discussed, but action was deferred, as several members of the Town Council were concerned that if a single-family property owner wanted to swap out exterior light fixtures or add security lighting, a photometric plan would be required, which was felt to be an unnecessary burden and could cost a considerable amount of money to have an engineer / professional to prepare such a plan. While this is common in a few similar communities (Golden Beach), others allow owners to swap out similar existing fixtures, and add security lighting if the light spillage meets the Code – the draft Code has illustrations and verbiage to address this. MMPA revised the draft Ordinance to include exemptions for single-family homes for similar lighting swaps. However, if new wiring is required a permit cannot be avoided via the Florida Building Code requirements. At the 4/16/18 Town Council meeting the updated draft

Ordinance was discussed again, but action was deferred for additional editing / fine-tuning. MMPA revised the draft Ordinance again and coordinated with Town officials to solve the remaining issues. The current draft dated 5/22/18 incorporates all the requested changes. A question was raised by members of the public about interior lighting (inside a building) affecting neighboring sites (through windows / hallways / etc.). It would be very difficult to regulate interior lighting levels – one should allow some individual freedom in personal areas; however, occupants should be respectful of neighboring sites. MMPA believes proposed Code Section 23-19(d) concerning excessive illumination addresses this issue (“unnecessarily illuminates and substantially interferes with the use and enjoyment of any lot...”. Should a complaint occur this provision could be used for enforcement actions.

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. Since the March 2018 discussion additional text was requested to be added concerning applicability, conditions of approval and future changes, so that unlimited vesting does not occur.
- Since the March 2018 discussion additional text was requested to be added for seasonal holiday lighting exemptions.

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, a proposed Ordinance to enhance the regulations for the Town 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 draft Ordinance was reviewed by the PZB on 2/20/18 and 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. The current draft includes provisions for all land uses.

At the March 2018 and April 2018 Town Council meetings the updated Ordinance was discussed, but action was deferred again to add new provisions. MMPA modified the draft Ordinance accordingly.

MMPA recommends the Town Council review and discuss the latest 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.

STEPHANIE BRUDER
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 foot-candles 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 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 residential (single-family and multiple-family) development. A site lighting plan (photometric plan) shall be required for only nonresidential and multiple family developments 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 residential (single-family and multiple-family) development that involves outdoor lighting alterations. Existing development sites are encouraged to retrofit outdoor lighting fixtures over time. A site lighting photometric plan shall be required for only nonresidential and multiple family developments to demonstrate compliance with these regulations. Such site lighting photometric plan shall include ground level, building mounted and any rooftop recreational facilities.

(3) Repair and maintenance. These regulations shall apply to replacement of individual lighting fixtures in any nonresidential or residential (single-family and multiple-family) development. A permit is not required to reposition or switch out a fixture; however, all other electrical work is subject to compliance with the Florida Building Code, as may be amended from time to time.

(4) Exceptions. These regulations shall not mandatorily apply to Town-owned facilities; however, voluntary compliance with light spillage standards is encouraged.

(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). Incandescent, fluorescent, metal halide, single-color light emitting diode (LED), 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. This provision shall not apply to security lighting with motion detectors that allow temporary light spillage when activated.

(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 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 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, unless an agreement of compliance with future Code updates was made, or a condition of approval limiting uses, hours of operation or lighting of a land development approval was included. 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.

d. The regulations as to the hours of illumination shall not apply to Town-owned or sponsored temporary seasonal decorations for holidays recognized by the Town. The regulations as to the hours of illumination shall not apply to privately-owned or sponsored temporary seasonal decorations for holidays, provided a nuisance is not created.

(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>
Architectural lighting	<u>0.0</u>	<u>1.0</u>	<u>5.0</u>
Canopy area lighting	<u>2.0</u>	<u>10.0</u>	<u>15.0</u>
Entrances to buildings	<u>0.3</u>	<u>0.75</u>	<u>3</u>
Rooftop lighting	<u>0.3</u>	<u>1.0</u>	<u>5.0</u>
Multiple-family parking lots	<u>0.2</u>	<u>1.0</u>	<u>8.0</u>
Nonresidential parking lots and garages	<u>0.2</u>	<u>1.5</u>	<u>10.0</u>
Public Streets and sidewalks	<u>1</u>	<u>12:1 uniformity ratio</u>	<u>4:1 uniformity ratio</u>
Storage areas (security lighting)	<u>0.2</u>	<u>1.0</u>	<u>10.0</u>
Walkways, landscape or decorative lighting	<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>
Garage entrance	<u>No daytime min. 1.0 nighttime</u>	<u>10:1 uniformity ratio</u>	<u>No daytime max. 15.0 nighttime</u>
Garages with openings to outside	<u>0.2</u>	<u>10:1 uniformity ratio</u>	<u>10.0</u>
Enclosed garages	<u>0.2</u>	<u>10:1 uniformity ratio</u>	<u>None</u>

b. Minimum and maximum levels are measured on the pavement or other surface 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.

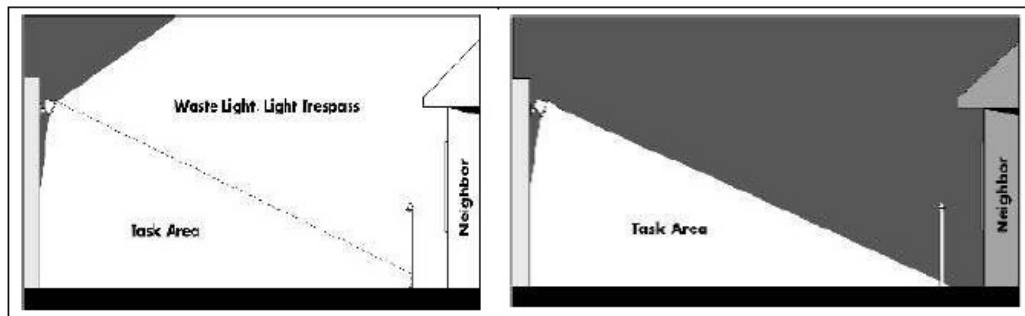
g. Decorative lighting for building and landscaping.

(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. See subsection (c)(4) above for temporary security lighting exemption.	

(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 generally prohibited, unless approved by the planning and zoning board. 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. A site lighting photometric plan shall be required for only nonresidential and multiple family developments to demonstrate compliance with these regulations (not single-family homes). 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

June 11, 2018

ITEM NUMBER: 5.

ITEM: Approval of an ordinance on **first reading** requested by Council Member Yaffe amending Section 5-23.01 providing for staggered terms for the members of the Planning and Zoning Board. Enclosed is a copy of the proposed ordinance.

DESCRIPTION:

At the last Town Council Meeting Council Member Yaffe suggested that perhaps it would be a good idea to implement staggered terms for the members of the planning and zoning board to retain some continuity and not have to reappoint all members every 4 years. Assistant Town Attorney Frank Simone drafted the attached ordinance that provides for the term beginning 2020 three out of seven members be chosen to serve a 3 year terms and four members for a two year term.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk
Robert Yaffe, Council Member

ATTACHMENTS

1. 2018.05.24 Ordinance Staggered PZ Board

ORDINANCE NO. ____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 5 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED BUILDINGS AND CONSTRUCTION, BY AMENDING SECTION 5-23.01 TO PROVIDE FOR A STAGGERED PLANNING AND ZONING BOARD; 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;

WHEREAS, the Town Council of the Town of Bay Harbor Islands believes that it is in the best interest of the Town's residents to have a staggered planning and zoning board;

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

Section 1: That Section 5-23.01 of the Town of Bay Harbor Islands Code of Ordinances is hereby amended 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.

STEPHANIE BRUDER
Mayor

ATTEST:

MARLENE SIEGEL
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG SHERMAN, ESQ.
Town Attorney

EXHIBIT A

Sec. 5-23.01. - Planning and zoning board membership; appointment; vacancies; terms; removal; meetings; officers; and quorum.

- (a) *Members.* The town council will resign as members of the planning and zoning board. Thereafter, the planning and zoning board shall consist of seven members. Up to five of the members shall be presently employed full time or were employed full time in the field of engineering, architecture, land use and zoning law, city planning, construction, or any other field which substantially relates to the planning and development of real estate. The professional members are not required to be residents of Bay Harbor Islands. The two remaining members shall be residents of the town for a minimum of one year and they are not required to possess any professional license or professional designation. Each member of the planning and zoning board shall serve on the planning and zoning board for a two-year term unless they resign, are no longer able to serve, or are otherwise removed as set forth in subsection (d), except as provided in subsection (b), below.
- (b) *Staggered Board.* The planning and zoning board shall be a staggered board. As such, as a one-time event in 2020, three of the seven appointed members, selected randomly by the Town Council, shall serve on the planning and zoning board for a three-year term. After the 2020 appointments, each member shall be appointed to serve on the planning and zoning board for two-year terms as set forth in subsection (a), above.
- ~~(b)~~(c) *Appointment to the planning and zoning board.* Each town council member shall submit one or more persons as candidates for consideration by the town council for appointment to the planning and zoning board. In order for a candidate to be appointed to the planning and zoning board, the candidate must meet the membership requirement of subsection (a) and must be approved by at least five town council members.
- ~~(c)~~(d) *Vacancies.* Should a planning and zoning board member resign, lose the residency requirement of subsection (c), be removed pursuant to subsection (e), or otherwise not be able to serve on the Planning and Zoning Board for whatever reason, the member's vacancy shall be filled pursuant to subsection (c).
- ~~(d)~~(e) *Removal of members.* The town council, upon the vote of at least five council members, may remove any planning and zoning board member, with or without cause, at any time. Any member who misses three consecutive regularly scheduled planning and zoning board meetings or misses five meetings in any 12-month period may be removed from the planning and zoning board.
- ~~(e)~~(f) *Meetings.* The regularly scheduled planning and zoning board meeting shall occur in the evening on the first Tuesday and third Tuesday of every month or as needed.
- ~~(f)~~(g) *Officers.* One member shall be elected by the planning and zoning board as chairperson. One member shall be elected by the planning and zoning board as vice-chairperson. The chairperson and vice-chairperson shall serve a term of one year. A new election shall occur at the conclusion of the one-year term. In the event that the chairperson position becomes vacant within the one-year term, the vice-chairperson shall be appointed as chairperson for the duration of the prior chairperson's term and the planning and zoning board shall elect a member to the vice-chairperson position for the duration of the prior vice-chairperson's term. The chairperson shall preside at all planning and zoning meetings. In the chairperson's absence, the vice-chairperson shall preside. The chairperson shall submit any and all reports and recommendations of the planning and zoning board to the town council. The town shall provide a secretary for the planning and zoning board and the town clerk shall be the custodian of all records, books, and journals of the planning and zoning board.
- ~~(g)~~(h) *Quorum.* Four present members shall constitute a quorum.
- ~~(h)~~(i) The town council shall promulgate such rules and regulations as may be reasonably necessary to govern the operations of the planning and zoning board in performance of its duties.

AGENDA ITEM REPORT

June 11, 2018

ITEM NUMBER: 6.

ITEM: Approval of an ordinance on **first reading** amending Chapter 20 of the town code relating to utility billing and collections. Enclosed is a copy of the proposed ordinance.

DESCRIPTION:

This item was discussed at the last meeting and it was the consensus of the Town Council to bring back an ordinance updating the method of billing and collection of utilities. The ordinance provides for a process to notice delinquent accounts, collect overdue fees and file liens where appropriate.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk
 Kelly Reid, Council Member

ATTACHMENTS

1. 2018.05.24 Ordinance Utilities Fees (3)

ORDINANCE NO. ____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 20 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED UTILITIES, BY AMENDING SECTIONS 20-7, 20-11, AND 20-15.1 TO PROVIDE FOR UNIFORM BILLING, PAYMENT, COLLECTION, AND THE FILING OF LIENS IN CONNECTION WITH UTILITIES; 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;

WHEREAS, the Town is responsible for providing, billing, and collecting certain fees for utilities;

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

Section 1: That Sections 20-7, 20-11, and 20-15.1 of the Town of Bay Harbor Islands Code of Ordinances are hereby amended 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.

STEPHANIE BRUDER
Mayor

ATTEST:

MARLENE SIEGEL
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG SHERMAN, ESQ.
Town Attorney

EXHIBIT A

Sec. 20-7. - Same—Billing for Water Services, Sewer Services, and Storm Water Fees; discontinuance of service.

Charges for water service, sewer services (as set forth in Section 20-11, below), and storm water fees (as set forth in Section 20-11.1, below) shall be billed to each ~~owner or owner's agent of the property owner involved~~ monthly. If payment for service is not made within ~~30~~ 60 days from the due date of the bill, the ~~town manager~~ shall have the authority to discontinue service upon written notice by him to the property owner. ~~or owner's agent.~~ Written notice shall be sent by certified mail sent five days before and First Class U.S. Mail and shall specify the date that the service is will be discontinued, and the outstanding balance. The outstanding balance shall also include all ~~All~~ costs of notice, including costs of mailing, together with a 3% late fee charge. ~~billing and a lien created thereby.~~ Such ~~water service charges, costs, and late fees~~ shall constitute a tax and shall be a lien against the property for which the ~~water service~~ charges are due and unpaid. The lien will be effective from the due date of the charges and will remain as long as the charges are unpaid. The lien may be recorded in the public records and interest shall accrue at the legal rate set forth in Section 55.03, Florida Statutes. The Town Manager shall have the discretion to waive any late fee(s), lien recording fee(s), and accrued interest in connection with any property owner's payment of their outstanding balance. ~~Interest at the rate of nine percent per annum shall be added to the charges from the due date of the charges to payment.~~

Sec. 20-11. - Same—Payment Billing; discontinuance of service.

~~The Charges for sewer service charges shall be imposed, billed and noticed, collected, and liened as set forth in Section 20-7, above. on a calendar monthly basis, and shall become due and payable immediately upon billing for same without discount or further demand, and such Sewer service charges shall constitute a tax and shall be a lien against the property for which the sewer service charges are due and unpaid. The lien will be effective from the due date of the charges and will remain as long as the charges are unpaid.~~

Sec. 20-15.1. - Billing; discontinuance of service; liens.

- (a) Charges for storm water services shall be billed, noticed, collected, and liened as set forth in Section 20-7, above. ~~Fees shall be billed to each property owner of each developed property in conjunction with the monthly water bill. Fees shall be due under the same conditions as the water bill. Late charges may be established by the governing body and amended from time to time and applied to fees that are 60 days past the due date.~~
- (b) ~~Fees and late charges~~ Charges for storm water fees, late fees, mailing fees, and interest shall be debts due and owing the utility and the same shall be recoverable by the town or its assignee on behalf of the utility, in any court of competent jurisdiction.
- (c) Intentionally Deleted. ~~The utility shall establish procedures to notify all property owners, tenants and managers of developed property of delinquent fee accounts.~~
- (d) ~~All fees and late charges due and owing to the utility which remain unpaid for 60 days past the due date of the fees shall become a lien against and upon the developed property for which the fees are due and owing to the same extent and character as a lien for a special assessment. Charges for storm water fees, late fees, mailing fees, and interest~~ Until fully paid and discharged, said fees and late charges shall remain, and constitute a special assessment lien equal in rank and dignity with the liens of municipal ad valorem taxes and superior in rank and dignity to all other liens, encumbrances, titles, and claims in, to or against the developed property involved for a period of five years from the date of said fees and late charges, thereupon, become a lien as set forth in this article. Said lien may be enforced and satisfied by the town on behalf of the utility, pursuant to F.S. Ch. 173, as amended from time to time, or by any other method permitted by law. The lien provided herein shall not be deemed to be in lieu of any other legal remedies for recovery of said fee and late charges available to the town and to the utility.

- (e) ~~For fees which become more than 60 days past due and unpaid, the utility shall cause to be filed in the office of the clerk of the court of Dade County, Florida, a notice of lien or statement showing a legal description of the property against which the lien is claimed, its location by street and number, the name of the owner, and an accurate statement of the fees and late charges then unpaid. A copy of such A~~ notice of lien shall be mailed within a reasonable time to the owner of the property involved as may be known to the town or shown on the tax assessment roll most recently published by Metro-Dade County. No such lien shall be enforceable by the town or the utility unless said notice shall be filed within six months from the date the fees and late charges become a lien as established by this article.
- (f) Liens may be discharged and satisfied by payment to the town, on behalf of the utility, of the aggregate amounts specified in the notice of lien and all filing and recording fees. When any such lien shall be fully paid or discharged, the town shall cause evidence of the satisfaction and discharge to be filed with the clerk of the circuit court of Dade County, Florida.
- (g) Notwithstanding other provisions to the contrary herein, the town, on behalf of the utility, shall have the discretion not to file notices of lien for fees and late charges for sums in the amount less than \$50.00. If the town or the utility elects not to file a notice of lien, said fees and late charges shall remain as debts due and owing in accordance with (b) above.

AGENDA ITEM REPORT

June 11, 2018

ITEM NUMBER: 7.

ITEM: Request from the Florida League of Cities to designate one official to be the voting delegate for this year Annual Business Session. Enclosed find correspondence from the Florida League of Cities.

DESCRIPTION:

The designated voting member will cast their votes at the annual business session that will determine the direction of the league. The 92st Annual Conference is schedule to be held on August 16 through 18, 2018 at the Diplomat Beach Resort, Hollywood.

Last year's designated voting delegate was Council Member Isaac Salver.

Enclosed find the correspondence received by the Florida League of Cities for the request.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

ATTACHMENTS

1. FLC Voting delegate request



301 South Bronough Street • Suite 300 • P.O. Box 1757 • Tallahassee, FL 32302-1757 • (850) 222-9684 • Fax (850) 222-3806 • www.floridaleagueofcities.com

TO: Municipal Key Official

FROM: Michael Sittig, Executive Director

DATE: May 7, 2018

SUBJECT: 92nd Annual FLC Conference
VOTING DELEGATE INFORMATION
August 16-18, 2018 – The Diplomat Beach Resort, Hollywood

The Florida League of Cities' Annual Conference will be held at The Diplomat Beach Resort, Hollywood, Florida on August 16-18. This conference will provide valuable educational opportunities to help Florida's municipal officials serve their citizenry more effectively.

It is important that each municipality designate one official to be the voting delegate. Election of League leadership and adoption of resolutions are undertaken during the business meeting. One official from each municipality will make decisions that determine the direction of the League.

In accordance with the League's by-laws, each municipality's vote is determined by population, and the League will use the Estimates of Population from the University of Florida for 2017.

Conference registration materials will be sent to each municipality in the month of June. Materials will also be posted on-line. Call us if you need additional copies.

If you have any questions on voting delegates, please call Gail Dennard at the League (850) 701-3619 or (800) 616-1513, extension 3619. **Voting delegate forms must be received by the League no later than August 10, 2018.**

Attachments: Form Designating Voting Delegate

President **Gil Ziffer**, Commissioner, Tallahassee

First Vice President **Leo E. Longworth**, Vice Mayor, Bartow • Second Vice President **Isaac Salver**, Councilman, Bay Harbor Islands
Executive Director **Michael Sittig** • General Counsel **Kraig Conn**

AGENDA ITEM REPORT

June 11, 2018

ITEM NUMBER: 8.

ITEM: Approval of an expenditure to M&J Construction Company of Pinellas County in the amount of \$29,897.69, for reimbursement of additional bonding cost associated with the increased contract amount. Enclosed is a copy of the invoice and payment.

DESCRIPTION:

The Contractor, first indicated their intention to seek compensation for additional money for Construction Bonding in the December 2016 progress meeting. At that time the project was in the final stages of completion, and the Town Engineer was of the opinion that this request was untimely should not be paid. The matter was referred to the Town Attorney who agreed with the Town Engineer.

The Town attorney indicated in an email that the additional bond costs associated with an increased contract value is legitimate and must be paid to M&J. The email confirming the Town Attorneys' opinion is attached.

The Contractor has submitted an invoice from the Bonding Company in regards to the additional amount of \$29,897.69 (see copy attached).

The Account for this project has been finalized in the amount of \$17,498,626.81 (inclusive of the requested amount of \$29,897.69).

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Randy Daniel, Town Engineer

ATTACHMENTS

1. Email from Frank
2. Bay Harbor Added Bond Cost

Randy Daniel

From: Frank Simone <frank@franksimone.com>
Sent: Friday, May 25, 2018 3:31 PM
To: Randy Daniel
Cc: Ronald J. Wasson; J C Jimenez; Melissa Cruz; Douglas Armstrong; Craig Sherman
Subject: Re: Additional Bond Costs in favor of M&J Constrction

Randy:

The bond payment is required. The bond (which is in the Town's favor and for the Town's benefit) is calculated pursuant to the ultimate cost of the work. As the cost of the work increased, so too has the cost of the bond.

Best Regards,

FRANK SIMONE P.A.
Law Offices

Frank C. Simone, Esq., CFP(R)
701 Brickell Avenue
Suite 1550
Miami, Florida 33131
Phone: (305) 221-8000
Cell: (305) 790-3873
Fax: (305) 357-2510
Email: Frank@FrankSimone.com
Web: www.FrankSimone.com

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Thank you.

From: Randy Daniel <rdaniel@bayharborislands-fl.gov>
Date: Wednesday, May 23, 2018 at 4:24 PM
To: "Frank C. Simone, Esq. CFP(r)" <frank@franksimone.com>
Cc: "Ronald J. Wasson" <rwasson@bayharborislands-fl.gov>, J C Jimenez <jcjimenez@bayharborislands-fl.gov>, Melissa Cruz <macruz@bayharborislands-fl.gov>, Douglas Armstrong <darmstrong@bayharborislands-fl.gov>
Subject: Additional Bond Costs in favor of M&J Constrction

Dear Frank:

I am made to understand by the Town Manager, that despite our refusal to pay M&J for additional bond costs, we are legally required to pay.

MJ Checking 7909: Account Activity Transaction Details

Check number: 00000011263

Post date: 02/20/2018

Amount: -29,897.69

Type: Check

Description: Check

Merchant name: Check

Transaction category: Cash, Checks & Misc: Checks

11263

M & J CONSTRUCTION COMPANY
OF PINELLAS COUNTY, INC.
P.O. BOX 698
TARPON SPRINGS, FL 34688
PH. (727) 938-6478

BANK OF AMERICA

63-27/631

2/20/2018

PAY TO THE ORDER OF L. Calvin Jones & Co

\$**29,897.69

Twenty-Nine Thousand Eight Hundred Ninety-Seven and 69/100*****

DOLLARS

L. Calvin Jones & Co
3744 Star Centre Drive
PO Box 159
Canfield, OH 44406-0159

MEMO

⑆011263⑆ ⑆063100277⑆ 898052387909⑆

FOR DEPOSIT ONLY - JPMC



Insurance Strategies for Business since 1911

Customer	M & J Construction Company of Pinellas Cty. (Bond)
Acct #	7031
Date	09/08/2017
Customer Service	Alvin zzMiller Jr Bond Dept Bond Dept.
Page	1 of 1

Invoice Summary	\$	29,897.69
Payment Amount		
Payment for:	Invoice#194865	
9098345		

Invoice	Effective	Transaction	Description	Amount
194865	05/10/2017	Premium audit	Policy #9098345 11/10/2014-05/10/2017 Fidelity & Deposit Co of Md Contract B - Overrun CORRECTED INVOICE Overrun/Town of Bay Harbor Island-Rehabilitation of Broad Causeway Bridges Contract No BC-142/FCP \$17,555,244 JOB <u>217</u> ACCOUNT <u>51001</u> AMOUNT _____ APPROVED _____	29,897.69
				Total
				\$ 29,897.69

(330)533-1195

Date _____

09/08/2017

AGENDA ITEM REPORT

June 11, 2018

ITEM NUMBER: 9.

ITEM: Approval of contracts award to Lakes Engineering Inc. and STV Inc. for continuing bridge engineering services. Enclosed are copies of the evaluation sheets and supporting documents.

DESCRIPTION:

The last time the Town received proposals for Bridge Engineering Services was in 2003. In December 2003 Council approved a Continuing Services Contract with Hardesty and Hanover LLP (Hardesty).

The Town advertised for Continuing Bridge Engineering Services in March 2018 and proposals were due on April 12th 2018. Proposals were received from Lakes Engineering Inc. (hereafter referred to as Lakes) and STV Incorporated (STV). An Evaluation Committee was created to evaluate and recommend Continuing Services Contract awards with the top ranked firm(s).

The Evaluation Committee consisted of J.C. Jimenez, Assistant Town Manager, Melissa Cruz, Finance Director, Michael Miller, Consultant Planner, Dale Lee, Building Official, and Randy L. Daniel, P.E. Town Engineer (Committee Chair).

The format for evaluating the responses was created by the Town Engineer; the evaluation score sheet consisted of 5 main scoring categories which were subdivided into sub categories. Each sub category was weighted from 0.25 to 1.5 and evaluators were required to score each sub category from 1-10. The evaluators' score multiplied by the weighting factor (referred to as rating in the score sheet) equaled the score for each sub category. The maximum score for any sub-category ranged from 2.5 to 15.

The first noticed meeting of the Evaluation Committee was held on May 16, 2018 at 11:00 A.M. in the 2nd Floor Conference Room at Town Hall. A copy of the Public Notice is attached. Dale lee was absent, but there was a quorum and the meeting proceeded as planned.

The Finance Director circulated a Financial Comparison of both firms, and this document is attached.

Lakes is the smaller of the two firms and is incorporated in the State of Florida. Their relatively small size is reflected in the value of their assets (less than 1 Million USD). STV is the significantly larger firm, that is incorporated in the State of New York. Their assets are in excess of 200 Million USD. The Committee believed that each firm had distinct advantages: Lakes because of its size should be more competitive and may be used for smaller projects. STV has a wealth of Bridge Engineering Knowledge and Experience and may be better suited for larger projects.

The Committee achieved consensus in regards to the ranking of the firms: STV was ranked number 1 and Lakes was ranked number 2. Copies of signed evaluations from the Committee members who were present at the meeting are attached.

The Committee further reached consensus on awarding Continuing Services Contract Agreements with both Firms.

In addition to selecting a firm based on project scope, the Committee was also of the view that one firm could be used to provide Construction Engineering Inspection Services for a design that was prepared by the other.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Randy Daniel, Town Engineer

ATTACHMENTS

1. Notice of Meeting
2. Financial Comparison
3. Signed Evaluations

PUBLIC NOTICE
TOWN OF BAY HARBOR ISLANDS
EVALUATION COMMITTEE MEETING

Pursuant to Florida Statute 286.011, the Town of Bay Harbor Islands gives notice that a public meeting of the Evaluation Committee for the below-referenced RFQ will be held as follow:

DATE: Wednesday, May 16, 2018

TIME: 11:00AM

LOCATION: Town Hall Conference Room, 9665 Bay Harbor Terrace, Bay Harbor Islands, FL 33154

TITLE: RFQ - Bridge Continuing Services

AGENDA

- A. CALL TO ORDER**
- B. EVALUATION COMMITTEE DISCUSSION**
- C. SCORING OF PRESENTATIONS**
- D. PUBLIC COMMENT**
- E. ADJOURNMENT**

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, that person will need a record of the proceedings and, for such purpose, 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. In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this proceeding should contact the Clerk's office at 305-866-6241 at least seven days prior to the date of the meeting.

Town of Bay Harbor Islands
RFQ Continuing Bridge Engineering Services
Financial Comparison
5/3/2018

	Lakes Engineering		STV Group	
Net Profit Margin	35%	✓	16%	
Working Capital Ratio	67%	✓	45%	
Debt to Equity	199%		114%	✓
Return on Equity	184%	✓	8%	
Total Current assets	\$ 1,038,827		\$ 190,627,000	✓
Total Equity	\$ 351,165		\$ 110,048,000	✓
In business since	2013		1912	
# of employees	18		1700	

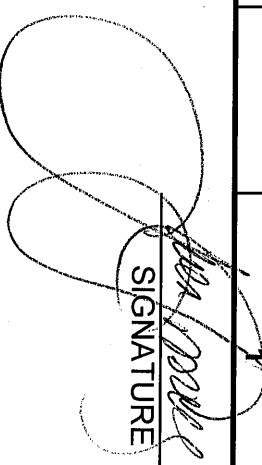
EVALUATION SCORE SHEET
EVALUATOR: JC JIMENEZ
EVALUATION OF QUALIFICATIONS FOR CONTINUING BRIDGE ENGINEERING SERVICES

CATEGORY	Rating	Max. Score	LAKES ENG INC EM (1-10)	Total Score	STV INCORPORATED EM (1-10)	Total Score
1. Related Project Experience						
Movable Bridge Design & Mtce	1.5	15	7	10.5	9	13.5
Fixed Span Design & Mtce	1.5	15	9	13.5	10	15
Transportation Engineering	1.0	10	8	8	9	9
Size & Cost of similar projects	1.0	10	8	8	9	9
				0		0
				0		0
2. Office Staff				0		0
Qualifications (Structural Engineers)	1.5	15	9	13.5	10	15
Experience in Similar Projects	1.0	10	9	9	10	10
Professional Experience	0.5	5	9	4.5	10	5
				0		0
				0		0
				0		0
3. FDOT /COUNTY EXPERIENCE				0		0
FDOT	0.25	2.5	8	2	9	2.25
COUNTY	0.25	2.5	8	2	9	2.25
				0		0
4. Distance to Site	0.5	5	10	5	8	4
				0		0
5. Financials	1.0	10	8	8	10	10
Total:	10.0	100.0	2	84.0		95.0
RANK			2			

Note: 1. EM - Evaluator Mark (1-10)

2. Total Score = EM X Rating

** I recommend both firms.*


SIGNATURE

EVALUATION SCORE SHEET
EVALUATOR: MELLISA CRUZ
EVALUATION OF QUALIFICATIONS FOR CONTINUING BRIDGE ENGINEERING SERVICES

CATEGORY	Rating	Max. Score	LAKES ENG INC E M (1-10)	Total Score	STV INCORPORATED EM (1-10)	Total Score
1. Related Project Experience						
Movable Bridge Design & Mtce	1.5	15	8	12	7	10.5
Fixed Span Design & Mtce	1.5	15	9	13.5	8	12
Transportation Engineering	1.0	10	8	8	8	8
Size & Cost of similar projects	1.0	10	8	8	9	9
2. Office Staff						
Qualifications (Structural Engineer	1.5	15	8	12	8	12
Experience in Similar Projects	1.0	10	8	8	8	8
Professional Experience	0.5	5	8	4	10	5
3. FDOT /COUNTY EXPERIENCE						
FDOT	0.25	2.5	8	2	8	2
COUNTY	0.25	2.5	10	2.5	8	2
				0		0
4. Distance to Site	0.5	5	10	5	10	5
				0		0
5. Financials	1.0	10	7	7	10	10
Total:	10.0	100.0		82.0		83.5
RANK			2		1	

Note: 1. EM - Evaluator Mark (1-10)
2. Total Score = EM X Rating

Mellisa Cruz
SIGNATURE

EVALUATION SCORE SHEET
EVALUATOR: RANDY L. DANIEL, P.E.
EVALUATION OF QUALIFICATIONS FOR CONTINUING BRIDGE ENGINEERING SERVICES

CATEGORY	Rating	Max. Score	LAKES ENG INC EM (1-10)	Total Score	STV/INCORPORATED EM (1-10)	Total Score
1. Related Project Experience						
Movable Bridge Design & Mice	1.5	15.0	7.5	11.3	8.5	12.8
Fixed Span Design & Mice	1.5	15.0	9.0	13.5	9.0	13.5
Transportation Engineering	1.0	10.0	8.0	8.0	7.0	7.0
Size & Cost of similar projects	1.0	10.0	9.0	9.0	9.0	9.0
2. Office Staff						
Qualifications (Structural Engineers)	1.5	15.0	9.0	13.5	9.5	14.3
Experience in Similar Projects	1.0	10.0	9.0	9.0	8.0	8.0
Professional Experience	0.5	5.0	8.0	4.0	10.0	5.0
3. FDOT /COUNTY EXPERIENCE						
FDOT	0.25	2.5	10.0	2.5	10.0	2.5
COUNTY	0.25	2.5	10.0	2.5		0.0
4. Distance to Site	0.5	5.0	10.0	5.0	9.0	4.5
5. Financials	1.0	10.0	6.5	6.5	10.0	10.0
Total:	10.0	100.0		84.8		86.5
RANK			2		1	

Note: 1. EM - Evaluator Mark (1-10)
2. Total Score = EM X Rating


SIGNATURE

EVALUATION SCORE SHEET
EVALUATOR: MICHAEL MILLER
EVALUATION OF QUALIFICATIONS FOR CONTINUING BRIDGE ENGINEERING SERVICES

CATEGORY	Rating	Max Score	LAKES ENG INC EM (1-10)	Total Score	STV INCORPORATED EM (1-10)	Total Score
1. Related Project Experience						
Movable Bridge Design & Mice	1.5	15.0	8.7	13.0	9.3	14.0
Fixed Span Design & Mice	1.5	15.0	8.7	13.0	9.3	14.0
Transportation Engineering	1.0	10.0	8.0	8.0	10.0	10.0
Size & Cost of similar projects	1.0	10.0	8.0	8.0	10.0	10.0
2. Office Staff						
Qualifications (Structural Engineers)	1.5	15.0	8.7	13.0	10.0	15.0
Experience in Similar Projects	1.0	10.0	10.0	10.0	10.0	10.0
Professional Experience	0.5	5.0	10.0	5.0	10.0	5.0
3. FDOT /COUNTY EXPERIENCE						
FDOT	0.3	2.5	10.0	2.5	10.0	2.5
COUNTY	0.3	2.5	10.0	2.5	10.0	2.5
4. Distance to Site	0.5	5.0	10.0	5.0	8.0	4.0
5. Financials	1.0	10.0	8.0	8.0	9.0	9.0
Total:	10.0	100.0		88.0		96.0
<i>Rank</i>				2		1

Note: 1. EM - Evaluator Mark (1-10)
2. Total Score = EM X Rating


SIGNATURE

AGENDA ITEM REPORT

June 11, 2018

ITEM NUMBER: 10.

ITEM: Approval of contract award to Brute Proof LLC. in the amount of \$29,750 to purchase a HyperV Terminal Server for the administrative computer network. Enclosed is a copy of the proposal.

DESCRIPTION:

The Town requested Request for Proposals (RFP) for the redundancy of their HyperV Terminal Server for the administrative computer network. The scope will include providing delivering and installation of all necessary equipment as well as implementing and configuring the new network with all components while maintaining the functionality of the systems with minimal disruptions.

The Town solicited an RFP for the proposed project in early April of 2018, a Public Notice was advertised on the Daily Business Review and the Town website. On May 25, 2018, the Town Clerk's office received only one proposal from Brute Proof in the amount of \$29,750.

Staff recommends award of contract to the only responsive bidder, Brute Proof in the amount of \$29,750.

Enclosed is a copy of the proposal and supporting documents.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

This project is coming out of IT Department's approved budget of fiscal year 2017 -2018

BUDGET IMPACT:

Submitted By: Robert Gonzalez, I.S. Manager

ATTACHMENTS

1. HyperV server redundancy project

TOWN OF BAY HARBOR ISLANDS, FLORIDA
REQUEST FOR PROPOSAL

BHI HyperV Server Redundancy Project

Sealed Bids for the **BHI hyperV Server redundancy project** must be received by the Town Clerk, Town of Bay Harbor Islands, 9665 Bay Harbor Terrace, Bay Harbor Islands, Florida 33154, by **3:00 PM on May 25th, 2018** at which time bids will be publicly opened and read aloud. All bids shall be clearly marked: "**BHI HyperV Server Redundancy Project.**"

The Town Bay Harbor Islands is a vibrant, affluent community of approximately 6,000 residents located on two islands in northern Biscayne Bay. The Town connects to the barrier island at Bal Harbour Village and the Town of Surfside to the east and to the mainland city of North Miami at 125th Street by a series of 4 bridges maintained by the Town of Bay Harbor Islands. The Town employs approximately 60 civilian employees and 23 police officers.

The Town is requesting proposals for the redundancy of their HyperV Terminal Server of the network for the administrative computer network. The scope will include providing delivering and installation of all necessary equipment as well as implementing and configuring the new network with all components while maintaining the functionality of the systems with minimal disruptions.

Contract Documents may be printed from the Town's website at www.bayharborislands-fl.gov. Further information may be obtained by emailing the Town's IT Manager, Roberto Gonzalez at rgonzalez@bayharborislands-fl.gov

The Town of Bay Harbor Islands reserves the right to waive any irregularities and to reject any and all bids.

Town of Bay Harbor Islands, Florida
Marlene M. Siegel, Town Clerk

TOWN OF BAY HARBOR ISLANDS
BID CLOSING – SIGN IN SHEET

Friday, May 25, 2018 @ 3:00PM

BHI HyperV Server Redundancy Project

NAME/COMPANY	MAILING ADDRESS	PHONE NUMBER AND FAX NUMBER	EMAIL
Alba Chang Deputy Town Clerk Town of BHI	9665 Bay Harbor Terrace, BHI, FL	305-866-6241	achang@bayharborislands- fl.gov
Roberto Gonzalez IS Manager Town of BHI	9665 Bay Harbor, BHI, FL	305-866-6241	rgonzalez@bayharborislands-fl.gov

TOWN OF BAY HARBOR ISLANDS

BID CLOSING

Friday, May 25, 2018

BHI HyperV Server Redundancy Project

1.		Bid Bond	Bid Amount \$
Company Name Contractor Name Address/ Phone #	BRUTE PROOF	NO	\$29,750
	724 NE 193 rd St.		
	Miami, FL 33179		
2.			
Company Name Contractor Name Address/ Phone #			
3.			
Company Name Contractor Name Address/ Phone #			
4.			
Company Name Contractor Name Address/ Phone #			



STATEMENT OF WORK FOR

TOWN OF BAY HARBOR ISLANDS

Project Name

BHI Hyper-V Server Redundancy Project

STATEMENT OF WORK FOR

TOWN OF BAY HARBOR ISLANDS

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CONFIDENTIAL

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The information in this document is not meant for general dissemination and may only be used by the recipient in connection with the services reflected in this document. No portion of this document may be reproduced, stored, transmitted or disclosed for any purpose to any third party without prior written consent from BruteProof.

PREFACE

This document is intended to outline the work to be done and provide clear expectations of the final outcome. Any modifications to this Statement of Work requires a written project change request and approval by Town of Bay Harbor Islands and BruteProof, LLC. The content of this proposal reflects the understanding of the Hyper-V Server Redundancy Project. The scope, approach, deliverables, and pricing are based on information received to date. Contractually this document may serve as schedule document.

GOALS

The goal of this project is to assist the TBHI IT team in deploying a Storage Area Network and its corresponding iSCSI switching fabric. Then create a Hyper-V Cluster in order to migrate the existing virtual machines from local server storage over to Cluster Shared Volumes.

PROJECT ITEMS

SAN and Hyper-V Cluster Setup

- Unbox, install rails and rack server.
- Unbox, install rails and rack switches.
- Unbox, install rails and rack SAN.
- Upgrade switch firmware and create stack.
- Configure switch stack and optimize configuration for iSCSI network.
- Wire SAN and Servers to switch.
- Document a diagram.
- Initialize SAN, configure networking, and install latest SAN firmware.
- Create group and 1GB LUN to be used for Cluster Shared Volumes.
- Shut down BHI-HYPER1 and install additional quad port NIC.
- Install Windows Server 2012 R2, activate and run updates on server.
- Install necessary roles for virtualization on new server.
- Install clustering services on both servers.
- Install EqualLogic Host Integration tools on both servers.
- Install Dell OpenManage and configure iDRAC on new server.
- Configure network teams, virtual switches, IP addressing and NICs according to SAN vendor requirements on both servers.
- Create Hyper-V Cluster.
- Create LUN on SAN, add to Cluster as Cluster Shared Volume and move a test Virtual Machine as a functional test.
- Install and configure EqualLogic SAN Headquarters on management server.
- Install client-provided Backup and Antivirus software.

Virtual Machine Migration

- Move BHI-DC1 into Cluster, and confirm functionality.
- Move BHI-DC2 into Cluster, and confirm functionality.
- Move BHIMAIL into Cluster, and confirm functionality.
- Move IMCSERVERNEW into Cluster, and confirm functionality.
- Move FILESERVERNEW into Cluster, and confirm functionality.
- Create project documentation.
- Train BHI team and perform knowledge transfer.

DEPENDENCIES

The success of this project is dependent upon the cooperation of key members of the Town of Bay Harbor Islands IT staff. The following individuals are recognized by BruteProof as key client contacts:

Roberto Gonzalez

CLIENT RESPONSIBILITIES

This Section is provided for informational purposes only. BruteProof typically includes (but is not obligated under this Project SOW to include) the following customer responsibilities in BruteProof' customer-facing Project SOW related to the Services:

1. During the term of this SOW, Customer is responsible for promptly notifying BruteProof in writing of a) any changes Customer makes to its information technology environment that may impact BruteProof' delivery of the Services; and b) if Customer becomes aware that any of the Assumptions set forth herein are incorrect.
2. Customer will maintain a backup of all data and programs on affected systems prior to BruteProof performing the Services and during the term of the SOW. BruteProof will have no liability for loss or recovery of data, programs or loss of use of system(s) arising out of or in connection with the Services provided under this PSOW.
3. Customer will provide technical points-of-contact, who have a working knowledge of the enterprise components to be considered during the Services ("Technical Contacts"). BruteProof may request that meetings be scheduled with Technical Contacts.

4. The Customer Contact will have the authority to act for Customer in all aspects of the Service including bringing issues to the attention of the appropriate persons within Customer's organization and resolving conflicting requirements.
5. The Customer Contact will ensure that any communication between Customer and BruteProof, including any scope-related questions or requests, are made through the appropriate BruteProof Lead Project Engineer.
6. The Customer Contact will provide timely access to technical and business points of contact and required data/information for matters related to the SOW.
7. The Customer Contact will ensure attendance by key Customer contacts at Customer meetings and deliverable presentations.
8. The Customer Contact will obtain and provide project requirements, information, data, decisions and approvals within one working day of the request, unless both parties agree to a different response time.
9. Customer may be responsible for developing or providing documentation, materials and assistance to BruteProof and agrees to do so in a timely manner. BruteProof shall not be responsible for any delays in completing its assigned tasks to the extent that they result from Customer's failure to provide such timely documentation, materials and assistance.
10. The Customer Contact will ensure the Services personnel have reasonable and safe access to the Project site, a safe working environment, an adequate office space, and parking as required.
11. Customer will inform BruteProof of all access issues and security measures, and provide access to all necessary hardware and facilities.
12. Customer is responsible for providing all hardware, software, internet access, and facilities for the successful completion of the Services. Facilities and power must meet BruteProof' requirements for the products and Services purchased.

CHANGE ORDER AUTHORIZATION

The Statement of Work change process requires a written Project Change Addendum with signatures by Town of Bay Harbor Islands and BruteProof Professional Services. A Project Change Addendum is required when additional tasks requested by Town of Bay Harbor Islands or recommended by BruteProof. Changes to the project may impact project timeline or budget.

The following personnel from Town of Bay Harbor Islands are authorized to approve a project change request:

Roberto Gonzalez

FLAT RATE FEES

All labor for the tasks specified in this Scope of Work will be performed for a flat rate. Any work performed not listed in this Statement of Work will require a Statement of Work Addendum and will be billed at the BruteProof standard time and materials rate. The rates represented on this Statement of Work are valid for 30 days from 5/25/2018.

Option 1 (100% payment up front)

\$13,000

Option 2 (50% deposit and 50% at project completion)

\$7,000 deposit at the time of commencement

\$7,000 at project completion

STATEMENT OF WORK APPROVAL

Project Name: BHI Hyper-V Server Redundancy Project

I accept the terms and I understand that I am responsible for paying the above listed prior to project commencement.

I have reviewed and approved the terms for the project named above. All changes, additions or deletions must be approved by the authorized Town of Bay Harbor Islands representative and Town of Bay Harbor Islands.

I hereby give BruteProof approval to proceed with creation of a project plan. I also give my approval for BruteProof to invoice Town of Bay Harbor Islands according to the installments. I understand further changes to the structure, objectives, or content of the project will likely result in a delay in the final delivery date and may result in additional charges to Town of Bay Harbor Islands.

Town of Bay Harbor Islands Approval:

Signature

Date

Print Name

BruteProof SOW Approval:



Elias J Castillo



Hardware Quote

Virtual Server Host

\$5,200

- Dell PowerEdge R630
- 2x Intel Xeon E5-2620 v3 2.4GHz 6 Core
- 128GB DDR4 PC4-2133P ECC Memory
- PERC H730 1GB Cache & Battery
- 2x 146GB 15K RPM SAS 12Gbps Hot Swap Drives
- Broadcom 5720 Quad Port 1Gb NDC
- 3x PCI-E 3.0 Slots
- Redundant Power Supplies
- iDRAC8 Remote Access Enterprise License
- Rail Kit, Front Bezel & 2x Power Cords
- 2 Year NBD Parts Replacement Warranty

Dell EQUALLOGIC PS6100X SFF ISCSI SAN 24X 900GB 10K SAS DRIVES 21.6TB

\$7,000

- Dell EqualLogic PS6100X
- 24x 2.5" SFF Hard Drive Option
- 24x 900GB 10K SAS Hot Swap Drives
- 2x Type 11 Controllers
- 4x 1GB RJ45 Port + 1x Mgmt Port
- 2x 700W Power Supplies
- Rail Kit Included
- Front Bezel Included
- 2x Power Cords, & 1x Console Cable
- 2 Year NBD Parts Replacement Warranty

2 x Dell N2048 Switches and 2 x Dell Stacking Cables

\$4,000

Dell Networking N2024 Switch with 24 x 10/100/1000 Auto-Sensing RJ45 Ports, two integrated 10GbE SFP+ ports, two dedicated rear stacking ports and one integrated 1000W AC power supply. Includes the power cord only, no other accessories included.
2 Year NBD Parts Replacement Warranty

Miscellaneous

- | | |
|---|-------|
| • Windows Server 2012 R2 Standard OEM | \$300 |
| • Broadcom 5720 Quad Port 1Gb Network Card for BHI-HYPER1 | \$100 |
| • 20 Color-coded Ethernet Cables | \$50 |

Subtotal	\$16,650
Shipping	\$100
Total	\$16,750

Please note, a 50% up-front payment will be required for all hardware and software purchases.

AGENDA ITEM REPORT

June 11, 2018

ITEM NUMBER: 11.

ITEM: Discussion and possible action requested by Vice Mayor 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: Marlene Siegel, Town Clerk
 Joshua Fuller, Council Member

ATTACHMENTS

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

 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

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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

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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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AGENDA ITEM REPORT

June 11, 2018

ITEM NUMBER: 12.

ITEM: Discussion requested by Council Member Reid on possible locations to host a Community Garage Sale. Enclosed is a copy of the Section 13-13 of the Town Code relating to Garage Sales.

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk
 Kelly Reid, Council Member

ATTACHMENTS

1. Section 13-13

Sec. 13-13. - Auction sales, garage sales and sales of any kind outside buildings; penalty for violation.

- (a) *Auction sales of gold, silver, etc.* Auction sales of gold, silver, jewelry, precious stones, artwork, bric-a-brac, antiques and copies of antiques are prohibited in the B1 district of town.
- (b) *Sales outside buildings.* All sales of property, sales material, and displays related thereto in any part of the town not conducted or maintained in a building, are prohibited, except for Garage Sales, as set forth below.
- (c) *Garage sales.* "Garage Sales" are defined as informal sales of several articles of personal property to a number of different buyers in the residential districts of the Town. Garage Sales are prohibited except as conducted in the following manner:
 - (1) A garage sale is limited to three days in one year by any one person, by any one family, or by any one group.
 - (2) Only one printed black and white sign can be used by the seller and during the sale days only, bearing only the words "Garage Sale," being no larger than two feet square, being placed only on the premises of the sale, and being approved by the town manager as in compliance with this section.
 - (3) No merchandise shall be displayed outside a building that is visible from the street it being the intent that the garage sale and all merchandise to be sold shall be inside of a building or be confined to an area outside the building that is not visible from the street.
 - (4) A permit must be obtained from the town for each garage sale, the cost of such permit being \$50.00.
 - (5) All articles sold must be owned by the person in whose premises the sale is being conducted.
- (d) *Penalty.* Any person who shall violate any of the provisions of this ordinance shall be punished in accordance with the provisions of section 1-8 of this Code.

(Ord. No. 575, § 1, 8-14-95; Ord. No. 628, § 1, 1-12-98; Ord. No. 635, § 1, 9-14-98; Ord. No. 836, § 1, 4-14-08; Ord. No. 974, § 1, 4-13-15)

AGENDA ITEM REPORT

June 11, 2018

ITEM NUMBER: 13.

ITEM: Discussion requested by Council Member Reid with regards to Town Council term limits and Election of a Mayor.

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

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

ATTACHMENTS

None

AGENDA ITEM REPORT

June 11, 2018

ITEM NUMBER: 14.

ITEM: Discussion requested by Council Member Reid regarding an amendment to the code to require noticing for project revisions.

DESCRIPTION:

At the last Council meeting Council Member Reid requested that this issue be brought for discussion. Enclosed Section 5-29 of the Town Code which outlines the methods of noticing for new projects. The request that Council Member Reid makes seem far simpler than it actually is. This discussion is being raised because there were two projects that requested revisions that impacted the aesthetics of the buildings (which is why they were brought to the Planning and Zoning Board by staff). Staff makes it's decision on whether or not to bring to the Planning and Zoning Board revisions if significant changes are made to the exterior of the building that change the aesthetics of the original project approval. It's always a judgement call; however, sometimes the changes are minor such as replacing some windows, reworking architectural features to accommodate structural issues that come up during the actual drafting of building plans. That might be moving a stairway, or access door, relocating some utilities, removing entrance features such as a fountain, a green wall, etc. Sometimes it's a change in materials that doesn't really affect the overall look of the building.

It would not seem practical to go through the entire process again, once the project for that site has already been through a public hearing process, the property owners were notified and the property was posted. Perhaps, it would be an acceptable compromise to post a sign on the property to notify nearby neighbors that the original project is undergoing a revision when its deemed necessary to go back to the Planning and Zoning Board.

As far as the code goes, I don't believe an amendment would be necessary since the last paragraphs states the Council can ask for additional advertisement; however, I would recommend that a resolution is adopted to give staff guidance and to provide a solid deadline for submission of revisions to give us time to install a sign on the property. The building department usually notifies the Clerk's office who orders the sign and makes sure it is installed at the correct site.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk
Kelly Reid, Council Member

ATTACHMENTS

1. Sec. 5_29.____Notice_procedures_for_site_development_plan_approvals

Sec. 5-29. - Notice procedures for site development plan approvals.

- (1) *Intent.* It is the intent of this section to provide the citizens of the Town of Bay Harbor Islands with notice of pending land development applications and those town meetings at which approvals will be considered to encourage public participation in the decision-making process, within the requirements of general law and the Florida Statutes.

- (2) *Definitions.*

As used in this section the following terms shall mean:

Affected person. A person (or persons), natural or corporate who is the owner of the subject property or who owns property abutting or within the specified notice distance of the subject property.

Land development review body. The town entity or entities designated by the town council to recommend actions and/or approve certain land development applications.

Local governing body. The Town Council of the Town of Bay Harbor Islands.

Local planning agency (LPA). The agency designated to prepare the comprehensive plan of the town required by Florida Statutes.

Property owner. Person (or persons), natural or corporate who, by reference to the latest ad-valorem tax records, owns the subject property.

Subject property. Property sought to be rezoned, platted, re-platted, or property subject to a conditional use, special exception, zoning variance, comprehensive plan amendment, change in permitted use or site plan approval.

- (3) *Types of public notice for site development plans.* The types of public notice are as follows:

- (a) *Mail notice.* Mail notice shall consist of mailing a notice of the public meeting(s) to each real property owner within 375 feet of the subject property as each is listed in the latest ad valorem tax records of Miami-Dade County. Mail notice may be provided through one of the following:

1. Bulk mail.
2. First class mail.
3. Certified mail, return receipt requested.

- (b) *Posting.* Posting of the subject property shall consist of a sign to be posted on such land, which sign shall comply with the standard size and content required by Florida Statutes and/or adopted by the town, shall be of a color distinguishable from the surrounding landscape, and shall contain notice of the public hearing.

- (c) *Additional and optional notice.* The planning and zoning board or the town council may direct that additional and optional notice be given as they may deem as proper for the circumstances involved for the particular hearing, but such additional notice shall not be deemed as legally required.

- (4) *Notification of property owners; listing of property owners.* In those instances that require individual notification of property owners within specified distances of a property requesting a site development plan approval from the town, the applicant shall provide and the applicant shall pay for two copies of a listing of property owners and addresses within the distances specified below of the exterior boundary lines of the subject property. In addition, the applicant shall pay for the cost of postage. One such list shall be gummed labels for mailing purposes. If the subject property constitutes only a portion of a contiguous ownership parcel, the exterior boundary from which the specified radius is to be projected will be the exterior boundary of the entire contiguous ownership parcel. Following is the required public notification radius for various types of land development applications: Site development plans—375 feet.

- (5) *Posting of property.* In those instances that require the property that is the subject of consideration for a site development plan be posted with a sign, the sign shall contain, at a minimum, verbiage

indicating the nature of the request, the date, time and location of meetings at which the matter will be discussed. The town shall adopt a standardized sign size, color, content and placement criteria. For site development plan applications, the sign shall be posted within ten days of the application being filed with the town and shall remain in place until the planning and zoning board takes final action on the application. When the property is initially posted, a photograph of the sign must be taken and provided to the town as evidence the property was posted.

(Ord. No. 809, § 1(Exh. A), 10-9-06)