

TOWN OF BAY HARBOR ISLANDS

March 9, 2020

AGENDA

STATEMENT OF DECORUM

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

CALL TO ORDER: 7:00 p.m.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

SPECIAL PRESENTATION:

1. Presentation to the Rotary Club of Bal Harbour of the proceeds of the 5K/10K Annual race for the Chief Mark N. Overton, Chief Miguel De La Rosa Legacy Memorial Scholarship Fund.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

TOWN MANAGER'S REPORT:

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

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

PUBLIC COMMENT: Set for approximately 7:55 p.m. *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.*

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.)*

3. **Consideration and Approval** of a resolution to appoint John Cunill as Assistant Town Attorney. Enclosed is a copy of the proposed resolution.
4. **Consideration and Approval** of a resolution to update the Town's Travel Policy. Enclosed is a copy of the proposed resolution.

- 4.5 **Consideration and Approval** of a **resolution** requested by Council Member Reid and co-sponsored by Council Member Yaffe expressing support for Florida Senate Bill 1752 and Florida House Bill 1317 which would revise and strengthen criminal penalties relating to violations for condominium associations. Enclosed is a copy of the proposed resolution and other supporting documents.
5. **Approval** of the May 13, 2019 Regular Council Meeting Minutes. Enclosed is a copy of the revised Minutes.
6. **Consideration and Approval** regarding the attendance to the 66th Annual Miami-Dade County League of Cities Gala to be held May 9th, 2020. The Bronze Sponsorship Package in the amount \$3,000 includes a table seating for 10 and recognition the night of the event. Enclosed are the sponsorship packages details.
7. **Consideration and Approval** of Conduit Access and Sharing Agreement between the Town and Comcast of California/ Colorado / Florida / Oregon, Inc for the shared use of the 10-inch Town owned conduit located on 96th Street between East Bay Harbor Drive and Bay Drive. Enclosed is a copy of the proposed agreement.
8. **Consideration and Approval** of a Conduit Access and Sharing Agreement between the Town and Hotwire Communications, LTD for the shared use of a 10-inch Town owned conduit located on 96th Street between East Bay Harbor Drive and Bay Drive. Enclosed is a copy of the proposed agreement.

STAFF RECOMMENDATION: Approval

ORDINANCES ON SECOND READING:

9. **Consideration and Approval** of an ordinance on **second** reading requested by Council Member Tricoche amending Section 15, Rule 22 of the Town Code regarding the hours of operation for the Town Parks. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 15 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED PARKS AND RECREATION, BY AMENDING RULE 22 HOURS OF OPERATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council Discretion

POLL VOTE

DISCUSSION ITEMS:

10. **Discussion** requested by Council Member Tricoche on the Selection Process for the Chief of Police. Enclosed is a Memorandum from Town Attorney Frank Simone, Esq. and other supporting documents.
11. **Discussion** requested by Council Member Reid regarding the possibility of creating an ordinance to regulate the placement of fencing on waterfront lots. Enclosed is a memorandum provided by the Town Attorney.

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

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

AGENDA ITEM REPORT

March 9, 2020

ITEM NUMBER: 1.

ITEM: Presentation to the Rotary Club of Bal Harbour of the proceeds of the 5K/10K Annual race for the Chief Mark N. Overton, Chief Miguel De La Rosa Legacy Memorial Scholarship Fund.

DESCRIPTION:

At the September meeting the Town Council approved that proceeds from the race will benefit the Rotary Club of Bal Harbour, Chief Mark N. Overton, Chief Miguel De La Rosa Legacy Memorial Scholarship Fund to help individual(s) aspiring for a career in Law Enforcement, by assisting with the costs associated with the police academy training and certification of a self-sponsored recruit in Miami-Dade County.

This year the Bal Harbour Police Department also donated their race proceeds (March 2019) for the Scholarship Fund.

The total proceeds to be donated totals \$3,672.00

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

ATTACHMENTS

None

AGENDA ITEM REPORT

March 9, 2020

ITEM NUMBER: 2.

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

DESCRIPTION:

At the April 8th, 2019, Organizational Meeting, the Town Council designated Council Member Robert Yaffe as the Director and Council Member Elizabeth Tricoche as alternate Director.

Enclosed is correspondence received by Miami Dade County League of Cities.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

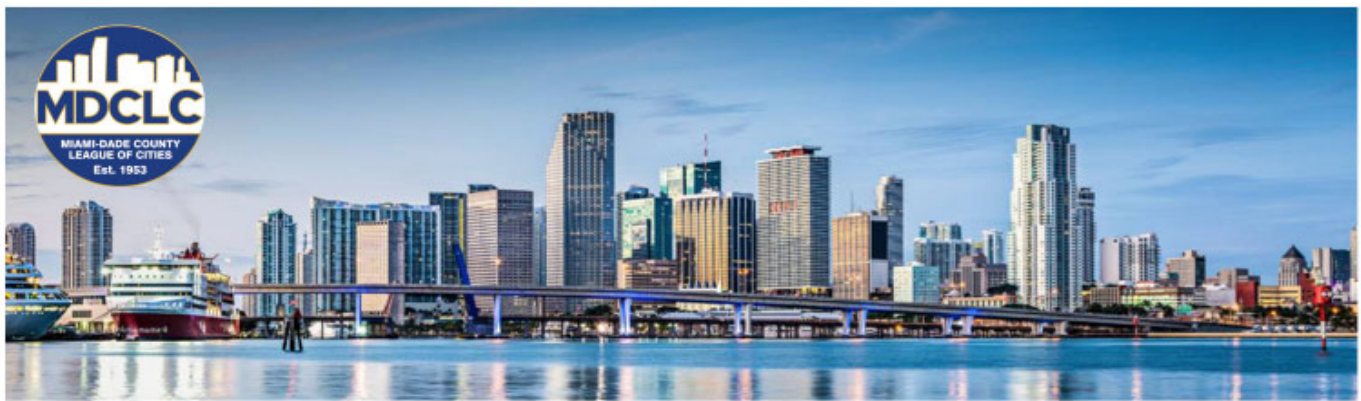
ATTACHMENTS

1. MDCLC - Designation of Director

Alba Chang

From: MDCLC <MDCLC@BELLSOUTH.NET>
Sent: Tuesday, March 3, 2020 12:08 PM
To: Alba Chang
Subject: MDCLC Board appointment

From: Miami-Dade County League of Cities <MDCLC@BELLSOUTH.NET>
Date: Wednesday, February 26, 2020 at 9:45 AM
To: Stephanie Bruder <sbruder@bayharborislands-fl.gov>
Subject: MDCLC Board appointment



Dear Mayor Bruder:

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

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

Allow this letter to serve as a kind reminder that you are required to designate a Director and an alternate to represent your municipality on the MDCLC's Board preferably before **April 1st, 2020**. Please send us a note to the League office naming your appointments.

Thank you for your continued cooperation and support.

Sincerely,

Richard Kuper, Esq.
Executive Director
Miami-Dade County League of Cities

AGENDA ITEM REPORT

March 9, 2020

ITEM NUMBER: 3.

ITEM: Consideration and Approval of a resolution to appoint John Cunill as Assistant Town Attorney. Enclosed is a copy of the proposed resolution.

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
 Frank Simone, Assistant Town Attorney

ATTACHMENTS

1. Reso - appointing Assistant Town Attorney - 2020
2. 2020.02.18 Letter Regarding John Cunill

RESOLUTION NO. _____

**A RESOLUTION OF THE TOWN COUNCIL OF THE
TOWN OF BAY HARBOR ISLANDS, FLORIDA
APPOINTING AN ASSISTANT TOWN ATTORNEY.**

WHEREAS, it is incumbent upon the Town Council to appoint an Assistant Town Attorney; and

WHEREAS, an appropriation for these officials has been provided for in the Operating Budget; and

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

Section 1. That the following shall be appointed to serve the Town as Assistant Town Attorney to handle all legal details for the current appointive year and assist the Town Attorney, Frank Simone, as he deems necessary and whose compensation is included in the Town Attorney's retainer/contract:

JOHN CUNILL

PASSED and ADOPTED this 9th day of March, 2020.

MAYOR

ATTEST:

TOWN CLERK

FRANK SIMONE P.A.

Law Offices

701 BRICKELL AVENUE
SUITE 1550
MIAMI, FLORIDA 33131

TELEPHONE (305) 221-8000
TELEFAX (305) 357-2510

WEBSITE: FrankSimone.com

February 18, 2020

Via e-mail: msiegel@bayharborislands-fl.gov

Town of Bay Harbor Islands
ATTN: Marlene Siegel, Town Clerk
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Re: John Cunill. Assistant Town Attorney.

Dear Marlene:

In connection with the resolution to appoint John Cunill as Assistant Town Attorney, I attach Mr. Cunill's CV. In addition to the CV, the following information about John is pertinent.

John served in the United States Army Reserves and, thereafter, as a police officer, for 19 years.

While in law school, John interned with the Department of Homeland Security and the State Attorney's Office.

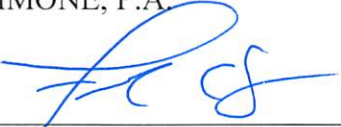
Since graduating from law school, John has worked as a principal in the law firm of Adorno Cunill & Damas. He has represented the City of Miami and the City of Sweetwater in various municipal matters. He has extensive experience with police department matters, including collective bargaining agreements.

John is an outstanding attorney and person. I have had the pleasure of knowing John and his family for almost twenty (20) years. During this time, I have worked with John on various legal matters. He has always provided outstanding legal services. I am confident that John will be a wonderful addition to the Town's legal team.

All of John's services as the Assistant Town Attorney are covered by the Town's retainer agreement with my firm. So, there is no additional charge for John or his services to the Town.

Sincerely,

FRANK SIMONE, P.A.

By: 
FRANK C. SIMONE, ESQ. CFP®

cc: Council Members via email.

John Cunill

1000 Brickell Ave. Ste 720

Miami, FL 33131

Phone: 305.381.9999

Email: john@acdfirm.com

Mission Statement	Quality work stands the test of time so always provide your best product.	
Legal Experience	Attorney with experience in Municipal Law, Election Law, Administrative Proceedings, Special Master Hearings and Law Enforcement Issues. My practice includes litigating challenges to election results, challenges to the qualification of candidates, litigating ordinances and municipal codes, litigating labor issues relating to City employees and Civil Service employees, reviewing City and Village Charters, drafting attorney opinion letters and appearing at Special Master Hearings.	
Bar Admittance	State of Florida United States District Court Southern District of Florida United States District Court for the District of Puerto Rico	
Courts Litigated	United State Federal Courts Second District Court of Appeals Third district Court of Appeals Florida State Courts	
Professional Memberships	Florida Bar Association Federal Bar Association Dade County Bar Association Cuban American Bar Association American Bar Association Military Pro Bono Project Florida Bar Section City County & Local Govt Law Florida Bar Section Environmental & Land Use Law	
Committees	City of Miami Homeland Defense Neighborhood Improvement Bond Program Oversight Board. (Board was dissolved upon termination of Bond).	
Education	B.A. Degree Florida International University	2009
	Juris Doctorate St. Thomas University School of Law	2012

AGENDA ITEM REPORT

March 9, 2020

ITEM NUMBER: 4.

ITEM: Consideration and Approval of a resolution to update the Town's Travel Policy. Enclosed is a copy of the proposed resolution.

DESCRIPTION:

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

Travel to conferences and seminars is budgeted each year for all department.

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1. per diem and travel

RESOLUTION NO. _____

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN
OF BAY HARBOR ISLANDS ESTABLISHING PER DIEM
AND TRAVEL EXPENSES.**

WHEREAS, Council Members and Staff of the Town Council of the Town of Bay Harbor Islands are responsible for the public health, safety and welfare of the citizens of the Town of Bay Harbor Islands and those coming to the Town; 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; and

WHEREAS, Town Council Members and Staff, from time to time, are required to travel on behalf of the Town and, at times, are required to incur expense(s) relating thereto; and

WHEREAS, regulation of per diem and travel allowances is necessary to the proper administration of the Town; and

WHEREAS, The Town wishes to amend it's per diem and travel expenses resolution No. 941, adopted July 2003 to comply with current state law, more specifically Section 112.061, F.S.

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

Section 1. Schedule of Per Diem and travel allowances to be paid by the Town Council Members and Staff shall be as follows:

Employees / Public Officers traveling for business purposes will be reimbursed as per the guidelines set forth below. Reimbursement shall be limited to those expenses necessarily incurred by them in the performance of a public purpose authorized by law to be performed by the agency. The number of trips allowed is limited to appropriated funds. As part of the annual budget process each Department Director / Manager shall request funding for travel related to themselves and for any employees in their department to the Town Manager. Travel outside that approved through the annual budget process shall be approved on a case by case basis per the Town Manager if funding is available.

A Travel Authorization form must be completed and approved prior to the trip (with appropriate approvals) certain exceptions apply (see below).

1. A Travel Authorization form is NOT required for:
 - a. A Meeting of one day or less in which only, registration fees, parking fees, mileage reimbursements and/or other transportation charges are incurred. When claiming a "Travel Authorization form" exemption under this section, an expense report must be included.
 - b. Travel that does not require the expenditure of funds.
 - c. Webinars
 - d. Town Council members for travel approved through the annual budget process or approved by the Town Council.

Types of Travel & Reimbursement:

Reimbursement for travel will be in the amount of \$80 per day for Class A / B travel & \$20 Breakfast, \$20 Lunch & \$20 Dinner for Class C travel. Per diem expenses allowed are for food (no alcohol). Request for reimbursement must be submitted to the Chief Financial Officer as soon as possible or within 3 working days after return from travel. No receipts need to be provided for per diem.

Class A travel-Continuous travel of 24 hours (4 quarters of 6 hours each) or more away from official headquarters.

Class B travel-Continuous travel of less than 24 hours (4 quarters of 6 hours each) which involves overnight absence from official headquarters.

Class C travel-Travel for short or day trips where the traveler is not away from his or her official headquarters overnight.

Other Expenses:

Travel through commercial airline must be reasonably priced at the lowest airfare reasonably possible. Cancellations to airfare shall be reimbursed to the employee only for serious personal or work-related problems. Documentation must be in writing and proof of payment required.

Personal Vehicles used for travel outside of the tri-county area (even if car allowance is received) will be reimbursed for additional travel mileage expenses as allowed by the IRS; furthermore, gas expenses may be reimbursed, and proof of payment or extra mileage amount is required.

If using a town vehicle to travel for work purposes outside the tri-county area, gas expenses will be the only reimbursable expense. Rental cars are allowed in lieu of the use of personal cars only when the rental option is less expensive when compared to other types of transportation. Proof of rental payment is required.

Miscellaneous Expenses:

Miscellaneous expenses, including checked baggage, airport parking, taxi fares, hotel parking, sundries etc., may be claimed if circumstances indicate they are necessary for the traveler and approved by the employee's department director. An expense report must be included with reimbursement request & receipts must be provided.

1) The following expenses will be reimbursed (receipts need to be provided):

- a. Laundry fees after seven (7) consecutive nights
- b. Internet connection fees incurred to conduct Town business
- c. Hotel parking including valet if it is the only means to park a Town authorized rental or personal vehicle
- d. Up to one checked bag per travel when traveling one (1) to seven (7) days. For those traveling eight (8) or more days, two (2) checked bags may be allowed after Department Director/ Manager approval
- e. For travelers carrying work related materials, including overweight bags, the cost for those checked bags will be reimbursed; however, the need must be specified on the Travel Authorization form and checked bags receipts must be submitted with the reimbursement requests
- f. Meals offered by some airlines that requires payment.
- g. Bridge, road, tunnel, tolls and other fees. Original receipts are required.
- h. Fax, and telephone - for Town business
- i. Gratuities will be allowed but are not to exceed 15% for meals and taxis. Original receipts are required

2) The following expenses will NOT be reimbursed:

- j. Alcoholic beverages
- k. Personal phone calls
- l. Parking, moving and/or traffic violations
- m. Movie rentals
- n. Florida Sales tax when it is the result of the traveler's failing to provide a Florida Sales tax exemption certificate
- o. Unauthorized claims - those incurred without prior approval and/or documentation
- p. Airline add-on fees (e.g. extra legroom fees, priority boarding fees, etc.). Exceptions are allowed with the Department Director / Manager's approval

Section 2. Requests for travel shall be submitted in advance, whenever possible.

Section 3. All authorized expenses incurred pursuant to Section 1 above, shall be submitted to the Town in writing and each expense shall be separately enumerated. The Town's Finance Department shall provide forms that are deemed necessary to effectuate the purposes of these regulations. Said forms shall contain the following sworn statement: "The Expenses were actually incurred by the traveler as necessary travel expenses in the performance of official duties and are true and correct as to every material matter." This section must be fully complied with as a condition precedent to reimbursement for travel expenses.

PASSED AND ADOPTED this ____ day of _____, 2020.

TOWN OF BAY HARBOR ISLANDS

BY: _____
MAYOR

ATTEST:

TOWN CLERK

AGENDA ITEM REPORT

March 9, 2020

ITEM NUMBER:

ITEM: Consideration and Approval of a **resolution** requested by Council Member Reid and co-sponsored by Council Member Yaffe expressing support for Florida Senate Bill 1752 and Florida House Bill 1317 which would revise and strengthen criminal penalties relating to violations for condominium associations. Enclosed is a copy of the proposed resolution and other supporting documents.

DESCRIPTION:

The proposed resolution supports Senate Bill 1752 and House Bill 1317 which would revise and strengthen the criminal penalties relating to violations for condominium associations.

Enclosed is a copy of the proposed resolution and other supporting documents.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

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

ATTACHMENTS

1. Reso Anti fraud - expressing support for SB 1752 and HB 1317 -
2. Senate Bill 1752
3. House Bill 1317

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, EXPRESSING SUPPORT FOR FLORIDA SENATE BILL 1752 AND FLORIDA HOUSE BILL 1317 WHICH WOULD REVISE AND STRENGTHEN CRIMINAL PENALTIES RELATING TO VIOLATIONS FOR CONDOMINIUM ASSOCIATIONS; URGING THE FLORIDA LEGISLATURE AND GOVERNOR RON DESANTIS TO SUPPORT AND APPROVE THE LEGISLATION; DIRECTING THE TOWN CLERK TO DISTRIBUTE COPIES OF THIS RESOLUTION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Senator Jason Pizzo has filed Senate Bill 1752 for consideration by the Florida Legislature, and House Representative Javier E. Fernandez has filed House Bill 1317 which would amend Chapter 718 of the Florida Statutes, which regulates Condominium Associations in the State of Florida; and

WHEREAS, these two (2) bills would revise and strengthen criminal penalties relating to the acceptance of things or services of value or kickbacks, violations relating to official association records, and fraudulent voting activities related to association elections; and

WHEREAS, it is in the best interests of condominium owners and residents throughout the State of Florida for the Florida Legislature to adopt proposed Senate Bill 1752 and House Bill 1317.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SUNNY ISLES BEACH, FLORIDA, AS FOLLOWS:

Section 1. Support for Senate Bill 1752 and House Bill 1317. The Town Council hereby expresses support for Senate Bill 1752 and House Bill 1317 and urges the Florida Legislature to adopt and Governor Ron DeSantis to support and approve said bills.

Section 2. Directions to the Town Clerk. The Town Clerk is hereby directed to distribute copies of this Resolution to Senator Jason Pizzo and House Representative Javier E. Fernandez, Governor Ron DeSantis, the Speaker of the Florida House of Representatives, the Florida League of Cities, and the Miami-Dade County League of Cities.

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

PASSED AND ADOPTED this 9th day of March 2020.

STEPHANIE BRUDER
MAYOR

ATTEST:

MARLENE M. SIEGEL
TOWN CLERK

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:**

FRANK SIMONE
TOWN ATTORNEY

By the Committee on Innovation, Industry, and Technology; and
Senator Pizzo

580-03744-20

20201752c1

A bill to be entitled

An act relating to condominium associations; amending s. 194.011, F.S.; providing that certain associations may continue to represent, prosecute, or defend unit owners in certain proceedings; providing applicability; amending s. 194.181, F.S.; revising the parties considered to be the defendant in a tax suit; requiring condominium and cooperative associations to provide unit owners with certain notice and information under certain circumstances; providing requirements for such notice; specifying that a unit owner who does not respond to the notice will be represented in the response or answer filed by the association; amending s. 718.111, F.S.; revising criminal penalties relating to the acceptance of things or services of value or kickbacks; authorizing a condominium association to take certain actions relating to ad valorem taxes assessed on units for commonly used facilities or common elements; providing applicability; revising the documents required to be included with accounting records; requiring an association to maintain official records in a specified manner; revising requirements for the creation of a rebuttable presumption relating to the provision of records; authorizing an association to direct certain persons to the association's website to fulfill certain obligations relating to the inspection of records; requiring an association to provide a checklist and a sworn affidavit to persons requesting

580-03744-20

20201752c1

to inspect records; requiring the association to maintain the checklist for a specified period of time; creating a rebuttable presumption for an association that provides such checklist and sworn affidavit; providing criminal penalties for certain violations relating to official association records; defining the term "repeatedly"; requiring certain associations to post copies of certain documents on their websites by a specified date; revising criminal penalties relating to the use of association debit cards; defining the term "lawful obligation of the association"; creating s. 718.129, F.S.; providing criminal penalties for fraudulent voting activities related to association elections; amending s. 718.501, F.S.; revising the jurisdiction of the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation with regard to investigating complaints; defining the term "financial issues"; providing an effective date.

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

Section 1. Paragraph (e) of subsection (3) of section 194.011, Florida Statutes, is amended to read:

194.011 Assessment notice; objections to assessments.—

(3) A petition to the value adjustment board must be in substantially the form prescribed by the department. Notwithstanding s. 195.022, a county officer may not refuse to accept a form provided by the department for this purpose if the

580-03744-20

20201752c1

59 taxpayer chooses to use it. A petition to the value adjustment
60 board must be signed by the taxpayer or be accompanied at the
61 time of filing by the taxpayer's written authorization or power
62 of attorney, unless the person filing the petition is listed in
63 s. 194.034(1)(a). A person listed in s. 194.034(1)(a) may file a
64 petition with a value adjustment board without the taxpayer's
65 signature or written authorization by certifying under penalty
66 of perjury that he or she has authorization to file the petition
67 on behalf of the taxpayer. If a taxpayer notifies the value
68 adjustment board that a petition has been filed for the
69 taxpayer's property without his or her consent, the value
70 adjustment board may require the person filing the petition to
71 provide written authorization from the taxpayer authorizing the
72 person to proceed with the appeal before a hearing is held. If
73 the value adjustment board finds that a person listed in s.
74 194.034(1)(a) willfully and knowingly filed a petition that was
75 not authorized by the taxpayer, the value adjustment board shall
76 require such person to provide the taxpayer's written
77 authorization for representation to the value adjustment board
78 clerk before any petition filed by that person is heard, for 1
79 year after imposition of such requirement by the value
80 adjustment board. A power of attorney or written authorization
81 is valid for 1 assessment year, and a new power of attorney or
82 written authorization by the taxpayer is required for each
83 subsequent assessment year. A petition shall also describe the
84 property by parcel number and shall be filed as follows:

85 (e)1. A condominium association as described in chapter
86 718, a cooperative association as described in chapter 719, or a
87 ~~any~~ homeowners' association as defined in s. 723.075, with

580-03744-20

20201752c1

88 approval of its board of administration or directors, may file
89 with the value adjustment board a single joint petition on
90 behalf of any association members who own units or parcels of
91 property which the property appraiser determines are
92 substantially similar with respect to location, proximity to
93 amenities, number of rooms, living area, and condition. The
94 condominium association, cooperative association, or homeowners'
95 association ~~as defined in s. 723.075~~ shall provide the unit or
96 parcel owners with notice of its intent to petition the value
97 adjustment board and shall provide at least 20 days for a unit
98 or parcel owner to elect, in writing, that his or her unit or
99 parcel not be included in the petition.

100 2. A condominium association as described in chapter 718,
101 or a cooperative association as described in chapter 719, which
102 has filed a single joint petition under this subsection may
103 continue to represent, prosecute, or defend the unit owners
104 through any related subsequent proceeding in any tribunal,
105 including judicial review under part II of this chapter and any
106 appeals. This subparagraph is intended to clarify existing law
107 and applies to cases pending on July 1, 2020.

108 Section 2. Subsection (2) of section 194.181, Florida
109 Statutes, is amended to read:

110 194.181 Parties to a tax suit.—

111 (2) (a) In any case brought by a ~~the~~ taxpayer or a
112 condominium or cooperative association, as described in chapters
113 718 and 719, respectively, on behalf of some or all unit owners
114 to contest ~~contesting~~ the assessment of any property, the county
115 property appraiser is the ~~shall be~~ party defendant.

116 (b) Except as provided in paragraph (c), in any case

580-03744-20

20201752c1

brought by the property appraiser under ~~pursuant to~~ s.
194.036(1) (a) or (b), the taxpayer is the ~~shall be~~ party
defendant.

(c) In any case brought by the property appraiser under s.
194.036(1) (a) or (b) concerning a value adjustment board
decision on a single joint petition filed by a condominium or
cooperative association under s. 194.011(3), the association and
all unit owners included in the single joint petition are the
party defendants.

1. The condominium or cooperative association must provide
unit owners with notice of its intent to respond to or answer
the property appraiser's complaint and advise the unit owners
that they may elect to:

a. Retain their own counsel to defend the appeal;

b. Choose not to defend the appeal; or

c. Be represented together with other unit owners in the
response or answer filed by the association.

2. The notice required in subparagraph 1. must be mailed,
delivered, or electronically transmitted to unit owners and
posted conspicuously on the condominium or cooperative property
in the same manner as is required for notice of board meetings
under s. 718.112(2) or s. 719.106(1), as applicable. Any unit
owner who does not respond to the association's notice will be
represented in the response or answer filed by the association.

(d) In any case brought by the property appraiser under
~~pursuant to~~ s. 194.036(1) (c), the value adjustment board is the
~~shall be~~ party defendant.

Section 3. Paragraphs (a) and (d) of subsection (1),
subsection (3), paragraphs (a), (b), (c), and (g) of subsection

580-03744-20

20201752c1

146 (12), and paragraph (b) of subsection (15) of section 718.111,
147 Florida Statutes, are amended to read:

148 718.111 The association.—

149 (1) CORPORATE ENTITY.—

150 (a) The operation of the condominium shall be by the
151 association, which must be a Florida corporation for profit or a
152 Florida corporation not for profit. However, any association
153 which was in existence on January 1, 1977, need not be
154 incorporated. The owners of units shall be shareholders or
155 members of the association. The officers and directors of the
156 association have a fiduciary relationship to the unit owners. It
157 is the intent of the Legislature that nothing in this paragraph
158 shall be construed as providing for or removing a requirement of
159 a fiduciary relationship between any manager employed by the
160 association and the unit owners. An officer, director, or
161 manager may not solicit, offer to accept, or accept any thing or
162 service of value or kickback for which consideration has not
163 been provided for his or her own benefit or that of his or her
164 immediate family, from any person providing or proposing to
165 provide goods or services to the association. Any such officer,
166 director, or manager who knowingly so solicits, offers to
167 accept, or accepts any thing or service of value or kickback
168 commits a felony of the third degree, punishable as provided in
169 s. 775.082, s. 775.083, or s. 775.084, and is subject to a civil
170 penalty pursuant to s. 718.501(1)(d) and, if applicable, a
171 criminal penalty as provided in paragraph (d). However, this
172 paragraph does not prohibit an officer, director, or manager
173 from accepting services or items received in connection with
174 trade fairs or education programs. An association may operate

580-03744-20

20201752c1

175 more than one condominium.

176 (d) As required by s. 617.0830, an officer, director, or
177 agent shall discharge his or her duties in good faith, with the
178 care an ordinarily prudent person in a like position would
179 exercise under similar circumstances, and in a manner he or she
180 reasonably believes to be in the interests of the association.
181 An officer, director, or agent shall be liable for monetary
182 damages as provided in s. 617.0834 if such officer, director, or
183 agent breached or failed to perform his or her duties and the
184 breach of, or failure to perform, his or her duties constitutes
185 a violation of criminal law as provided in s. 617.0834;
186 constitutes a transaction from which the officer or director
187 derived an improper personal benefit, either directly or
188 indirectly; or constitutes recklessness or an act or omission
189 that was in bad faith, with malicious purpose, or in a manner
190 exhibiting wanton and willful disregard of human rights, safety,
191 or property. ~~Forgery of a ballot envelope or voting certificate~~
192 ~~used in a condominium association election is punishable as~~
193 ~~provided in s. 831.01, the theft or embezzlement of funds of a~~
194 ~~condominium association is punishable as provided in s. 812.014,~~
195 ~~and the destruction of or the refusal to allow inspection or~~
196 ~~copying of an official record of a condominium association that~~
197 ~~is accessible to unit owners within the time periods required by~~
198 ~~general law in furtherance of any crime is punishable as~~
199 ~~tampering with physical evidence as provided in s. 918.13 or as~~
200 ~~obstruction of justice as provided in chapter 843.~~ An officer or
201 director charged by information or indictment with a crime
202 referenced in this paragraph must be removed from office, and
203 the vacancy shall be filled as provided in s. 718.112(2)(d)2.

580-03744-20

20201752c1

204 until the end of the officer's or director's period of
205 suspension or the end of his or her term of office, whichever
206 occurs first. If a criminal charge is pending against the
207 officer or director, he or she may not be appointed or elected
208 to a position as an officer or a director of any association and
209 may not have access to the official records of any association,
210 except pursuant to a court order. However, if the charges are
211 resolved without a finding of guilt, the officer or director
212 must be reinstated for the remainder of his or her term of
213 office, if any.

214 (3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT,
215 SUE, AND BE SUED; CONFLICT OF INTEREST.—

216 (a) The association may contract, sue, or be sued with
217 respect to the exercise or nonexercise of its powers. For these
218 purposes, the powers of the association include, but are not
219 limited to, the maintenance, management, and operation of the
220 condominium property.

221 (b) After control of the association is obtained by unit
222 owners other than the developer, the association may:

223 1. Institute, maintain, settle, or appeal actions or
224 hearings in its name on behalf of all unit owners concerning
225 matters of common interest to most or all unit owners,
226 including, but not limited to, the common elements; the roof and
227 structural components of a building or other improvements;
228 mechanical, electrical, and plumbing elements serving an
229 improvement or a building; representations of the developer
230 pertaining to any existing or proposed commonly used facilities;

231 2. Protest ~~and protesting~~ ad valorem taxes on commonly used
232 facilities and on units; ~~and may~~

580-03744-20

20201752c1

233 3. Defend actions pertaining to ad valorem taxation of
234 commonly used facilities or units or pertaining to in eminent
235 domain; or

236 4. Bring inverse condemnation actions.

237 (c) If the association has the authority to maintain a
238 class action, the association may be joined in an action as
239 representative of that class with reference to litigation and
240 disputes involving the matters for which the association could
241 bring a class action.

242 (d) The association, in its own name or on behalf of some
243 or all unit owners, may institute, file, protest, maintain, or
244 defend any administrative challenge, lawsuit, appeal, or other
245 challenge to ad valorem taxes assessed on units for commonly
246 used facilities or common elements. The affected association
247 members are not necessary or indispensable parties to such
248 actions. This paragraph is intended to clarify existing law and
249 applies to cases pending on July 1, 2020.

250 (e) Nothing herein limits any statutory or common-law right
251 of any individual unit owner or class of unit owners to bring
252 any action without participation by the association which may
253 otherwise be available.

254 (f) An association may not hire an attorney who represents
255 the management company of the association.

256 (12) OFFICIAL RECORDS.—

257 (a) From the inception of the association, the association
258 shall maintain each of the following items, if applicable, which
259 constitutes the official records of the association:

260 1. A copy of the plans, permits, warranties, and other
261 items provided by the developer pursuant to s. 718.301(4).

580-03744-20

20201752c1

262 2. A photocopy of the recorded declaration of condominium
263 of each condominium operated by the association and each
264 amendment to each declaration.

265 3. A photocopy of the recorded bylaws of the association
266 and each amendment to the bylaws.

267 4. A certified copy of the articles of incorporation of the
268 association, or other documents creating the association, and
269 each amendment thereto.

270 5. A copy of the current rules of the association.

271 6. A book or books that contain the minutes of all meetings
272 of the association, the board of administration, and the unit
273 owners.

274 7. A current roster of all unit owners and their mailing
275 addresses, unit identifications, voting certifications, and, if
276 known, telephone numbers. The association shall also maintain
277 the e-mail addresses and facsimile numbers of unit owners
278 consenting to receive notice by electronic transmission. The e-
279 mail addresses and facsimile numbers are not accessible to unit
280 owners if consent to receive notice by electronic transmission
281 is not provided in accordance with sub-subparagraph (c)5.e.

282 ~~(e)3.e.~~ However, the association is not liable for an
283 inadvertent disclosure of the e-mail address or facsimile number
284 for receiving electronic transmission of notices.

285 8. All current insurance policies of the association and
286 condominiums operated by the association.

287 9. A current copy of any management agreement, lease, or
288 other contract to which the association is a party or under
289 which the association or the unit owners have an obligation or
290 responsibility.

580-03744-20

20201752c1

291 10. Bills of sale or transfer for all property owned by the
292 association.

293 11. Accounting records for the association and separate
294 accounting records for each condominium that the association
295 operates. Any person who knowingly or intentionally defaces or
296 destroys such records, or who knowingly or intentionally fails
297 to create or maintain such records, with the intent of causing
298 harm to the association or one or more of its members, is
299 personally subject to a civil penalty pursuant to s.
300 718.501(1)(d). The accounting records must include, but are not
301 limited to:

302 a. Accurate, itemized, and detailed records of all receipts
303 and expenditures.

304 b. A current account and a monthly, bimonthly, or quarterly
305 statement of the account for each unit designating the name of
306 the unit owner, the due date and amount of each assessment, the
307 amount paid on the account, and the balance due.

308 c. All audits, reviews, accounting statements, and
309 financial reports of the association or condominium.

310 d. All contracts for work to be performed. Bids for work to
311 be performed are also considered official records and must be
312 maintained by the association.

313 e. All bank statements, canceled checks, and credit card
314 statements.

315 f. All invoices, transaction receipts, deposit slips, or
316 other underlying documentation that substantiates any receipt or
317 expenditure of funds by the association.

318 12. Ballots, sign-in sheets, voting proxies, and all other
319 papers and electronic records relating to voting by unit owners,

580-03744-20

20201752c1

which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

16. A copy of the inspection report as described in s. 718.301(4) (p).

17. Bids for materials, equipment, or services.

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law. All official records must be maintained in a manner and format prescribed by division rule so that the records are easily accessible for inspection. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association

580-03744-20

20201752c1

349 may offer the option of making the records available to a unit
350 owner electronically via the Internet or by allowing the records
351 to be viewed in electronic format on a computer screen and
352 printed upon request. The association is not responsible for the
353 use or misuse of the information provided to an association
354 member or his or her authorized representative pursuant to the
355 compliance requirements of this chapter unless the association
356 has an affirmative duty not to disclose such information
357 pursuant to this chapter.

358 (c)1.a. The official records of the association are open to
359 inspection by any association member or the authorized
360 representative of such member at all reasonable times. The right
361 to inspect the records includes the right to make or obtain
362 copies, at the reasonable expense, if any, of the member or
363 authorized representative of such member. A renter of a unit has
364 a right to inspect and copy the association's bylaws and rules.
365 The association may adopt reasonable rules regarding the
366 frequency, time, location, notice, and manner of record
367 inspections and copying. The failure of an association to
368 provide the records within 10 working days after receipt of a
369 written request that complies with the association's document
370 inspection rule creates a rebuttable presumption that the
371 association willfully failed to comply with this paragraph. A
372 unit owner who is denied access to official records is entitled
373 to the actual damages or minimum damages for the association's
374 willful failure to comply. Minimum damages are \$50 per calendar
375 day for up to 10 days, beginning on the 11th working day after
376 receipt of the written request that complies with the
377 association's document inspection rule. The failure to permit

580-03744-20

20201752c1

378 inspection entitles any person prevailing in an enforcement
379 action to recover reasonable attorney fees from the person in
380 control of the records who, directly or indirectly, knowingly
381 denied access to the records. If the requested records are
382 posted on an association's website, the association may fulfill
383 its obligations as provided under this paragraph by directing to
384 the website all persons authorized to request access to official
385 records pursuant to this paragraph.

386 b. In response to a statutorily compliant written request
387 to inspect records, the association must simultaneously provide
388 a checklist to the requestor of all records made available for
389 inspection and copying and a sworn affidavit in which the person
390 facilitating or handling the association's compliance with the
391 request attests to the veracity of the checklist provided to the
392 requestor. The checklist must also identify any of the
393 association's official records that were not made available to
394 the requestor. An association must maintain a checklist provided
395 under this sub-subparagraph for 7 years. An association
396 delivering a checklist and affidavit pursuant to this sub-
397 subparagraph creates a rebuttable presumption that the
398 association has complied with this paragraph.

399 2. Any director or member of the board or association or a
400 community association manager who knowingly, willfully, and
401 repeatedly violates subparagraph 1. commits a misdemeanor of the
402 second degree, punishable as provided in s. 775.082 or s.
403 775.083. For purposes of this subparagraph, the term
404 "repeatedly" means two or more violations within a 12-month
405 period.

406 3.2. Any person who knowingly or intentionally defaces or

580-03744-20

20201752c1

destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 ~~is personally subject to a civil penalty pursuant to s. 718.501(1)(d).~~

4. Any person who willfully and knowingly refuses to release or otherwise produce association records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

~~5.3.~~ The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized

580-03744-20

20201752c1

436 representative with a copy of such records. The association may
437 not charge a member or his or her authorized representative for
438 the use of a portable device. Notwithstanding this paragraph,
439 the following records are not accessible to unit owners:

440 a. Any record protected by the lawyer-client privilege as
441 described in s. 90.502 and any record protected by the work-
442 product privilege, including a record prepared by an association
443 attorney or prepared at the attorney's express direction, which
444 reflects a mental impression, conclusion, litigation strategy,
445 or legal theory of the attorney or the association, and which
446 was prepared exclusively for civil or criminal litigation or for
447 adversarial administrative proceedings, or which was prepared in
448 anticipation of such litigation or proceedings until the
449 conclusion of the litigation or proceedings.

450 b. Information obtained by an association in connection
451 with the approval of the lease, sale, or other transfer of a
452 unit.

453 c. Personnel records of association or management company
454 employees, including, but not limited to, disciplinary, payroll,
455 health, and insurance records. For purposes of this sub-
456 subparagraph, the term "personnel records" does not include
457 written employment agreements with an association employee or
458 management company, or budgetary or financial records that
459 indicate the compensation paid to an association employee.

460 d. Medical records of unit owners.

461 e. Social security numbers, driver license numbers, credit
462 card numbers, e-mail addresses, telephone numbers, facsimile
463 numbers, emergency contact information, addresses of a unit
464 owner other than as provided to fulfill the association's notice

580-03744-20

20201752c1

requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(g)1. By January 1, 2022 ~~2019~~, an association managing a condominium with 25 ~~150~~ or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website.

a. The association's website must be:

(I) An independent website or web portal wholly owned and

580-03744-20

20201752c1

operated by the association; or

(II) A website or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, or collection of subpages or web portals dedicated to the association's activities and on which required notices, records, and documents may be posted by the association.

b. The association's website must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website that contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment thereto. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

580-03744-20

20201752c1

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed \$500 must be maintained on the website for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website, or on a separate subpage of

580-03744-20

20201752c1

the website labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

1. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice pursuant to s. 718.112(2)(c).

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website, the association shall ensure the information is redacted before posting the documents online. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted pursuant to this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

5. By January 1, 2022, an association managing 25 or more units, not including timeshare units, shall post on its website

580-03744-20

20201752c1

581 digital copies of all official records subject to inspection by
582 tenants or unit owners or their authorized representatives.

583 (15) DEBIT CARDS.—

584 (b) A person who uses ~~Use of~~ a debit card issued in the
585 name of the association, or billed directly to the association,
586 for any expense that is not a lawful obligation of the
587 association commits theft under s. 812.014. For the purposes of
588 this paragraph, a "lawful obligation of the association" means
589 an obligation that has been properly preapproved by the board
590 and is reflected in the meeting minutes or the written budget
591 ~~may be prosecuted as credit card fraud pursuant to s. 817.61.~~

592 Section 4. Section 718.129, Florida Statutes, is created to
593 read:

594 718.129 Fraudulent voting activities related to association
595 elections; penalties.—

596 (1) Each of the following acts is a fraudulent voting
597 activity related to association elections and constitutes a
598 felony of the third degree, punishable as provided in s.
599 775.082, s. 775.083, or s. 775.084:

600 (a) Willfully and falsely swearing or affirming any oath or
601 affirmation, or willfully procuring another person to swear or
602 affirm falsely to an oath or affirmation, in connection with or
603 arising out of voting or elections.

604 (b) Perpetrating or attempting to perpetrate, or aiding in
605 the perpetration of, any fraud in connection with any vote cast,
606 to be cast, or attempted to be cast.

607 (c) Preventing an elector from voting, or preventing an
608 elector from voting as the elector intended, by fraudulently
609 changing or attempting to change a ballot, ballot envelope,

580-03744-20

20201752c1

610 vote, or voting certificate of the elector.

611 (d) Using bribery, menace, threat, or any other corruption
612 to attempt, directly or indirectly, to influence, deceive, or
613 deter any elector in voting.

614 (e) Directly or indirectly giving or promising anything of
615 value to another person with the intent to buy the vote of that
616 person or another person or to corruptly influence that person
617 or another person in casting his or her vote. However, this
618 paragraph does not apply to the serving of food to be consumed
619 at an election rally or meeting or to any item of nominal value
620 which is used as an election advertisement, including a campaign
621 message designed to be worn by a person.

622 (f) Directly or indirectly using or threatening to use
623 force, violence, or intimidation or any tactic of coercion or
624 intimidation to induce or compel an individual to vote or
625 refrain from voting in an election or on any particular ballot
626 measure.

627 (2) Each of the following acts constitutes a felony of the
628 third degree, punishable as provided in s. 775.082, s. 775.083,
629 or s. 775.084:

630 (a) Knowingly aiding, abetting, or advising a person in the
631 commission of a fraudulent voting activity related to
632 association elections.

633 (b) Agreeing, conspiring, combining, or confederating with
634 at least one other person to commit a fraudulent voting activity
635 related to association elections.

636 (c) Having knowledge of a fraudulent voting activity
637 related to association elections and giving any aid to the
638 offender with intent that the offender avoid or escape

580-03744-20

20201752c1

639 detection, arrest, trial, or punishment. This paragraph does not
640 apply to a licensed attorney giving legal advice to a client.

641 Section 5. Subsection (1) of section 718.501, Florida
642 Statutes, is amended to read:

643 718.501 Authority, responsibility, and duties of Division
644 of Florida Condominiums, Timeshares, and Mobile Homes.—

645 (1) The division may enforce and ensure compliance with the
646 provisions of this chapter and rules relating to the
647 development, construction, sale, lease, ownership, operation,
648 and management of residential condominium units. In performing
649 its duties, the division has complete jurisdiction to
650 investigate complaints and enforce compliance with respect to
651 associations that are still under developer control or the
652 control of a bulk assignee or bulk buyer pursuant to part VII of
653 this chapter and complaints against developers, bulk assignees,
654 or bulk buyers involving improper turnover or failure to
655 turnover, pursuant to s. 718.301. However, after turnover has
656 occurred, the division has jurisdiction to investigate
657 complaints related only to financial issues, elections,
658 maintenance of official records, and unit owner access to
659 association records pursuant to s. 718.111(12). As used in this
660 subsection, the term "financial issue" means an issue related to
661 operating budgets; reserve schedules; financial records under s.
662 718.111(12) (a)11.; notices of meetings and meeting minutes for
663 budget or financial statement related meetings; any assessment
664 for common expenses, fees, or fines; commingling of funds; and
665 any other record necessary to determine the revenues and
666 expenses of the association. The division may adopt rules to
667 further define the term "financial issue."

580-03744-20

20201752c1

668 (a)1. The division may make necessary public or private
669 investigations within or outside this state to determine whether
670 any person has violated this chapter or any rule or order
671 hereunder, to aid in the enforcement of this chapter, or to aid
672 in the adoption of rules or forms.

673 2. The division may submit any official written report,
674 worksheet, or other related paper, or a duly certified copy
675 thereof, compiled, prepared, drafted, or otherwise made by and
676 duly authenticated by a financial examiner or analyst to be
677 admitted as competent evidence in any hearing in which the
678 financial examiner or analyst is available for cross-examination
679 and attests under oath that such documents were prepared as a
680 result of an examination or inspection conducted pursuant to
681 this chapter.

682 (b) The division may require or permit any person to file a
683 statement in writing, under oath or otherwise, as the division
684 determines, as to the facts and circumstances concerning a
685 matter to be investigated.

686 (c) For the purpose of any investigation under this
687 chapter, the division director or any officer or employee
688 designated by the division director may administer oaths or
689 affirmations, subpoena witnesses and compel their attendance,
690 take evidence, and require the production of any matter which is
691 relevant to the investigation, including the existence,
692 description, nature, custody, condition, and location of any
693 books, documents, or other tangible things and the identity and
694 location of persons having knowledge of relevant facts or any
695 other matter reasonably calculated to lead to the discovery of
696 material evidence. Upon the failure by a person to obey a

580-03744-20

20201752c1

subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is

580-03744-20

20201752c1

726 about to violate any provision of this chapter, any rule adopted
727 or order issued by the division, or any written agreement
728 entered into with the division, and presents an immediate danger
729 to the public requiring an immediate final order, it may issue
730 an emergency cease and desist order reciting with particularity
731 the facts underlying such findings. The emergency cease and
732 desist order is effective for 90 days. If the division begins
733 nonemergency cease and desist proceedings, the emergency cease
734 and desist order remains effective until the conclusion of the
735 proceedings under ss. 120.569 and 120.57.

736 3. If a developer, bulk assignee, or bulk buyer, fails to
737 pay any restitution determined by the division to be owed, plus
738 any accrued interest at the highest rate permitted by law,
739 within 30 days after expiration of any appellate time period of
740 a final order requiring payment of restitution or the conclusion
741 of any appeal thereof, whichever is later, the division must
742 bring an action in circuit or county court on behalf of any
743 association, class of unit owners, lessees, or purchasers for
744 restitution, declaratory relief, injunctive relief, or any other
745 available remedy. The division may also temporarily revoke its
746 acceptance of the filing for the developer to which the
747 restitution relates until payment of restitution is made.

748 4. The division may petition the court for appointment of a
749 receiver or conservator. If appointed, the receiver or
750 conservator may take action to implement the court order to
751 ensure the performance of the order and to remedy any breach
752 thereof. In addition to all other means provided by law for the
753 enforcement of an injunction or temporary restraining order, the
754 circuit court may impound or sequester the property of a party

580-03744-20

20201752c1

defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought pursuant to subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed pursuant to subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of this chapter, adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The

580-03744-20

20201752c1

784 division, before initiating formal agency action under chapter
785 120, must afford the officer or board member an opportunity to
786 voluntarily comply, and an officer or board member who complies
787 within 10 days is not subject to a civil penalty. A penalty may
788 be imposed on the basis of each day of continuing violation, but
789 the penalty for any offense may not exceed \$5,000. By January 1,
790 1998, the division shall adopt, by rule, penalty guidelines
791 applicable to possible violations or to categories of violations
792 of this chapter or rules adopted by the division. The guidelines
793 must specify a meaningful range of civil penalties for each such
794 violation of the statute and rules and must be based upon the
795 harm caused by the violation, the repetition of the violation,
796 and upon such other factors deemed relevant by the division. For
797 example, the division may consider whether the violations were
798 committed by a developer, bulk assignee, or bulk buyer, or
799 owner-controlled association, the size of the association, and
800 other factors. The guidelines must designate the possible
801 mitigating or aggravating circumstances that justify a departure
802 from the range of penalties provided by the rules. It is the
803 legislative intent that minor violations be distinguished from
804 those which endanger the health, safety, or welfare of the
805 condominium residents or other persons and that such guidelines
806 provide reasonable and meaningful notice to the public of likely
807 penalties that may be imposed for proscribed conduct. This
808 subsection does not limit the ability of the division to
809 informally dispose of administrative actions or complaints by
810 stipulation, agreed settlement, or consent order. All amounts
811 collected shall be deposited with the Chief Financial Officer to
812 the credit of the Division of Florida Condominiums, Timeshares,

580-03744-20

20201752c1

and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least \$500 but no more than \$5,000 for each violation. The court may

580-03744-20

20201752c1

also award to the prevailing party court costs and reasonable
attorney ~~attorney's~~ fees and, if the division prevails, may also
award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus
and other information to assist prospective owners, purchasers,
lessees, and developers of residential condominiums in assessing
the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce
the provisions of this chapter.

(g) The division shall establish procedures for providing
notice to an association and the developer, bulk assignee, or
bulk buyer during the period in which the developer, bulk
assignee, or bulk buyer controls the association if the division
is considering the issuance of a declaratory statement with
respect to the declaration of condominium or any related
document governing such condominium community.

(h) The division shall furnish each association that pays
the fees required by paragraph (2)(a) a copy of this chapter, as
amended, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association
with a summary of declaratory statements and formal legal
opinions relating to the operations of condominiums which were
rendered by the division during the previous year.

(j) The division shall provide training and educational
programs for condominium association board members and unit
owners. The training may, in the division's discretion, include
web-based electronic media, and live training and seminars in
various locations throughout the state. The division may review
and approve education and training programs for board members

580-03744-20

20201752c1

and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by

580-03744-20

20201752c1

the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

(n) Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation pursuant to this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or
2. Accept grants-in-aid from any source.

580-03744-20

20201752c1

(p) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(q) The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(s) The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

Section 6. This act shall take effect October 1, 2020.

1 A bill to be entitled
2 An act relating to condominium associations; amending
3 s. 718.111, F.S.; revising criminal penalties relating
4 to the acceptance of things or services of value or
5 kickbacks; revising the documents required to be
6 included with accounting records; requiring an
7 association to maintain official records in a
8 specified manner and format; revising requirements for
9 the creation of a rebuttable presumption relating to
10 the provision of records; authorizing an association
11 to direct certain persons to the association's website
12 to fulfill certain obligations relating to the
13 inspection of records; requiring an association to
14 provide a checklist and sworn affidavit to persons
15 requesting to inspect records; requiring the
16 association to maintain a copy of the checklist for a
17 specified period of time; creating a rebuttable
18 presumption for an association that provides such
19 checklist and sworn affidavit; providing criminal
20 penalties for certain violations relating to official
21 association records; defining the term "repeatedly";
22 requiring certain associations to post copies of
23 certain documents on their websites by a specified
24 date; revising criminal penalties relating to the use
25 of association debit cards; defining the term "lawful

obligation of the association"; creating s. 718.129, F.S.; providing criminal penalties for fraudulent voting activities related to association elections; amending s. 718.501, F.S.; revising the jurisdiction of the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation with regard to investigating certain complaints; defining the term "financial issue"; authorizing the division to make certain rules; providing an effective date.

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

Section 1. Paragraphs (a) and (d) of subsection (1), paragraphs (a), (b), (c), and (g) of subsection (12), and paragraph (b) of subsection (15) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(1) CORPORATE ENTITY.—

(a) The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the

51 association have a fiduciary relationship to the unit owners. It
52 is the intent of the Legislature that nothing in this paragraph
53 shall be construed as providing for or removing a requirement of
54 a fiduciary relationship between any manager employed by the
55 association and the unit owners. An officer, director, or
56 manager may not solicit, offer to accept, or accept any thing or
57 service of value or kickback for which consideration has not
58 been provided for his or her own benefit or that of his or her
59 immediate family, from any person providing or proposing to
60 provide goods or services to the association. Any such officer,
61 director, or manager who knowingly so solicits, offers to
62 accept, or accepts any thing or service of value or kickback
63 commits a felony of the third degree, punishable as provided in
64 s. 775.082, s. 775.083, or s. 775.084, and is subject to a civil
65 penalty pursuant to s. 718.501(1)(d) and, if applicable, a
66 criminal penalty as provided in paragraph (d). However, this
67 paragraph does not prohibit an officer, director, or manager
68 from accepting services or items received in connection with
69 trade fairs or education programs. An association may operate
70 more than one condominium.

71 (d) As required by s. 617.0830, an officer, director, or
72 agent shall discharge his or her duties in good faith, with the
73 care an ordinarily prudent person in a like position would
74 exercise under similar circumstances, and in a manner he or she
75 reasonably believes to be in the interests of the association.

76 An officer, director, or agent shall be liable for monetary
77 damages as provided in s. 617.0834 if such officer, director, or
78 agent breached or failed to perform his or her duties and the
79 breach of, or failure to perform, his or her duties constitutes
80 a violation of criminal law as provided in s. 617.0834;
81 constitutes a transaction from which the officer or director
82 derived an improper personal benefit, either directly or
83 indirectly; or constitutes recklessness or an act or omission
84 that was in bad faith, with malicious purpose, or in a manner
85 exhibiting wanton and willful disregard of human rights, safety,
86 or property. ~~Forgery of a ballot envelope or voting certificate~~
87 ~~used in a condominium association election is punishable as~~
88 ~~provided in s. 831.01, the theft or embezzlement of funds of a~~
89 ~~condominium association is punishable as provided in s. 812.014,~~
90 ~~and the destruction of or the refusal to allow inspection or~~
91 ~~copying of an official record of a condominium association that~~
92 ~~is accessible to unit owners within the time periods required by~~
93 ~~general law in furtherance of any crime is punishable as~~
94 ~~tampering with physical evidence as provided in s. 918.13 or as~~
95 ~~obstruction of justice as provided in chapter 843.~~ An officer or
96 director charged by information or indictment with a crime
97 referenced in this paragraph must be removed from office, and
98 the vacancy shall be filled as provided in s. 718.112(2)(d)2.
99 until the end of the officer's or director's period of
100 suspension or the end of his or her term of office, whichever

occurs first. If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and

126 the unit owners.

127 7. A current roster of all unit owners and their mailing
128 addresses, unit identifications, voting certifications, and, if
129 known, telephone numbers. The association shall also maintain
130 the e-mail addresses and facsimile numbers of unit owners
131 consenting to receive notice by electronic transmission. The e-
132 mail addresses and facsimile numbers are not accessible to unit
133 owners if consent to receive notice by electronic transmission
134 is not provided in accordance with sub-subparagraph (c)5.e.

135 ~~(c)3.e.~~ However, the association is not liable for an
136 inadvertent disclosure of the e-mail address or facsimile number
137 for receiving electronic transmission of notices.

138 8. All current insurance policies of the association and
139 condominiums operated by the association.

140 9. A current copy of any management agreement, lease, or
141 other contract to which the association is a party or under
142 which the association or the unit owners have an obligation or
143 responsibility.

144 10. Bills of sale or transfer for all property owned by
145 the association.

146 11. Accounting records for the association and separate
147 accounting records for each condominium that the association
148 operates. Any person who knowingly or intentionally defaces or
149 destroys such records, or who knowingly or intentionally fails
150 to create or maintain such records, with the intent of causing

151 harm to the association or one or more of its members, is
152 personally subject to a civil penalty pursuant to s.
153 718.501(1)(d). The accounting records must include, but are not
154 limited to:

155 a. Accurate, itemized, and detailed records of all
156 receipts and expenditures.

157 b. A current account and a monthly, bimonthly, or
158 quarterly statement of the account for each unit designating the
159 name of the unit owner, the due date and amount of each
160 assessment, the amount paid on the account, and the balance due.

161 c. All audits, reviews, accounting statements, and
162 financial reports of the association or condominium.

163 d. All contracts for work to be performed. Bids for work
164 to be performed are also considered official records and must be
165 maintained by the association.

166 e. All bank statements, canceled checks, and credit card
167 statements.

168 f. All invoices, transaction receipts, deposit slips, or
169 other underlying documentation that substantiates any receipt or
170 expenditure of funds by the association.

171 12. Ballots, sign-in sheets, voting proxies, and all other
172 papers and electronic records relating to voting by unit owners,
173 which must be maintained for 1 year from the date of the
174 election, vote, or meeting to which the document relates,
175 notwithstanding paragraph (b).

176 13. All rental records if the association is acting as
177 agent for the rental of condominium units.

178 14. A copy of the current question and answer sheet as
179 described in s. 718.504.

180 15. All other written records of the association not
181 specifically included in the foregoing which are related to the
182 operation of the association.

183 16. A copy of the inspection report as described in s.
184 718.301(4) (p) .

185 17. Bids for materials, equipment, or services.

186 (b) The official records specified in subparagraphs (a)1.-
187 6. must be permanently maintained from the inception of the
188 association. All other official records must be maintained
189 within the state for at least 7 years, unless otherwise provided
190 by general law. All official records must be maintained in a
191 manner and format prescribed by division rule so that the
192 records are easily accessible for inspection. The records of the
193 association shall be made available to a unit owner within 45
194 miles of the condominium property or within the county in which
195 the condominium property is located within 10 working days after
196 receipt of a written request by the board or its designee.
197 However, such distance requirement does not apply to an
198 association governing a timeshare condominium. This paragraph
199 may be complied with by having a copy of the official records of
200 the association available for inspection or copying on the

condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(c)1.a. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy the association's bylaws and rules. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request that complies with the association's document inspection rule creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled

226 to the actual damages or minimum damages for the association's
227 willful failure to comply. Minimum damages are \$50 per calendar
228 day for up to 10 days, beginning on the 11th working day after
229 receipt of the written request that complies with the
230 association's document inspection rule. The failure to permit
231 inspection entitles any person prevailing in an enforcement
232 action to recover reasonable attorney fees from the person in
233 control of the records who, directly or indirectly, knowingly
234 denied access to the records. If the requested records are
235 posted on an association's website, the association may fulfill
236 its obligations as provided under this paragraph by directing to
237 the website all persons authorized to request access to official
238 records pursuant to this paragraph.

239 b. In response to a statutorily compliant written request
240 to inspect records, the association must simultaneously provide
241 a checklist to the requestor of all records made available for
242 inspection and copying and a sworn affidavit in which the person
243 facilitating or handling the association's compliance with the
244 request attests to the veracity of the checklist provided to the
245 requestor. The checklist must also identify any of the
246 association's official records that were not made available to
247 the requestor. An association must maintain a copy of the
248 checklist provided under this sub-subparagraph for at least 7
249 years. An association providing a checklist and affidavit
250 pursuant to this sub-subparagraph creates a rebuttable

251 presumption that the association has complied with this
252 paragraph.

253 2. Any director or member of the board or association or a
254 community association manager who knowingly, willfully, and
255 repeatedly violates subparagraph 1. commits a misdemeanor of the
256 second degree, punishable as provided in s. 775.082 or s.
257 775.083. For purposes of this subparagraph, the term
258 "repeatedly" means two or more violations within a 12-month
259 period.

260 3.2. Any person who willfully and knowingly ~~or~~
261 ~~intentionally~~ defaces or destroys accounting records that are
262 required by this chapter to be maintained during the period for
263 which such records are required to be maintained, or who
264 knowingly or intentionally fails to create or maintain
265 accounting records that are required to be created or
266 maintained, with the intent of causing harm to the association
267 or one or more of its members, commits a misdemeanor of the
268 first degree, punishable as provided in s. 775.082 or s. 775.083
269 ~~is personally subject to a civil penalty pursuant to s.~~
270 ~~718.501(1)(d).~~

271 4. Any person who willfully and knowingly refuses to
272 release or otherwise produce association records with the intent
273 to avoid or escape detection, arrest, trial, or punishment for
274 the commission of a crime, or to assist another person with such
275 avoidance or escape, commits a felony of the third degree,

276 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

277 ~~5.3-~~ The association shall maintain an adequate number of
278 copies of the declaration, articles of incorporation, bylaws,
279 and rules, and all amendments to each of the foregoing, as well
280 as the question and answer sheet as described in s. 718.504 and
281 year-end financial information required under this section, on
282 the condominium property to ensure their availability to unit
283 owners and prospective purchasers, and may charge its actual
284 costs for preparing and furnishing these documents to those
285 requesting the documents. An association shall allow a member or
286 his or her authorized representative to use a portable device,
287 including a smartphone, tablet, portable scanner, or any other
288 technology capable of scanning or taking photographs, to make an
289 electronic copy of the official records in lieu of the
290 association's providing the member or his or her authorized
291 representative with a copy of such records. The association may
292 not charge a member or his or her authorized representative for
293 the use of a portable device. Notwithstanding this paragraph,
294 the following records are not accessible to unit owners:

295 a. Any record protected by the lawyer-client privilege as
296 described in s. 90.502 and any record protected by the work-
297 product privilege, including a record prepared by an association
298 attorney or prepared at the attorney's express direction, which
299 reflects a mental impression, conclusion, litigation strategy,
300 or legal theory of the attorney or the association, and which

301 was prepared exclusively for civil or criminal litigation or for
302 adversarial administrative proceedings, or which was prepared in
303 anticipation of such litigation or proceedings until the
304 conclusion of the litigation or proceedings.

305 b. Information obtained by an association in connection
306 with the approval of the lease, sale, or other transfer of a
307 unit.

308 c. Personnel records of association or management company
309 employees, including, but not limited to, disciplinary, payroll,
310 health, and insurance records. For purposes of this sub-
311 subparagraph, the term "personnel records" does not include
312 written employment agreements with an association employee or
313 management company, or budgetary or financial records that
314 indicate the compensation paid to an association employee.

315 d. Medical records of unit owners.

316 e. Social security numbers, driver license numbers, credit
317 card numbers, e-mail addresses, telephone numbers, facsimile
318 numbers, emergency contact information, addresses of a unit
319 owner other than as provided to fulfill the association's notice
320 requirements, and other personal identifying information of any
321 person, excluding the person's name, unit designation, mailing
322 address, property address, and any address, e-mail address, or
323 facsimile number provided to the association to fulfill the
324 association's notice requirements. Notwithstanding the
325 restrictions in this sub-subparagraph, an association may print

and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(g)1. By January 1, 2022 ~~2019~~, an association managing a condominium with 25 ~~150~~ or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website.

a. The association's website must be:

(I) An independent website or web portal wholly owned and operated by the association; or

(II) A website or web portal operated by a third-party

351 provider with whom the association owns, leases, rents, or
352 otherwise obtains the right to operate a web page, subpage, web
353 portal, or collection of subpages or web portals dedicated to
354 the association's activities and on which required notices,
355 records, and documents may be posted by the association.

356 b. The association's website must be accessible through
357 the Internet and must contain a subpage, web portal, or other
358 protected electronic location that is inaccessible to the
359 general public and accessible only to unit owners and employees
360 of the association.

361 c. Upon a unit owner's written request, the association
362 must provide the unit owner with a username and password and
363 access to the protected sections of the association's website
364 that contain any notices, records, or documents that must be
365 electronically provided.

366 2. A current copy of the following documents must be
367 posted in digital format on the association's website:

368 a. The recorded declaration of condominium of each
369 condominium operated by the association and each amendment to
370 each declaration.

371 b. The recorded bylaws of the association and each
372 amendment to the bylaws.

373 c. The articles of incorporation of the association, or
374 other documents creating the association, and each amendment
375 thereto. The copy posted pursuant to this sub-subparagraph must

376 be a copy of the articles of incorporation filed with the
377 Department of State.

378 d. The rules of the association.

379 e. A list of all executory contracts or documents to which
380 the association is a party or under which the association or the
381 unit owners have an obligation or responsibility and, after
382 bidding for the related materials, equipment, or services has
383 closed, a list of bids received by the association within the
384 past year. Summaries of bids for materials, equipment, or
385 services which exceed \$500 must be maintained on the website for
386 1 year. In lieu of summaries, complete copies of the bids may be
387 posted.

388 f. The annual budget required by s. 718.112(2)(f) and any
389 proposed budget to be considered at the annual meeting.

390 g. The financial report required by subsection (13) and
391 any monthly income or expense statement to be considered at a
392 meeting.

393 h. The certification of each director required by s.
394 718.112(2)(d)4.b.

395 i. All contracts or transactions between the association
396 and any director, officer, corporation, firm, or association
397 that is not an affiliated condominium association or any other
398 entity in which an association director is also a director or
399 officer and financially interested.

400 j. Any contract or document regarding a conflict of

401 interest or possible conflict of interest as provided in ss.
402 468.436(2)(b)6. and 718.3027(3).

403 k. The notice of any unit owner meeting and the agenda for
404 the meeting, as required by s. 718.112(2)(d)3., no later than 14
405 days before the meeting. The notice must be posted in plain view
406 on the front page of the website, or on a separate subpage of
407 the website labeled "Notices" which is conspicuously visible and
408 linked from the front page. The association must also post on
409 its website any document to be considered and voted on by the
410 owners during the meeting or any document listed on the agenda
411 at least 7 days before the meeting at which the document or the
412 information within the document will be considered.

413 1. Notice of any board meeting, the agenda, and any other
414 document required for the meeting as required by s.
415 718.112(2)(c), which must be posted no later than the date
416 required for notice pursuant to s. 718.112(2)(c).

417 3. The association shall ensure that the information and
418 records described in paragraph (c), which are not allowed to be
419 accessible to unit owners, are not posted on the association's
420 website. If protected information or information restricted from
421 being accessible to unit owners is included in documents that
422 are required to be posted on the association's website, the
423 association shall ensure the information is redacted before
424 posting the documents online. Notwithstanding the foregoing, the
425 association or its agent is not liable for disclosing

information that is protected or restricted pursuant to this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

5. By January 1, 2022, an association managing 25 or more units, not including timeshare units, shall post on its website digital copies of all official records subject to inspection by tenants or unit owners or their authorized representatives.

(15) DEBIT CARDS.—

(b) A person who uses ~~Use of~~ a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association commits theft under s. 812.014. For the purposes of this paragraph, a "lawful obligation of the association" means an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget ~~may be prosecuted as credit card fraud pursuant to s. 817.61.~~

Section 2. Section 718.129, Florida Statutes, is created to read:

718.129 Fraudulent voting activities related to association elections; penalties.—

451 (1) Each of the following acts is a fraudulent voting
452 activity related to association elections and constitutes a
453 felony of the third degree, punishable as provided in s.
454 775.082, s. 775.083, or s. 775.084:

455 (a) Willfully and falsely swearing or affirming any oath
456 or affirmation, or willfully procuring another person to swear
457 or affirm falsely to an oath or affirmation, in connection with
458 or arising out of voting or elections.

459 (b) Perpetrating or attempting to perpetrate, or aiding in
460 the perpetration of, any fraud in connection with any vote cast,
461 to be cast, or attempted to be cast.

462 (c) Preventing an elector from voting, or preventing an
463 elector from voting as the elector intended, by fraudulently
464 changing or attempting to change a ballot, ballot envelope,
465 vote, or voting certificate of the elector.

466 (d) Using bribery, menace, threat, or any other corruption
467 to attempt, directly or indirectly, to influence, deceive, or
468 deter any elector in voting.

469 (e) Directly or indirectly giving or promising anything of
470 value to another person with the intent to buy the vote of that
471 person or another person or to corruptly influence that person
472 or another person in casting his or her vote. However, this
473 paragraph does not apply to the serving of food to be consumed
474 at an election rally or meeting or to any item of nominal value
475 which is used as an election advertisement, including a campaign

476 message designed to be worn by a person.

477 (f) Directly or indirectly using or threatening to use
478 force, violence, or intimidation or any tactic of coercion or
479 intimidation to induce or compel an individual to vote or
480 refrain from voting in an election or on any particular ballot
481 measure.

482 (2) Each of the following acts constitutes a felony of the
483 third degree, punishable as provided in s. 775.082, s. 775.083,
484 or s. 775.084:

485 (a) Knowingly aiding, abetting, or advising a person in
486 the commission of a fraudulent voting activity related to
487 association elections.

488 (b) Agreeing, conspiring, combining, or confederating with
489 at least one other person to commit a fraudulent voting activity
490 related to association elections.

491 (c) Having knowledge of a fraudulent voting activity
492 related to association elections and giving any aid to the
493 offender with intent that the offender avoid or escape
494 detection, arrest, trial, or punishment. This paragraph does not
495 apply to a licensed attorney giving legal advice to a client.

496 Section 3. Subsection (1) of section 718.501, Florida
497 Statutes, is amended to read:

498 718.501 Authority, responsibility, and duties of Division
499 of Florida Condominiums, Timeshares, and Mobile Homes.—

500 (1) The division may enforce and ensure compliance with

~~the provisions of~~ this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, maintenance of official records, and unit owner access to association records pursuant to s. 718.111(12). As used in this subsection, the term "financial issue" means an issue related to operating budgets; reserve schedules; accounting records under s. 718.111(12)(a)11.; notices of meetings and meeting minutes for budget- or financial statement-related meetings; any assessments for common expenses, fees, or fines; commingling of funds; and any other records necessary to determine the revenues and expenses of the association. The division may adopt rules to further define the term "financial issue."

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order

hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of

551 material evidence. Upon the failure by a person to obey a
552 subpoena or to answer questions propounded by the investigating
553 officer and upon reasonable notice to all affected persons, the
554 division may apply to the circuit court for an order compelling
555 compliance.

556 (d) Notwithstanding any remedies available to unit owners
557 and associations, if the division has reasonable cause to
558 believe that a violation of any provision of this chapter or
559 related rule has occurred, the division may institute
560 enforcement proceedings in its own name against any developer,
561 bulk assignee, bulk buyer, association, officer, or member of
562 the board of administration, or its assignees or agents, as
563 follows:

564 1. The division may permit a person whose conduct or
565 actions may be under investigation to waive formal proceedings
566 and enter into a consent proceeding whereby orders, rules, or
567 letters of censure or warning, whether formal or informal, may
568 be entered against the person.

569 2. The division may issue an order requiring the
570 developer, bulk assignee, bulk buyer, association, developer-
571 designated officer, or developer-designated member of the board
572 of administration, developer-designated assignees or agents,
573 bulk assignee-designated assignees or agents, bulk buyer-
574 designated assignees or agents, community association manager,
575 or community association management firm to cease and desist

576 from the unlawful practice and take such affirmative action as
577 in the judgment of the division carry out the purposes of this
578 chapter. If the division finds that a developer, bulk assignee,
579 bulk buyer, association, officer, or member of the board of
580 administration, or its assignees or agents, is violating or is
581 about to violate any provision of this chapter, any rule adopted
582 or order issued by the division, or any written agreement
583 entered into with the division, and presents an immediate danger
584 to the public requiring an immediate final order, it may issue
585 an emergency cease and desist order reciting with particularity
586 the facts underlying such findings. The emergency cease and
587 desist order is effective for 90 days. If the division begins
588 nonemergency cease and desist proceedings, the emergency cease
589 and desist order remains effective until the conclusion of the
590 proceedings under ss. 120.569 and 120.57.

591 3. If a developer, bulk assignee, or bulk buyer, fails to
592 pay any restitution determined by the division to be owed, plus
593 any accrued interest at the highest rate permitted by law,
594 within 30 days after expiration of any appellate time period of
595 a final order requiring payment of restitution or the conclusion
596 of any appeal thereof, whichever is later, the division must
597 bring an action in circuit or county court on behalf of any
598 association, class of unit owners, lessees, or purchasers for
599 restitution, declaratory relief, injunctive relief, or any other
600 available remedy. The division may also temporarily revoke its

601 acceptance of the filing for the developer to which the
602 restitution relates until payment of restitution is made.

603 4. The division may petition the court for appointment of
604 a receiver or conservator. If appointed, the receiver or
605 conservator may take action to implement the court order to
606 ensure the performance of the order and to remedy any breach
607 thereof. In addition to all other means provided by law for the
608 enforcement of an injunction or temporary restraining order, the
609 circuit court may impound or sequester the property of a party
610 defendant, including books, papers, documents, and related
611 records, and allow the examination and use of the property by
612 the division and a court-appointed receiver or conservator.

613 5. The division may apply to the circuit court for an
614 order of restitution whereby the defendant in an action brought
615 pursuant to subparagraph 4. is ordered to make restitution of
616 those sums shown by the division to have been obtained by the
617 defendant in violation of this chapter. At the option of the
618 court, such restitution is payable to the conservator or
619 receiver appointed pursuant to subparagraph 4. or directly to
620 the persons whose funds or assets were obtained in violation of
621 this chapter.

622 6. The division may impose a civil penalty against a
623 developer, bulk assignee, or bulk buyer, or association, or its
624 assignee or agent, for any violation of this chapter or related
625 rule. The division may impose a civil penalty individually

626 against an officer or board member who willfully and knowingly
627 violates a provision of this chapter, adopted rule, or a final
628 order of the division; may order the removal of such individual
629 as an officer or from the board of administration or as an
630 officer of the association; and may prohibit such individual
631 from serving as an officer or on the board of a community
632 association for a period of time. The term "willfully and
633 knowingly" means that the division informed the officer or board
634 member that his or her action or intended action violates this
635 chapter, a rule adopted under this chapter, or a final order of
636 the division and that the officer or board member refused to
637 comply with the requirements of this chapter, a rule adopted
638 under this chapter, or a final order of the division. The
639 division, before initiating formal agency action under chapter
640 120, must afford the officer or board member an opportunity to
641 voluntarily comply, and an officer or board member who complies
642 within 10 days is not subject to a civil penalty. A penalty may
643 be imposed on the basis of each day of continuing violation, but
644 the penalty for any offense may not exceed \$5,000. By January 1,
645 1998, the division shall adopt, by rule, penalty guidelines
646 applicable to possible violations or to categories of violations
647 of this chapter or rules adopted by the division. The guidelines
648 must specify a meaningful range of civil penalties for each such
649 violation of the statute and rules and must be based upon the
650 harm caused by the violation, the repetition of the violation,

651 and upon such other factors deemed relevant by the division. For
652 example, the division may consider whether the violations were
653 committed by a developer, bulk assignee, or bulk buyer, or
654 owner-controlled association, the size of the association, and
655 other factors. The guidelines must designate the possible
656 mitigating or aggravating circumstances that justify a departure
657 from the range of penalties provided by the rules. It is the
658 legislative intent that minor violations be distinguished from
659 those which endanger the health, safety, or welfare of the
660 condominium residents or other persons and that such guidelines
661 provide reasonable and meaningful notice to the public of likely
662 penalties that may be imposed for proscribed conduct. This
663 subsection does not limit the ability of the division to
664 informally dispose of administrative actions or complaints by
665 stipulation, agreed settlement, or consent order. All amounts
666 collected shall be deposited with the Chief Financial Officer to
667 the credit of the Division of Florida Condominiums, Timeshares,
668 and Mobile Homes Trust Fund. If a developer, bulk assignee, or
669 bulk buyer fails to pay the civil penalty and the amount deemed
670 to be owed to the association, the division shall issue an order
671 directing that such developer, bulk assignee, or bulk buyer
672 cease and desist from further operation until such time as the
673 civil penalty is paid or may pursue enforcement of the penalty
674 in a court of competent jurisdiction. If an association fails to
675 pay the civil penalty, the division shall pursue enforcement in

676 a court of competent jurisdiction, and the order imposing the
677 civil penalty or the cease and desist order is not effective
678 until 20 days after the date of such order. Any action commenced
679 by the division shall be brought in the county in which the
680 division has its executive offices or in the county where the
681 violation occurred.

682 7. If a unit owner presents the division with proof that
683 the unit owner has requested access to official records in
684 writing by certified mail, and that after 10 days the unit owner
685 again made the same request for access to official records in
686 writing by certified mail, and that more than 10 days has
687 elapsed since the second request and the association has still
688 failed or refused to provide access to official records as
689 required by this chapter, the division shall issue a subpoena
690 requiring production of the requested records where the records
691 are kept pursuant to s. 718.112.

692 8. In addition to subparagraph 6., the division may seek
693 the imposition of a civil penalty through the circuit court for
694 any violation for which the division may issue a notice to show
695 cause under paragraph (r). The civil penalty shall be at least
696 \$500 but no more than \$5,000 for each violation. The court may
697 also award to the prevailing party court costs and reasonable
698 attorney ~~attorney's~~ fees and, if the division prevails, may also
699 award reasonable costs of investigation.

700 (e) The division may prepare and disseminate a prospectus

701 and other information to assist prospective owners, purchasers,
702 lessees, and developers of residential condominiums in assessing
703 the rights, privileges, and duties pertaining thereto.

704 (f) The division may adopt rules to administer and enforce
705 the provisions of this chapter.

706 (g) The division shall establish procedures for providing
707 notice to an association and the developer, bulk assignee, or
708 bulk buyer during the period in which the developer, bulk
709 assignee, or bulk buyer controls the association if the division
710 is considering the issuance of a declaratory statement with
711 respect to the declaration of condominium or any related
712 document governing such condominium community.

713 (h) The division shall furnish each association that pays
714 the fees required by paragraph (2)(a) a copy of this chapter, as
715 amended, and the rules adopted thereto on an annual basis.

716 (i) The division shall annually provide each association
717 with a summary of declaratory statements and formal legal
718 opinions relating to the operations of condominiums which were
719 rendered by the division during the previous year.

720 (j) The division shall provide training and educational
721 programs for condominium association board members and unit
722 owners. The training may, in the division's discretion, include
723 web-based electronic media, and live training and seminars in
724 various locations throughout the state. The division may review
725 and approve education and training programs for board members

726 and unit owners offered by providers and shall maintain a
727 current list of approved programs and providers and make such
728 list available to board members and unit owners in a reasonable
729 and cost-effective manner.

730 (k) The division shall maintain a toll-free telephone
731 number accessible to condominium unit owners.

732 (l) The division shall develop a program to certify both
733 volunteer and paid mediators to provide mediation of condominium
734 disputes. The division shall provide, upon request, a list of
735 such mediators to any association, unit owner, or other
736 participant in arbitration proceedings under s. 718.1255
737 requesting a copy of the list. The division shall include on the
738 list of volunteer mediators only the names of persons who have
739 received at least 20 hours of training in mediation techniques
740 or who have mediated at least 20 disputes. In order to become
741 initially certified by the division, paid mediators must be
742 certified by the Supreme Court to mediate court cases in county
743 or circuit courts. However, the division may adopt, by rule,
744 additional factors for the certification of paid mediators,
745 which must be related to experience, education, or background.
746 Any person initially certified as a paid mediator by the
747 division must, in order to continue to be certified, comply with
748 the factors or requirements adopted by rule.

749 (m) If a complaint is made, the division must conduct its
750 inquiry with due regard for the interests of the affected

parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

(n) Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation pursuant to this section. The division shall refer to local law enforcement authorities

any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(p) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(q) The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(s) The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the

number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

Section 4. This act shall take effect October 1, 2020.

AGENDA ITEM REPORT

March 9, 2020

ITEM NUMBER: 5.

ITEM: Approval of the May 13, 2019 Regular Council Meeting Minutes. Enclosed is a copy of the revised Minutes.

DESCRIPTION:

Minutes revised at the request of Council Member Reid.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1. 5-13-19 DRAFT revised

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A REGULAR MEETING**

A Regular Meeting of the Town Council was held on Monday May 13, 2019 at 7:00 p.m. in the Council Chambers. Upon roll call the following members responded:

Mayor Stephanie Bruder	
Vice Mayor Joshua Fuller	Council Member Jordan Leonard
Council Member Kelly Reid	Council Member Isaac Salver
Council Member Elizabeth Tricoche	Council Member Robert Yaffe

SPECIAL PRESENTATION:

Item 1. Legislative Update - Senator Jason Pizzo

Senator Pizzo came forward and provided a legislative update on the recent legislation proposed at a state level. Among the bills proposed was a ban on plastic straws; building condominiums and reported that Miami Dade County opened a new division regulate condominiums. He stated that he was concerned with the utility companies placing their equipment on the public land and accidents to water mains.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

TOWN MANAGER'S REPORT:

- Introduce Mrs. Melissa Cruz as the new Assistant Town Manager / Finance Director.
- All Public Meetings were now being live streamed.
- The Town new website will be launch as soon as the PDF documents are ADA compliant.
- The Miami Dade County School Board requested an extended hour of construction for the weekend, they are schedule for completion in October.
- Patrick Prendergast, Code Director, will conduct inspections of all properties that need Tree trimming in anticipation of the upcoming Hurricane Season.
- Florida League of Cities Conference will be taking place in August.

The Town Attorney Report

Town Attorney Sherman reported that Antony and Robin Sieden have complied with all of requirements as requested by the Town relating to the variance approval. The Town Special Master levied \$20,000 in code violations fines which have been paid. They have also executed a resolution for a covenant running with the land.

~~Item 2. Report of the Town investment performance for the period ending March 31, 2019.~~

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

Council Member Reid reported she attended the quarterly Retirement Board Meeting.

Council Member Salver reported he received the Florida League of Cities Home Rule Hero Award.

Council Member Leonard reported he attended the Miami Dade County League of Cities Installation Gala.

Council Member Yaffe reported he attended the Founder Day Event.

Council Member Fuller reported attending several meetings with state legislators to lobby for Town funds.

Mayor Bruder thanked Captain Noel; Lieutenant Johnson and the entire Police Department for obtaining re-accreditation of the Police Department.

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.

Kathleen Kennedy, 9180 W. Bay Harbor Drive, came forward and thanked the staff for a great Founder's Day Event and reported that parking issues at the Bank of America Lot, the property owners are towing vehicles anyone not there for business.

Council Member Tricoche suggested to put signs and communicate to the school for parents to park in the Town Parking Garage for free.

John Vetter, 10350 W. Bay Harbor Drive, came forward and was concerned with the 1177 KC project. He was opposed to the proposed project and felt that there was no public benefit to the Town.

Kathy Srur, 10350 W. Bay Harbor Drive, was concerned with the recent traffic study for the 1177 Kane Concourse and felt that there would be a big parking problem.

Frances Neuhut, 1060 Kane Concourse, came forward and requested for the Town broadcasting channel be put back on TV so meetings can be televised.

Joyce Green, 1360 99 Street, came forward and felt that there was an overcrowding problem at the local school and asked for the Town to be more involved.

CLOSED PUBLIC COMMENT

COMITEE REPORTS:

At this time Item 4, 5 and 7 were taken out of consent agenda for discussion.

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.)

Item 3. Approval of the January 14th, 2019 Meeting Minutes. Enclosed is a copy of the draft Minutes.

Item 5. Consideration and Approval of a resolution requested by Council Member Leonard to become a member of the American Flood Coalition.

ACTION: Council Member Leonard made a motion to approve the consent agenda. Council Member Yaffe seconded the motion and it passed unanimously.

The following are items that were taken out of consent agenda for discussion.

Item 4. Consideration and Approval of a Resolution re-appointing the Town Attorney and Assistant Town Attorneys.

Council Member Reid questioned how the Town Attorneys retainer was increased without the Town Council Approval. She stated that every year the Town Council adopts a resolution at the Annual Organization Meeting setting forth the retainer and hourly rate for the legal services.

Council Member Yaffe stated he pulled the resolution last month because the resolution wasn't consistent with what was previously billed and urged the Town Attorney to draft a retainer agreement outlining the services to be provided. He felt that the new agreement resulted in a much better price because it included items that were previously billed separately.

Council Member Leonard stated it was best practice to have a retainer agreement in place for the legal services.

Vice Mayor Fuller was opposed to the 3% fee for the facsimile, long distance calls, and suggested those expenses be included in the retainer.

Council Member Salver stated that there was room for improvements as it relates to the retainer agreement and asked for the Town Attorney to consider reducing the fees and to provide a credit for prior billing.

There was a brief discussion on the inconsistency on the Town Attorney monthly billing; the retainer fees did not reflect the amount as set per resolution and proposed increase to the retainer fees and special matter fees.

Town Attorney Sherman agreed to provide credits on prior billing and to remove a 3% fee for copies and telephone.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that the voters did not have a say on how the council appoints the Town Clerk and the Town Attorneys. She disagreed with the Assistant Town Attorney attitude.

CLOSED PUBLIC COMMENT

ACTION: Council Member Yaffe made a motion to approve the agreement. Council Member Tricoche seconded the motion and it passed 6-1, with Council Member Reid opposed.

Item 6. Consideration and Approval to extend the Program Grant Agreement for Address Verification Plan between the Town and the School Board of Miami-Dade County for an additional two (2) schools years. Enclosed is a copy of the request for extension request and other supporting documents.

There was a brief discussion on the proposed extension for the address verification agreement with the school board; the amount of kids attending the school; the process being utilized to find students who are attending the school outside of their school boundaries; class sizes; and the school construction.

PUBLIC COMMENT

Vincent Martino, 1050 93 ST, came forward and suggested the installation of cameras and to scan the vehicle plates. He felt that the school was overwhelmed with the amount of kids.

Frances Neuhut, 1060 Kane Concourse, came forward and was frustrated with the amount of kids attending the school.

CLOSED PUBLIC COMMENT

Council Member Leonard explained that the School Board was exempt from coming to the Town building department. Florida Statue allows them to utilize their own Building Department.

ACTION: Council Member Leonard made a motion to approve and extend the Plan Agreement for the Address Verification Plan. Council Member Tricoche seconded the motion and it passed unanimously.

ORDINANCES ON SECOND READING:

Item 7. Consideration and approval of an ordinance on second reading amending the Town Code to replace the current flood ordinance with a new model ordinance. The state has created a new “model” flood code for communities that participate in the FEMA NFIP program. Enclosed is a copy of the proposed ordinance and supporting documents.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES TO REPEAL THE TOWN’S EXISTING CHAPTER 7½ ENTITLED FLOOD DAMAGE PREVENTION; TO ADOPT A NEW UPDATED CHAPTER 7½ ENTITLED FLOOD DAMAGE PREVENTION; TO ADOPT UPDATED FLOOD PLAIN MAPS; TO DESIGNATE A FLOODPLAIN ADMINISTRATOR; TO ADOPT PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS; AND FOR OTHER PURPOSES; PROVIDING FOR APPLICABILITY; PROVING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

PUBLIC COMMENT

Vincent Martino, 1050 93 St, came forward and was in favor of the proposed ordinance.

CLOSED PUBLIC COMMENT

ACTION: Council Member Leonard made a motion to approve the proposed ordinance on second reading. Vice Mayor Fuller seconded the motion and it passed by unanimous poll vote.

ORDINANCES ON FIRST READING:

Item 8. Consideration and Approval of an ordinance on first reading amending Section 23-11 of the Town Code regarding the open space requirements in the RD Single-Family District.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA; AMENDING THE TOWN'S CODE OF ORDINANCES AS RELATED TO OPEN SPACE REQUIREMENTS IN THE RD SINGLE-FAMILY DISTRICT; AMENDING CHAPTER 23-11 OF THE ZONING AND PLANNING CODE ENTITLED LAND DEVELOPMENT REGULATIONS; PROVIDING REQUIREMENTS AND STANDARDS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and stated that this section of the code was recently modified and asked why the amendments weren't included then.

CLOSED PUBLIC COMMENT

ACTION: Council Member Leonard made a motion to approve the ordinance on first reading. Council Member Yaffe seconded the motion and it passed by unanimous poll vote.

DEFERRED ITEMS:

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

Item 9. Consideration and Approval of contract award BHI-202 to Persant Construction Co. Ltd. in the amount of \$22,700 for roadway milling and resurfacing for the intersection on 99th Street and East Bay Harbor Drive.

ACTION: Council Member Leonard made a motion to approve the contract BHI 202 to Persant Construction Co. Ltd. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

Item 10. Appointment of three Council Members to the Block 11 Parking Lot Lease Committee. The committee has not met in years, the last members were Council Member Salver and Council Members Yaffe. The committee originally had three members and it was a Council Committee (not open to resident participation).

PUBLIC COMMENT

Residents Vincent Martino and Frances Neuhut were opposed to the Committee not being open to residents.

CLOSED PUBLIC COMMENT

ACTION: Consensus was to appoint Council Member Leonard, Council Member Yaffe and Council Member Tricoche to serve on the Block 11 Committee.

DISCUSSION ITEMS:

Item 11. Discussion requested by Mayor Bruder to direct the Town Manager to budget for marketing, public relations, design guidelines, branding and/or other method of helping the Business District achieve the desire mixed of tenants and attract more people to the Town.

Mayor Bruder asked for the Town Manager to research ideas, prices, designs, and methods to revitalize the Town Business District.

There was a brief discussion on possibility to provide an incentive program; search for a Public Relations Firm; Chamber of Commerce; research prior years ideas on public relations; public / private partnership ideas and ways to better brand the Town.

PUBLIC COMMENT

Vincent Martino, 1050 93 Street, came forward and supported the idea of helping the Business District and agreed to discuss on what was needed moving forward.

Frances Neuhut, 1060 Kane Concourse, came forward and thanked Mayor Bruder for trying to enhance the Business District. She urged the Council to stop allowing non-conforming uses on the ground floor.

Ken Eskin, 1310 99 Street, came forward and stated that people don't know where the Town was located.

CLOSED PUBLIC COMMENT

Consensus was for the Town Manager to bring back more information to the Council on Public Relations firms.

Item 12. Discussion requested by Vice Mayor Fuller regarding the change in flight pattern by the Federal Aviation Administration (FAA).

Vice Mayor Fuller updated the Council regarding the proposed change in flight pattern by the Federal Aviation Administration (FAA) and how it could impact Bay Harbor Islands. He explained that if the FAA approved the proposed pattern it could increase the number of airplanes over the Town by 50%, which will create noise. He will continue to monitor the FAA plans and will report back to the Council.

Item 13. Discussion requested by Council Member Leonard to renovate / enhance the 92th Street Park by re-sodding the green space.

Council Member Leonard asked for the Council consideration to renovate the 92 Street Park.

There was a brief discussion on the renovation options such as re-sodding or artificial turf; cost estimates; the quote to re-sod and concerns for the type of turf to be environmentally friendly.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and was concerned with the pesticides used on the grass.

CLOSED PUBLIC COMMENT

Mayor Bruder asked that the environmental information be included as part of their submission of the cost estimates.

Consensus was for staff to obtain cost estimates for artificial turf for the 92nd Street Park and to provide additional information on environmentally friendly turf.

There being no further business to discuss meeting was adjourned at 9:51 p.m.

MAYOR

ATTEST

DEPUTY TOWN CLERK

DRAFT

AGENDA ITEM REPORT

March 9, 2020

ITEM NUMBER: 6.

ITEM: Consideration and Approval regarding the attendance to the 66th Annual Miami-Dade County League of Cities Gala to be held May 9th, 2020. The Bronze Sponsorship Package in the amount \$3,000 includes a table seating for 10 and recognition the night of the event. Enclosed are the sponsorship packages details.

DESCRIPTION:

This year the Miami-Dade County League of Cities will host its 66th Annual installation Gala at the Mana Wynwood Convention Center.

The Bronze Sponsorship Package in the amount of \$3,000 includes seating for 10, award recognition the night of the event during the VIP reception.

Enclosed is a copy of the sponsorship packages.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

Funds budgeted in this account are for all meals for monthly meetings and the annual installation gala.

BUDGET IMPACT:

Name	Impact Date	Fund(s)	Account(s)	Project #(s)	Amount Budgeted
Miami Dade County League Installation Gala	5/9/2020	\$3,000.00	511.0-400049.000		\$5,000.00

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1. MDCLC Annual Gala May 9
2. MDCLC Annual Gala



MAY
9TH

*Save
the
Date*

7PM

66th Annual Gala

HONORING
Incoming President Keon Hardemon

&

the 2020-2021 Board of Director's

Mana Wynwood
Convention Center
318 NW 23rd St,
Miami, FL 33127



Sponsorship OPPORTUNITIES

66th Annual Gala

Title Sponsor | \$20,000.00

2 tables of twelve with Royal table seating, Full page recognition in the event program (color), Recognition night of the event and on website, GOBO recognition displayed night of the event, Award recognition night of the event during VIP reception for 1 company representative and 1 guest, Company representative to deliver program welcome during VIP reception, Champagne Bottle Sparklers Table Service

Platinum Sponsor | \$15,000.00

2 tables of ten with premium seating, Full page recognition in the event program (color), Recognition night of the event and on website, GOBO recognition displayed night of the event, Award recognition night of the event during VIP reception for 1 company representative and 1 guest, 4 tickets to the MDCLC Best Practices Conference, Champagne Bottle Sparklers Table Service

Gold Sponsor | \$10,000.00

1 table of twelve with premium seating, Full page recognition in the event program (color), Recognition night of the event and on website, Award recognition night of the event during VIP reception for 1 company representative and 1 guest, 2 tickets to the MDCLC Best Practices Conference, Champagne Bottle Sparklers Table Service

Silver Sponsor | \$5,000.00

1 table of ten with quality seating, Half page recognition in the event program (color), Recognition night of the event and on website, Award recognition night of the event during VIP reception for 1 company representative and 1 guest, Champagne Bottle Sparklers Table Service

Bronze Sponsor | \$3,000.00

1 table of ten with quality seating, Quarter page recognition in the event program (color), Recognition night of the event and on website, Award recognition night of the event during VIP reception for 1 company representative and 1 guest

Full Page Color ad | Dimensions must be (5.5" W X 8.5" H) in a high resolution PDF or EPS format | **\$1,250.00**

Half Page Color ad | Dimensions must be (5.5" W X 4.25" H) in a high resolution PDF or EPS format | **\$750.00**

Quarter Page color ad | Dimensions must be (2.75" W X 4.25" H) in a high resolution PDF or EPS format | **\$600.00**

MEMBERS:

Table of 10 | \$1,650.00 Individual Tickets | \$175.00

NON- MEMBERS:

Table of 10 | \$1,900.00 Individual Tickets | \$200.00

AGENDA ITEM REPORT

March 9, 2020

ITEM NUMBER: 7.

ITEM: Consideration and Approval of Conduit Access and Sharing Agreement between the Town and Comcast of California/ Colorado / Florida / Oregon, Inc for the shared use of the 10-inch Town owned conduit located on 96th Street between East Bay Harbor Drive and Bay Drive. Enclosed is a copy of the proposed agreement.

DESCRIPTION:

Approval of Conduit Access and Sharing Agreement between the Town and Comcast for the shared use of the approximate 10-inch conduit owned by the Town and crossing the Kane Concourse over Indian Creek Bridge located on 96th Street between East Bay Harbor Drive and Bay Drive, since the Town is not currently using the conduit but may elect to in the future. Town agrees that Comcast may have non-exclusive use of the Town conduit subject to conditions that include, but are not limited to, that work be performed without damage to the Town conduit or facilities located within the Town Conduit with the Town's permission; that any modification, repairs, or replacements be made by Comcast employees or designated contractors; that Comcast comply with the Town Code; and that Comcast hold the Town harmless against any claims and causes of action.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Maythe Martin, Executive Asst. to Town Manager
 Juan C. Jimenez, Town Manager

ATTACHMENTS

1. Conduit Access and Sharing Agreement - Comcast

CONDUIT ACCESS AND SHARING AGREEMENT

This Agreement is entered into between Comcast of California/Colorado/Florida/Oregon, Inc. ("Grantee"), and Town of Bay Harbor Islands, FL ("Town"), for the shared use of the approximately 10-inch conduit owned by the Town and crossing the Kane Concourse over Indian Creek Bridge located on 96th Street between East Bay Harbor Dr. and Bay Dr. ("Town Conduit").

WHEREAS, Grantee has certain facilities located in the Town and adjacent community public rights-of-way and seeks to utilize the Town Conduit for its communications facilities to provide service to the Miami-Dade County Public Library, located at 1175 95th Street, Bay Harbor Islands, FL 33154 ("Library");

WHEREAS, the Town is not currently using the Town Conduit, however it may use the Town Conduit in the future, and may authorize a third party to use the Town Conduit. The Town intends for the parties using the Town Conduit to cooperate and to coordinate in the shared use of the Town Conduit going forward; and

NOW THEREFORE, the Grantee and Town hereby agree as follows:

1. Town agrees to allow Grantee to have non-exclusive use of the Town Conduit subject to the following conditions:
 - a. All Grantee's work in the Town Conduit shall be performed without damage to the Town Conduit or to facilities of other parties that may be located within the Town Conduit with the Town's permission.
 - b. Any modification, repair or replacement of facilities within the Town Conduit shall be completed by the Grantee's employees or designated contractors.
 - c. In the event of any damage to the Town Conduit or to another users' facilities within the Town Conduit with Town permission, the party responsible for the damage shall promptly notify the Town and the affected party so that corrective action can be taken. The party responsible for the damage shall reimburse the impacted party for the actual costs of repairing the damage (time and materials).
 - d. Prior to installing any facilities within the Town Conduit, Grantee shall notify the Town of the proposed installation including a description of the facilities to be installed, the method of installation, and the remaining available space for additional facilities within the Town Conduit prior to the proposed installation. This notice shall be provided in writing prior to the proposed installation. Nothing herein shall operate to waive the requirement of permits from the Town. Grantee shall comply with the Town Code with respect to placement and maintenance of its facilities within the Town.
 - e. If any other party seeks to use the Town Conduit, the Town shall undertake commercially reasonable efforts to require such other party to enter into an agreement substantially similar to this Agreement, with the exception of Subsection 4.b., which will be specific to such other party.
 - f. At any time during an installation project by another party, Grantee and the Town may have a representative present during the installation work. In the event the Town Conduit

is damaged or is in need of repair or maintenance that is not due to the actions of Grantee, Grantee shall be responsible for its pro rata share of the costs for repair or maintenance of the Town Conduit based on the total number of parties with facilities in the Town Conduit, with the exception of the Town. The Town shall provide the Grantee with an invoice for its share of the cost of repair or maintenance along with supporting documentation. Except for emergency repairs, the Town shall afford Grantee up to 60 calendar days to notify the Town of any questions as to the invoice or Grantee's acceptance or rejection of the Town's invoice. If Grantee does not respond within such time frame, Grantee shall be deemed to have accepted the Town invoice. Grantee shall not unreasonably reject the Town's invoice. Grantee shall pay the Town the amount of the invoice within 60 days of acceptance. The Town shall not be responsible for the costs of repair or maintenance of the Town Conduit. In the event any party's work in the Town Conduit requires a temporary interruption of the services of a party with facilities in the Town Conduit, that party shall provide Grantee with not less than seven business days' advance notice.

- g. When installing facilities within the Town Conduit, the installing party may install its own smaller conduit to contain, protect, and identify the facilities it is installing.
 - h. Grantee agrees that it shall use the Town Conduit for the sole purpose of providing its services to the Library. In the event the Grantee seeks to use the Town Conduit to expand its services to properties in addition to the Library, Grantee shall notify the Town and the parties shall engage in good faith negotiations for an appropriate fee for Grantee's expanded use of the Town Conduit. If such negotiations are not concluded by the parties within 90 days, unless extended by mutual consent of the parties, the Town may deny the Grantee's request to use the Town Conduit to provide service to other properties.
- 2. Grantee hereby agrees to comply with the terms set forth herein.
 - 3. This Agreement does not relinquish the Town's ownership of the Town Conduit. In the event the Town Conduit is not capable of being used, or there is a governmental project that requires the removal of the Town Conduit on a temporary or permanent basis, following reasonable notice, Grantee agrees to remove its facilities from the Town Conduit at its costs, and this Agreement shall terminate. The Town, in its sole discretion, may abandon, remove, sell, transfer, or otherwise dispose of the Town Conduit. In the event the Town determines to remove, transfer or otherwise dispose of the Town Conduit, the Town shall provide the Grantee with at least sixty days' written notice, this Agreement with the Town shall be terminated, assigned or transferred, as provided, and unless otherwise provided as part of a transfer or assignment, Grantee shall remove its facilities from the Town Conduit at its cost by the deadline established in the notice. The Town makes no warranties or representations regarding the fitness, suitability or availability of the Town Conduit for the Grantee's facilities, and any performance of work or costs incurred by the Grantee shall be at the Grantee's sole risk.
 - 4. Term and Consideration:
 - a. Term. This Agreement shall have a term of thirty (30) years commencing February 1, 2020, unless sooner terminated as provided herein. Grantee may terminate this Agreement without cause with no less than six months' written notice to the Town.
 - b. Consideration for Use of Town Conduit. Grantee shall pay the Town a fee in the amount of \$1,000 within 30 days' of the Town's approval of this Agreement. If this Agreement is not terminated, Grantee shall pay the Town an additional \$1,000 fee at every five-year

anniversary, on or about February 1, 2025, February 1, 2030, February 1, 2035, February 1, 2040, February 1, 2045, and February 1, 2050.

5. This Agreement constitutes the whole agreement between the parties and shall supersede all previous communications, representations, letters, agreements, either oral or written, between the parties with respect to the subject matter hereof. Neither of the parties, in executing or performing the Agreement, is relying upon any statement or information to whomsoever made or given, directly or indirectly, orally or in writing, by any individual or corporation, except as specifically set forth herein. Nothing in this Agreement shall be construed to provide an easement or property right to Grantee.
6. Any modifications or amendments to this Agreement and any waiver of any provision hereto shall not be valid unless set forth in writing and signed by an authorized representative of the parties. The Town Manager, or his/her designee, is authorized to adopt, to modify, and to repeal rules and regulations to carry out the intent of this Agreement on behalf of the Town.
7. When duly executed, this Agreement shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns.
8. Assignment, Default, Indemnification.
 - a. Grantee shall not assign its rights and obligations under this Agreement without the prior written consent of the Town. This Agreement shall be binding on all successors and assigns of the parties.
 - b. In addition to other remedies that may be available under applicable law, in the event of Grantee's breach of this Agreement, following reasonable notice and opportunity to cure the breach, the Town may terminate this Agreement and Grantee's rights to use the Town Conduit and require removal of Grantee's facilities at its cost. If Grantee fails to remove its facilities, the Town may arrange for such removal and charge all costs to Grantee.
 - c. Grantee shall, at its sole cost and expense, indemnify, hold harmless and defend the Town, its elected and appointed officials, boards, members, agents and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the Town arising out of the placement or maintenance of its communications system or facilities in the Town Conduit, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Agreement or permit issued by the Town. In no event shall the Town be liable for damage or destruction of Grantee's facilities installed in the Town Conduit. This provision includes, but is not limited to, the Town's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. The Town agrees to notify Grantee, in writing, within a reasonable time of the Town receiving notice, of any issue it determines may require indemnification. Nothing contained in this Agreement shall be construed or interpreted:
 - i. as denying to either party any remedy or defense available to such party under the laws of the state of Florida;
 - ii. as consent by the Town to be sued; or
 - iii. as a waiver of sovereign immunity beyond the waiver provided in Section

768.28, Florida Statutes, or caps therein, as it may be amended.

9. All written notifications to Grantee shall be made to:
Comcast of California/Colorado/Florida/Oregon, Inc.
1100 Northpoint Parkway
West Palm Beach, FL 33407
Attn: Government Affairs

All written notifications to the Town shall be made to:
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Attn: Town Manager

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to conflict of laws principles.
11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which together will be deemed to be one and the same instrument. The individual signing on behalf of the named party personally warrants and represents that he or she is the duly authorized agent of that party with the authority to execute this Agreement on behalf of the party.

IN WITNESS WHEREOF, the Parties have hereto caused this Conduit Access and Sharing Agreement to be executed as of the Effective Date.

[Signatures appear on the following page]

**GRANTEE:
COMCAST OF
CALIFORNIA/COLORADO/FLORIDA/OREGON, INC.**

By: _____

Name: Patrick O'Hare

Title: Regional Vice President

Date: _____

2/7/2020

Signature of Witness

Dan Cooper
Dan Cooper

TOWN OF BAY HARBOR ISLANDS

By: _____
J.C. Jimenez, Town Manager

Date: _____

ATTEST:

Marlene Siegel
Town Clerk

APPROVED AS TO FORM:

Frank C. Simone, Esq.
Assistant Town Attorney

#39313674 v1
01/31/20 4:58PM

AGENDA ITEM REPORT

March 9, 2020

ITEM NUMBER: 8.

ITEM: Consideration and Approval of a Conduit Access and Sharing Agreement between the Town and Hotwire Communications, LTD for the shared use of a 10-inch Town owned conduit located on 96th Street between East Bay Harbor Drive and Bay Drive. Enclosed is a copy of the proposed agreement.

DESCRIPTION:

Approval of Conduit Access and Sharing Agreement between the Town and Hotwire Communications for the shared use of the approximate 10-inch conduit owned by the Town and crossing the Kane Concourse over Indian Creek Bridge located on 96th Street between East Bay Harbor Drive and Bay Drive, since the Town is not currently using the conduit but may elect to in the future. Town agrees that Hotwire may have non-exclusive use of the Town conduit subject to conditions that include, but are not limited to, that work be performed without damage to the Town conduit or facilities located within the Town Conduit with the Town's permission; that any modification, repairs, or replacements be made by Hotwire employees or designated contractors; that Hotwire comply with the Town Code; and that Hotwire hold the Town harmless against any claims and causes of action.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Maythe Martin, Executive Asst. to Town Manager
 Juan C. Jimenez, Town Manager

ATTACHMENTS

1. Conduit Access and Sharing Agreement - Hotwire

CONDUIT ACCESS AND SHARING AGREEMENT

This Agreement is entered into between Hotwire Communications, LTD ("Grantee"), and Town of Bay Harbor Islands, FL ("Town"), for the shared use of the approximate 10-inch conduit owned by the Town and crossing the Kane Concourse over Indian Creek Bridge located on 96th Street between East Bay Harbor Dr. and Bay Dr. ("Town Conduit").

WHEREAS, Grantee has certain facilities located in the Town and adjacent community public rights-of-way and seeks to utilize the Town Conduit for its communications facilities;

WHEREAS, the Town is not currently using the Town Conduit, however it may use the Town Conduit in the future, or may authorize a third party to use the Town Conduit, and the Town intends for the parties using the Town Conduit to cooperate and to coordinate in the shared use of the Town Conduit going forward; and

NOW THEREFORE, the Grantee and Town hereby agree as follows:

1. Town agrees to allow Grantee to have non-exclusive use of the Town Conduit subject to the following conditions:
 - a. All Grantee's work in the Town Conduit shall be performed without damage to the Town Conduit or to facilities of other parties that may be located within the Town Conduit with the Town's permission.
 - b. Any modification, repair or replacement of facilities within the Town Conduit shall be completed by the Grantee's employees or designated contractors.
 - c. In the event of any damage to the Town Conduit or to another users' facilities within the Town Conduit, the party responsible for the damage shall promptly notify the Town and the affected party so that corrective action can be taken. The party responsible for the damage shall reimburse the impacted party for the actual costs of repairing the damage (time and materials).
 - d. Prior to installing any additional facilities within the Town Conduit, Grantee shall notify the Town of the proposed installation including a description of the facilities to be installed, the method of installation, and the remaining available space for additional facilities within the Town Conduit prior to the proposed installation. This notice shall be provided in writing at least three business days prior to the proposed installation. Nothing herein shall operate to waive the requirement of permits from the Town. Grantee shall comply with the Town Code with respect to placement and maintenance of its facilities within the Town.
 - e. If any other party seeks to use the Town Conduit, the Town shall undertake commercially reasonable efforts to require such other party to enter into an agreement substantially similar to this Agreement, with the exception of Subsection 4.b., which will be specific to such other party.
 - f. At any time during an installation project by another party, Grantee and the Town may have a representative present during the installation work. In the event the Town Conduit is damaged or is in need of repair or maintenance that is not due to the actions of Grantee, Grantee shall be responsible for its pro rata share of the costs for repair or maintenance of

g. When installing facilities within the Town Conduit, Grantee may install its own smaller conduit to contain, protect, and identify the facilities it is installing.

- 2

5. This Agreement constitutes the whole agreement between the parties and shall supersede all previous communications, representations, letters, agreements, either oral or written, between the parties with respect to the subject matter hereof. Neither of the parties, in executing or performing the Agreement, is relying upon any statement or information to whomsoever made or given, directly or indirectly, orally or in writing, by any individual or corporation, except as specifically set forth herein. Nothing in this Agreement shall be construed to provide an easement or property right to Grantee.
6. Any modifications or amendments to this Agreement and any waiver of any provision hereto shall not be valid unless set forth in writing and signed by an officer of the parties. The Town Manager, or his/her designee, is authorized to adopt, to modify, and to repeal rules and regulations to carry out the intent of this Agreement on behalf of the Town.
7. When duly executed, this Agreement shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns.
8. Assignment, Default, Indemnification.
 - a. Grantee shall not assign its rights and obligations under this Agreement without the prior written consent of the Town. This Agreement shall be binding on all successors and assigns of the parties.
 - b. In addition to other remedies that may be available under applicable law, in the event of breach of this Agreement by Grantee, following reasonable notice and opportunity to cure the breach, the Town may terminate this Agreement and its rights to use the Town Conduit and require removal of Grantee's facilities at its cost. If Grantee fails to remove its facilities, the Town may arrange for such removal and charge all costs to Grantee.
 - c. Grantee shall, at its sole cost and expense, indemnify, hold harmless and defend the Town, its elected and appointed officials, boards, members, agents and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the Town arising out of the placement or maintenance of its communications system or facilities in the Town Conduit, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Agreement or permit issued by the Town. In no event shall the Town be liable for damage or destruction of Grantee's facilities installed in the Town Conduit. This provision includes, but is not limited to, the Town's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. The Town agrees to notify Grantee, in writing, within a reasonable time of the Town receiving notice, of any issue it determines may require indemnification. Nothing contained in this Agreement shall be construed or interpreted:
 - i. as denying to either party any remedy or defense available to such party under the laws of the state of Florida;
 - ii. as consent by the Town to be sued; or
 - iii. as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, or caps therein, as it may be amended.
9. All written notifications to Grantee shall be made to:

Hotwire Communications, Ltd.
2100 Cypress Creek Road
Fort Lauderdale, FL 33409
Attn: Chief Executive Officer

All written notifications to the Town shall be made to:

Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Attn: Town Manager.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to conflict of laws principles.
11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which together will be deemed to be one and the same instrument. The individual signing on behalf of the named party personally warrants and represents that he or she is the duly authorized agent of that party with the authority to execute this Agreement on behalf of the party.

IN WITNESS WHEREOF, the Parties have hereto caused this Conduit Access and Sharing Agreement to be executed as of the Effective Date.

[Signatures appear on the following page]

GRANTEE: HOTWIRE COMMUNICATIONS, LTD.

Signature of Witness

Carmen Fredland

By: 

Name: Kristin Johnson

Title: CEO

Date: 2/13/20

TOWN OF BAY HARBOR ISLANDS

By: _____
J.C. Jimenez, Town Manager

ATTEST:

Marlene Siegel
Town Clerk

APPROVED AS TO FORM:

Frank C. Simone, Esq.
Assistant Town Attorney

ATTACHMENT "A"

DESCRIPTION OF SERVICES FOR COMMUNITY CENTER

Video Service:

The Grantee will provide, at no charge to Town, television connection with its video services, subject to any content restrictions, up to seven (7) televisions located within the Community Center. Grantee will provide its Digital Access channel lineup, which shall be delivered using Operator's Fision® system and requires a set top box. The consideration listed in this section is contingent upon Association providing Grantee with the locations of the television connections, as well as Town delivering power to each location.

WiFi Service:

- Grantee will provide Wi-Fi "hotspots" in the Community Center. The consideration listed is contingent upon the Town delivering power to each Wi-Fi "hotspot." The Wi-Fi "hotspots" shall be available for use at up to 100 Mbps. The specifications for the Wireless Access Points are: Each WAP is capable of delivering wireless data rates of up to 800 Mbps, contingent upon:
 - user devices;
 - Interference; and
 - Distance.

Each WAP can cover up to 1000 sq. ft.; *provided, however*, that structural interference may affect the range of coverage.

Grantee will not be held responsible or liable for any illegal or unlawful conduct related to or carried out by any user on the Wi-Fi network.

AGENDA ITEM REPORT

March 9, 2020

ITEM NUMBER: 9.

ITEM: Consideration and Approval of an ordinance on **second** reading requested by Council Member Tricoche amending Section 15, Rule 22 of the Town Code regarding the hours of operation for the Town Parks. Enclosed is a copy of the proposed ordinance.

DESCRIPTION:

The proposed ordinance for second reading would amend the hours of operations for the Town Parks from sunrise to sunset or 8:00 p.m. whichever is later.

Enclosed is a copy of the proposed ordinance. Estimates of the lighting installation will be provided at the meeting.

PREVIOUS MEETING VOTE:

Mayor Bruder - not present for the meeting.

Vice Mayor Fuller - in favor

Council Member Leonard - not present for the meeting.

Council Member Reid - in favor

Council Member Salver - in favor

Council Member Tricoche - in favor

Council Member Yaffe - in favor

Ordinance passed on **first** reading by unanimous poll vote.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
Elizabeth Tricoche, Council Member

ATTACHMENTS

1. 2020.02.18 Park Hours - Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 15 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED PARKS AND RECREATION, BY AMENDING RULE 22 HOURS OF OPERATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

Section 1: That Rule 22 of Chapter 15 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 _____ 2020.

PASSED AND ADOPTED on Second Reading this _____ day of _____
2020.

STEPHANIE BRUDER
Mayor

ATTEST:

MARLENE SIEGEL
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

FRANK C. SIMONE, ESQ.
Town Attorney

EXHIBIT “A”

Sec. 15-1. - Parks and recreation rules and regulations.

...

Rule 22. Hours of operations.

All parks shall open at sunrise and close at sunset or 8:00 p.m., which ever is later, unless otherwise approved by the town. Trespassing during closing hours is prohibited.

AGENDA ITEM REPORT

March 9, 2020

ITEM NUMBER: 10.

ITEM: Discussion requested by Council Member Tricoche on the Selection Process for the Chief of Police. Enclosed is a Memorandum from Town Attorney Frank Simone, Esq. and other supporting documents.

DESCRIPTION:

At the February 18th, Regular Council there was a request from Council Member Tricoche on the Selection Process for the position of Chief of Police. Enclosed is a memo provided by Town Attorney Simone and other supporting documents.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
Elizabeth Tricoche, Council Member

ATTACHMENTS

1. Memo - Selection of Police Chief
2. Chief of Police - FL Cities
3. Chief of Police Appointment - Other States

FRANK SIMONE P.A.

Law Offices

701 BRICKELL AVENUE
SUITE 1550
MIAMI, FLORIDA 33131

TELEPHONE (305) 221-8000

TELEFAX (305) 357-2510

WEBSITE: FrankSimone.com

Date: March 4, 2020

From: Frank C. Simone, Esq., Town Attorney



To: JC Jimenez, Town Manager

Re: Survey of Municipalities' Selection of Police Chief

During the February 18, 2020, Town Council meeting, a discussion was had concerning whether to pursue an amendment to the Town's Charter to have the Town Council (rather than the Town Manager) select the Chief of Police and/or remove the Chief of Police. This memorandum discusses the method of selecting a chief of police by Florida municipalities (and out of state municipalities).

The Town's form of government is Council-Manager. The Town Council is responsible for policy making. The Town Council selects a manager and the manager appoints his or her staff (including the Chief of Police) and oversees the municipalities' daily operations. In so doing, the manager makes critical managerial decisions.

In a 2006 survey, 55% of city governments identified as council-manager. A list of large cities that utilize the Council-Manager form of government include: Phoenix, AZ; Dallas, TX, San Antonio, TX, El Paso, TX, Fort Worth, TX, San Jose, CA, Austin, TX, Charlotte, NC, and Las Vegas, NV.¹ According to a University of Pennsylvania's publication, *Does the Structure of Local Government Matter? Dated December 7, 2017*, "[a] main benefit of this form of government [council-manager] is that the day-to-day operations are largely insulated from politics."²

The University of Pennsylvania's sentiment is echoed by the Florida League of Cities, Inc. ("Florida League"). In the Florida League's publication, *The Florida Municipal Officials' Manual*, the Florida League states:

The council-manager form is widely viewed as a way to take politics out of municipal administration. The manager himself is expected to abstain from any and all political involvement. At the same time, the council members and other "political" leaders are

¹ Source: National League of Cities.

² 34% of city governments identified as mayor-council. This form of government is prominent in large and old cities, as well as cities located in the Mid-Atlantic and Midwest.

expected to refrain from intruding on the manager's role as chief executive. Of course, the manager, who is hired and fired by the council, is subject to the authority of the council, but council members are expected to abstain from seeking to individually interfere in administrative matters, including actions in personnel matters. Some city charters provide that interference in administrative matters by an elected city official is grounds for removal of the elected official from office.

(*Id.* Chapter 2. Page 5)(Emphasis Added).

The Town's charter specifies that the Town Manager is responsible for hiring, supervision, and removal of all Town employees, except as otherwise provided in this Charter. (Section 3.01(b)(2)).³ This includes the Chief of Police. The Town Council is prohibited from interfering with the administration, including the appointment or removal of any Town employees, including the Chief of Police.

As Set forth in Section 2.10 – Prohibitions:

- (a) Appointments; Removals. Neither the Council nor any Council Member shall in any manner dictate the appointment or removal of any Town employees whom the Manager or any of his/her subordinates is empowered to appoint. The Council may express its views and fully and freely discuss with the Manager matters pertaining to appointment and removal of such employees.
- (b) Interference with administration. Except for the purpose of inquiries and investigations made in good faith, the Council or its members shall deal with Town employees who are subject to the direction and supervision of the Manager solely through the Manager, and neither the Council nor any Council Member shall give orders to any such employee, either publicly or privately. It is the express intent of this Charter that recommendations for improvement of Town government operations by individual Council Members be made solely to and through the Manager. Council Members may discuss with the Manager any matter of Town business; however, no individual Council Member shall instruct the Manager to act or refrain from acting.

³ In contrast, the Town Council appoints and can remove the Town Manager, Town Clerk, and Town Attorney.

The only municipality in Florida that is a Council-Manager form of government, discovered to date, where the city council directly appoints and removes the Chief of Police, is Miramar.

In contrast, in all other Council-Manager form of government, discovered to date, the Town/Village/City Manager appoints and removes the Chief of Police. Such municipalities include, but are not limited to, Key West, Doral, Tallahassee, Marco Island, Venice, Neptune Beach, West Melbourne, among others. This is not surprising considering the belief shared by The University of Pennsylvania and the Florida League that by having the manager hire and fire all administrative staff including, but not limited to, the police chief, it takes politics out of municipal administration.

In fact, the Florida legislature has removed politics from certain municipal appointees. For example, the chief building official and the building code enforcement officials are afforded a bill of rights. The bill of rights is to ensure that such municipal appointments are not indebted to any elected official and no elected official has the ability to persuade him or her to circumvent any law, rule, or ordinance. This bill of rights is codified in Section 468.619, Fla. Statutes.

Chief of Police Selection in other Florida Municipalities

City / Town / Village	Appointed / Elected	Appointed by	Contract	Process
City of Aventura	Appointed	City Manager	No	HR Director sent an email internally to the Police Majors with information on the position, resumes, etc. and deadline for submittal. A Panel consisting of the City Manager and HR Director conducted oral interviews with the candidates that met the required qualifications, then the City Manager selected the Police Chief.
Village of Pinecrest	Appointed	Village Manager	No	At the Discretion of the Village Manager
Village of North Bay Village	Appointed	Village Manager	Yes	
Town of Cutler Bay		Town Manager	Yes	
Village of Miami Shores	Appointed	Village Manager	No	Standard Interview process.
City of North Lauderdale		City Manager	Yes	
City of Lake Wales	Appointed	City Manager	No	The current Chief came up through the ranks and was Deputy Chief when the previous one left.
City of Venice	Appointed	City Manager	No	
City of Temple Terrace	Appointed	City Manager	Yes	No formal process in place
City of Sanibel	Appointed	City Manager	No	
City of Dunnellon	Appointed	City Council	No	Advertising: website, Newspaper and etc.
City of Wilton Manors	Appointed	City Manager	No	Recruitment and Selection of Candidates for interviewing is conducted by the HR Department. Interviews are panel interviews.

Chief of Police in other Council-Manager Cities

City	Contact & Number	Result
Phoenix, AZ	Ben Lane Deputy Clerk 602-262-6814	Hired by the Manager
San Antonio, TX	Denise, Clerk's Ofc. 210-207-5919	Police Chief is appointed by the Manager and confirmed by the Council
Dallas, TX	HR 214-670-3111 Althea Chatterton 214-671-8158	They are covered by State Law. The Chief of Police is appointed by the Manager and confirmed by the Council.
San Jose, CA	Clerk 408-535-1260 Toni.taber@sanjoseca.gov Jonathan, HR 408-795-1695	Per Jonathan, the process to appoint is a joint effort between the Manager and the Council. The Manager would recommend someone and the Council, the elected members, would approve and appoint. Council has authority to make final appointment.
Austin, TX	HR 512-974-5007	The City Council appoints the Chief by vote. However, other cities reported that, under state law, the Chief of Police is hired by the Manager and confirmed by the Council.
Fort Worth, TX	Jennifer Navarro Police Appointment Specialist 817-392-4206	They are covered by State Law. The Chief of Police is appointed by the Manager and confirmed by the Council.
Charlotte, NC	Clerk's Office 704-336-2248	The Council appoints the Manager and the Manager hires the Chief of Police.
El Paso, TX	HR – Carlos Ramirez 915-212-4304	They are covered by State Law. The Chief of Police is appointed by the Manager and confirmed by the Council. Chief is appointed by Manager through whatever methods s/he chooses (whether local, regional or national recruitment). Does not require city council approval.
Las Vegas, NV	702-229-6011 702-828-3111 (Met PD)	Doesn't apply to them. They have City Marshalls.

AGENDA ITEM REPORT

March 9, 2020

ITEM NUMBER: 11.

ITEM: Discussion requested by Council Member Reid regarding the possibility of creating an ordinance to regulate the placement of fencing on waterfront lots. Enclosed is a memorandum provided by the Town Attorney.

DESCRIPTION:

At the February meeting there was discussion on requiring fencing on waterfront lots for safety and security. The Town Attorney has presented a memorandum addressing the issue.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk
Frank Simone, Assistant Town Attorney

ATTACHMENTS

1. Memo regarding fencing along bodies of water

FRANK SIMONE P.A.

Law Offices

701 BRICKELL AVENUE
SUITE 1550
MIAMI, FLORIDA 33131

TELEPHONE (305) 221-8000

TELEFAX (305) 357-2510

WEBSITE: FrankSimone.com

Date: March 4, 2020

From: Frank C. Simone, Esq., Town Attorney



To: JC Jimenez, Town Manager

Re: Requiring a Fence on Vacant Waterfront Land

During the February 18, 2020, Town Council meeting, a discussion was had concerning whether to require vacant properties (owned by private owners) along the water to install fencing (whether along the front or rear of the property). The issue raised was in connection with the safety of trespassers. This memorandum discusses Florida law concerning fencing in connection with bodies of water and a survey of ordinances concerning the requirement of waterfront fencing.

An owner of a natural or artificial body of water has no duty to fence it. There is also no duty to erect a fence between one's property and a body of water.

In *Saga Bay Property Owners Association, Inc. et. al. v. Askew*, 513 So.2d 691 (Fla. 3d DCA 1987), the parents of a child who drown in a lake brought an action against the owners of the lake. In ruling in favor of the lake owner, the court articulated the law in Florida that an owner of a natural or artificial body of water has no duty to fence its body of water. In so holding, the court stated that:

The world cannot be made danger-proof – especially to children. To require all natural or artificial streams or ponds so located as to endanger the safety of children to be fenced or guarded would in the ordinarily settled community practically include all streams and ponds, be they in public parks or upon private soil, for children are self-constitute licensees, if not trespassers, everywhere. And to construct a boy-proof fence at a reasonable cost would tax the inventive genius of Edison. *Id.* at 693.

In so holding, the court noted the distinction of a property owner's liability for a child drowning when its swimming pool's fence lacked a self-closing gate (as a swimming pool is an attractive nuisance) citing *Machin v. Royal Green Condominium Association, Inc.*, 507 So.2d 646 (Fla. 3d DCA 1987).

Several courts have relied upon *Saga*. See *Kenley v. Inwood Property Investments, Inc.*, 931 So.2d 1053 (Fla. 4th DCA 2006)(property owner not liable for injuries to young child who fell off the property owner's dock) and *Navarro v. Country Village Homeowners Association, Inc.*, 399 So.2d 538 (Fla. 3d DCA 1981).

Similarly, the courts have held that there is no duty upon the developer of a condominium or the association to erect a fence or wall between the condominium's common areas and a canal owned by the county. In *Waters v. Greenglade Villas Homeowners Association, Inc.*, 399 So.2d 538 (Fla. 3d DCA 1981), a child drowned in a canal located behind the association's property. In ruling in favor of the association, the court set forth the law in Florida that a landowner is not required to erect a fence between its property and a body of water.

If the Town were to require fencing when fencing is not required as a matter of law, a property owner may be held liable for a fence that is not properly maintained. See *Morris v. FP&L*, 753 So.2d 153 (Fla. 4th DCA 2000)(a landowner may be liable to third parties for injuries for failure to maintain its fence).

There are no ordinances discovered to date requiring a property owner of vacant land to fence its property along (or to otherwise enclose) a natural body of water.

A search was conducted in Florida and elsewhere for municipalities that have required property owners of vacant land to install a fence along a natural body of water. To date, no such ordinances have been found.

No such ordinance is believed to exist due to the case law in Florida and elsewhere setting forth no legal duty to fence a natural body of water or to fence their own property if located adjacent to a natural body of water. Furthermore, municipalities may not wish to impose potential liability upon a property owner where no liability otherwise exists.