Town of Pembroke Park

Agenda

SPECIAL COMMISSION MEETING
Wednesday, April 22, 2020 @ 6:00 PM
Virtual Meeting

Page

1. INSTRUCTIONS TO ATTEND VIRTUAL MEETING

Town Hall is closed to the public. Public access to this virtual meeting can be accomplished as follows:

You can dial in using your phone.
United States (Toll Free): 1 866 899 4679
United States: +1 (312) 757-3117

Access Code: 322-976-957

During the meeting you can submit a text or leave a message at (954) 707-9820

Any member of the public wishing to comment publicly on any matter, including on items on the agenda, may submit their comments by email to the Interim Deputy Clerk at townclerk@townofpembrokepark.com.

2. CALL TO ORDER
3. PLEDGE OF ALLEGIANCE
4. ROLL CALL
5. ADDITIONS, DELETIONS OR WITHDRAWALS TO THE AGENDA
6. PUBLIC COMMENTS RELATED TO AGENDA ITEMS / GOOD & WELLFARE
7. REPORTS OF COMMITTEES AND CITY STAFF

7.a. Building Department - Miguel Nunez, Interim Building Official 5 - 9
Building Monthly Status Report March Complete

8. BOARD AND COMMITTEE APPLICATION

8.a. Code Enforcement Applicant 10 - 12
Tonea Nicolls Cary-TOWN OF PEMBROKE PARK APPLICATION FOR ADVISORY BOARD APPOINTMENT

9. CONSENT AGENDA

9.a. Adoption of Minutes 13 - 16
April 8th Special Commission Meeting
04 08 2020 Special Commission Meeting

9.b. Town of Pembroke Park Website Page - Mark Pakula, IT Director 17

Mark Webpage

9.c. Business Tax Receipt and Billing Update - Michelle Grooms, BTR/Billing Administrator 18 - 29

Waiver Request - V & L Debt Relief and Services, Inc. - Pdf
Waiver Request - Jon Chistyakov - Pdf
Waiver Request - Point of Grace - Pdf

9.d. Public Services Division - Todd Larson, Public Services Director 30 - 32

Golf Cart Price Increase

9.e. Personnel Policy and Procedures - Mayor Mohammed 33 - 164

Telephone and email protocol
Personnel Manual
Timesheets
Transferring of personnel
Personnel restructuring
Extension of probation

Personnel Manual
Mayor Personnel Manual
Mayor telephone and email protocol
Time Clock Policy
Time Clock Labor

9.f. Proclamation Protocol - Mayor Mohammed 165 - 174

Proclamation Protocol

9.g. Security System Plan discussed at Executive Session - Mark Pakula, IT Director

10. ORDINANCES

10.a. Emergency Ordinance - Mayor Mohammed, Christopher Ryan Town Attorney 175 - 226

Mayor extended emergency powers 04 08 2020
EMERGENCY POWERS supporting information

11. TOWN BUSINESS

11.a. Annual Service Contract Review - Vice Mayor Clark 227

Review of annual service contracts - AIR-20-025 - Html

11.b. Agenda Item Updates - Vice Mayor Clark 228 - 236

1. Lobbyist Reports /Annexation, etc...
2. MPO/FDOT/FEMA HMGP grants
3. Agro-Eco Gardens & Centers

Agro, Release, Urban Health Partnership AIR-20-017 - Pdf
MPO FDOT Grants AIR-20-023 - Pdf

11.c. Final Decision Public Services Director - Commissioner Cohen / Christopher Ryan Town Attorney 237 - 372

Memo Flooding issue - AIR-20-014 - Pdf
Commissioner Cohen Full Report

11.d. Discussion change the vehicle from the Building Department enterprise fund to the town's general fund Gray car registration - Clerk Commissioner Jacobs 373 - 374

Memo Grey car
Car registration grey vehicle

11.e. Discussion Professional Services for Police Department - Clerk Commissioner Jacobs 375 - 394

Professional Service Consultant Police
POLICE Professional Services David Howard
POLICE Profession Services Adam Burden
Police Roman Consulting Services Proposal
POLICE Roman Resume
POLICE Roman Project Timeline

11.f. Update of RFP FEMA Monitoring from Hurricane Dorian - CMTS, Preston Cook - Mayor Mohammed 395 - 399

10 02 2019 Minutes

11.g. Canopy extension at Food Garden - Vice Mayor Clark 400

Canopy extension - AIR-20-022 - Html

11.h. Discussion Public Private Partnership (P3) - Mayor Mohammed 401 - 407

Consulting Proposal Larry Spring

12. AFTER PUBLICATION OF AGENDA

12.a. Broward Community Collage - Mayor Mohammed 408 - 438

Broward County
MOU Broward College 1
MOU Broward College 2

12.b. FYI - Food Forest Newsletter Article - Vice Mayor Clark 439 - 441

TPP FOOD FOREST ARTICLE

12.c. Comcast Emergency Temporary Upgrade cost not to exceed $5,000 over a four (4) months - Mark Pakula, IT Director / Christopher Ryan Town Attorney

12.d. Code Enforcement Board Applicant - Jeffrey Louise, Code Enforcement 442 - 443

RESOLUTION NO. 2020-045

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA, APPOINTING TONEA NICOLLS-CARY TO THE TOWN OF PEMBROKE PARK CODE ENFORCEMENT BOARD; PROVIDING FOR SEVERALBILITY; SUPERSEDING CONFLICTING RESOLUTIONS AND PROVIDING AN EFFECTIVE DATE.

2020-045 Code Enforcement member Tonea Nicolls Cary

12.e. 2020 Local Option Gas Tax .6 cents - 444 - 445

RESOLUTION NO. 2020-046

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA, AUTHORIZING THE TOWN TO MAKE AND ENTER INTO AN AGREEMENT REGARDING THE 2020 LOCAL OPTION GAS TAX; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT FOR AND ON BEHALF OF THE TOWN; PROVIDING FOR SEVERABILITY; SUPERSEDING CONFLICTING RESOLUTIONS, AND PROVIDING AN EFFECTIVE DATE.

2020-046 Gas tax 6 cents

12.f. 2020 Local Option Gas Tax 05 cents - Christopher Ryan Town Attorney 446 - 447

RESOLUTION NO. 2020-047

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA, AUTHORIZING THE TOWN TO MAKE AND ENTER INTO THE 2020 AMENDMENT TO THE INTERLOCAL AGREEMENT WITH BROWARD COUNTY, FLORIDA, PROVIDING FOR DIVISION AND DISTRIBUTION OF THE PROCEEDS FROM THE BROWARD COUNTY FIFTH CENT ADDITIONAL LOCAL OPTION GAS TAX ON MOTOR FUEL FOR TRANSIT; AUTHORIZING THE MAYOR TO EXECUTE AND DELIVER SAID 2020 AMENDMENT FOR AND ON BEHALF OF THE TOWN OF PEMBROKE PARK; PROVIDING FOR SEVERABILITY; SUPERSEDING CONFLICTING RESOLUTIONS, AND PROVIDING AN EFFECTIVE DATE.

2020-047 Gas tax 5 cents

12.g. 2020 Local Option Gas Tax .3 cents - Christopher Ryan Town Attorney 448 - 449

RESOLUTION NO. 2020-048

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA, AUTHORIZING THE TOWN TO MAKE AND ENTER INTO THE 2020 AMENDMENT TO THE INTERLOCAL AGREEMENT WITH BROWARD COUNTY, FLORIDA, PROVIDING FOR DIVISION AND DISTRIBUTION OF THE PROCEEDS FROM THE BROWARD COUNTY ADDITIONAL LOCAL OPTION GAS TAX ON MOTOR FUEL ORDINANCE; AUTHORIZING THE MAYOR TO EXECUTE AND DELIVER SAID 2020 AMENDMENT FOR AND ON BEHALF OF THE TOWN OF PEMBROKE PARK; PROVIDING FOR SEVERABILITY; SUPERSEDING CONFLICTING RESOLUTIONS, AND PROVIDING AN EFFECTIVE DATE.

2020-048 gas tax 3 cents

12.h. Discussion: granting temporary signs for essential businesses - Mayor Mohammed

13. MEETING SCHEDULE

13.a. 2020 Calendar 450

Calendar

14. ANNOUNCEMENTS

15. ADJOURNMENT

IN ACCORDANCE WITH THE PROVISIONS OF F.S. SECTION 286.0105, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD, AGENCY, OR COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND, 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.

ANY PERSON REQUIRING AUXILIARY AIDS AND SERVICES AT THIS MEETING MAY CALL THE TOWN CLERKS OFFICE AT 954-966-4600 AT LEAST TWO CALENDAR DAYS PRIOR TO THE MEETING. IF YOU ARE HEARING OR SPEECH IMPAIRED PLEASE CONTACT THE FLORIDA RELAY SERVICES BY USING THE FOLLOWING NUMBERS: 1-800-955-8770 (VOICE) OR 1-800-955-8771 (TDD)

DECORUM - ALL COMMENTS MUST BE ADDRESSED TO THE COMMISSION AS A BODY AND NOT TO INDIVIDUALS. ANY PERSON MAKING IMPERTINENT OR SLANDEROUS REMARKS, OR WHO BECOMES BOISTEROUS WHILE ADDRESSING THE COMMISSION, SHALL BE BARRED FROM FURTHER AUDIENCE BEFORE THE COMMISSION BY THE PRESIDING OFFICER, UNLESS PERMISSION TO CONTINUE OR AGAIN ADDRESS THE COMMISSION IS GRANTED BY THE MAJORITY VOTE OF THE COMMISSION MEMBERS PRESENT. NO CLAPPING, APPLAUDING, HECKLING OR VERBAL OUTBURSTS IN SUPPORT OR IN OPPOSITION TO A SPEAKER OR HIS/HER REMARKS SHALL BE PERMITTED. NO SIGNS OR PLACARDS SHALL BE ALLOWED IN THE COMMISSION CHAMBERS. PLEASE MUTE OR TURN OFF YOUR CELL PHONE OR PAGER AT THE START OF THE MEETING. FAILURE TO DO SO MAY RESULT IN BEING BARRED FROM THE MEETING. PERSONS EXITING THE CHAMBER SHALL DO SO QUIETLY.

TOWN OF PEMBROKE PARK
BUILDING DEPARTMENT
3150 SW 52ND Avenue
Pembroke Park, FL 33023
Office 954-966-4600 ● Fax 954-966-5310

MEMORANDUM NO.: 20-008

DATE: April 8, 2020

TO: Todd V. Larson, Public Services Director

FROM: Miguel A. Núñez, Building Official

Miguel A. Nunez, CBO
Digitally signed by Miguel A. Nunez, CBO
DN: cn=Miguel A. Nunez, CBO, o=Town of Pembroke Park, ou=Building Department, email=mnunez@townofpembrokepark.com, c=US
Date: 2020.04.08 13:42:01 -04'00'

RE: MONTHLY STATUS REPORT – MARCH 2020

At this time, I would like to submit the Building Department Monthly Status Report for the above referenced period (attached).

As always, if you have further questions or comments, do not hesitate to contact me at your earliest convenience.

Respectfully submitted.

Cc: Newall Daughtrey, Assistant Town Manager
Malen Martell, Interim Deputy Clerk
File.

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TOWN OF PEMBROKE PARK
BUILDING DEPARTMENT
3150 SW 52ND Avenue
Pembroke Park, FL 33023

Building Department

Monthly Status Report

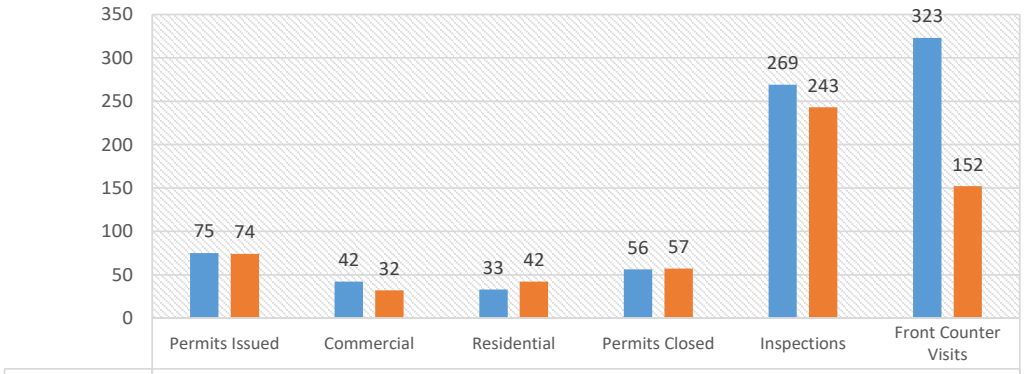
March 2020

Summary:

During this reporting period, the Building Department staff continues to receive praise from our developers, contractors, residents, and internal customers, due the constant personalize assistance in the permitting process, transparency, integrity, and meeting availability, especially during the beginning of the Global pandemic COVID-19; where the Building Department moved in a quick and proactive manner to implement a simple "electronic plans review" using the current system to the fullest; also, by implementing a virtual meeting program using "Zoom and Go to meeting" for conferences and information sharing during this non-contact times.

Furthermore, this condition is expected to continue during the next month; thus allowing us of additional opportunities for additional efficiency and productivity measures, during this unprecedented times.

By the Numbers:

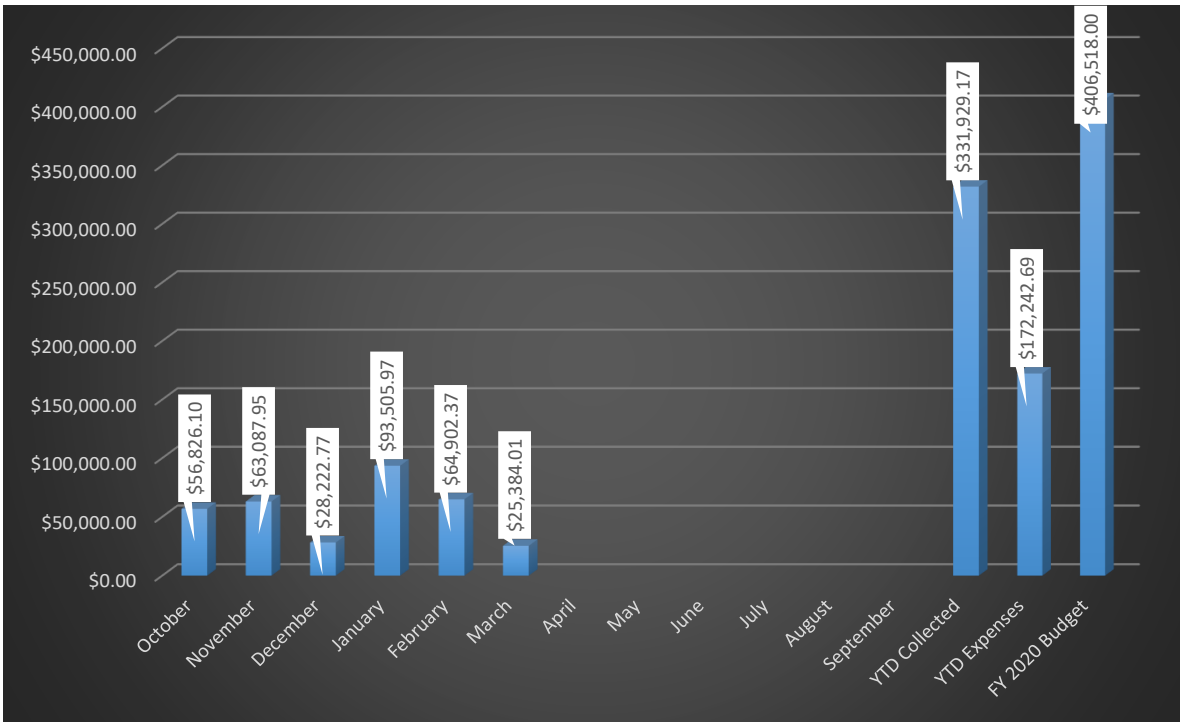


	Permits Issued	Commercial	Residential	Permits Closed	Inspections	Front Counter Visits
Previous Month	75	42	33	56	269	323
Current Month	74	32	42	57	243	152

During this reporting period the Building Department maintained the number of permits issued and the Front Counter Visits was substantially decreased due the emergency measures from the previous reported period. Also, inspections were as follows:
Structural = 99, Mechanical = 56, Electrical = 64 and Plumbing 24 for a total of 243 Inspections.

Revenue:

During this reporting period the Building Department and the new Fiscal Year (FY20) associated disciplines (Structural, Electrical, Plumbing and Mechanical) have collected $331,929.17; In addition, we can inform that as of-to-date the Building Department expenses are approximate $172,242.69 see chart below for graphical information:



Large Construction Projects Summary:

	Not Started		In Progress		No Action		Completed

Status / Commissioner District	Project	Description	Notes

	Seneca Town Center		
1	**Building 1**	Building Shell (Structure)	Completed.
1	*Unit 100*	Tenant Improvement	Completed.
1	*Unit 200*	Tenant Improvement	Submitted for Plans Review second cycle and waiting for resubmittal after comments were rendered.
1	*Unit 300*	Tenant Improvement	Submitted for Plans Review second cycle and waiting for resubmittal after comments were rendered.
1	*Unit 800*	Tenant Improvement	Completed
1	**Building 2**	Building Shell (Structure)	Submitted for Plans Review Third cycle and waiting for resubmittal after comments were rendered. Meetings were held with Architect and developer to review comments.
1	**Building 3**	Building Shell (Structure)	Submitted for Plans Review Second cycle and waiting for resubmittal after comments were rendered.
1	**Building 4**	Building Shell (Structure)	Completed.
1	*Unit 100*	Tenant Improvement	Completed
1	*Unit 300*	Tenant Improvement	Completed
1	*Unit 400*	Tenant Improvement	Completed
1	**Coca-Cola**	Various Improvements	Currently under the inspections process.
3	**Value Store It**	6 Story Storage Building	Completed
4	**Pembroke Plaza**	Shopping Center Building	Currently under the plan review process.
4	**3-Story Building** **(2991 SW 32nd Avenue)**	Office – Shell (Structure)	Submitted for Plans Review First cycle and waiting for resubmittal after comments were rendered.

Additional Comments:

In addition to the above reported items, the Building Department has processed numerous additions, renovations, alterations for the Single-Family Residences (SFR), Townhomes (TH); Commercial Tenant Improvements (TI), and Mobile Homes (MH) for repairs, exterior additions and new installations at all districts.

Other News:

Our Permit Clerk, Ms. Teresa Malcolm, has attended and **passed** the examination for the Fundamentals of Code enforcement (Level I) by the Florida association of Code enforcement (FACE).

TOWN OF PEMBROKE PARK
APPLICATION FOR ADVISORY BOARD APPOINTMENT

Your Service to our Town is Earnestly Solicited
Service on a Board or Committee provides citizens with an opportunity to help shape policy and direction for the Town of Pembroke Park. Residents are cordially invited to apply for appointment by the Town Commission to a Town Board.

Applications are valid for three (3) years.
Please check Boards/Committees for which you wish to be considered:

- ☐ Art and Cultural Board
- ☐ Beautification Advisory Board
- ☐ Board of Adjustment*
- ☐ Civil Service Board
- ☑ Code Enforcement Board*
- ☐ Historic Preservation Board
- ☐ Planning and Zoning Board*
- ☐ Police/Fire Pension Board*
- ☐ School Advisory Board
- ☐ Unsafe Structures Board*
- ☐ Local Government Academy (Eight week course)

Application is for: ☑ New Appointment ☐ Re-submission ☐ If you currently serve on a Board, please state which Board _____
** Per Section 112.317 Florida Statutes, Members of Some Boards are required to file a Financial Disclosure Report.*

Please type or print information.
PERSONAL:

Name: Tonea Nicolls -Cary E-Mail Address: ntonea@hotmail.co

Residential Address: 3100 w Hallandale Beach Blvd, Pembroke FL, Zip: 33009 Telephone Number: ( )

Business Number: ( ) Cell Number: (754)204-8564

(You must use your Pembroke Park home address on this application.) Voting Precinct Number: _____

EDUCATION:

Name of High School: Mt Carmel Prep Academy Location: Nassau Bahamas

College (if applicable): Culinary & Hospitality Management Institute Location: Nassau Bahamas

Years Completed: 2 years Degree: Associates degree Field of Study: Culinary & Hospitality Management

Other professional or technical training (Name of school, course name, etc.): property management

EMPLOYMENT:

Current or last employer: Lakeshore Management Address: 8800 N Bronx Ave 2 ND Floor Skokie IL 60077

Position: Community Manager Years of Service: 3

Duties: Maintaining property, advertising negotiations, enforcing lease rules and regulations ,violations collecting repairs etc.

OTHER QUALIFICATIONS: Briefly describe any specific expertise and/or abilities that would pertain to your service on a City Board:
Understanding Florida Statute 723 and 513 laws and regulations

MEMBERSHIPS: Pembroke Park Organization(s) **Years in Membership Office Held (if any)**
Nil

Outside City

ACKNOWLEDGMENT (Check Below:)

☑ **I understand that in accordance with the Florida Sunshine Law, this information will be available for public review and I waive any objections to such publication.**

☑ **I understand that appointment to any of the positions indicated above is a voluntary service.**

☑ **If appointed, I agree to faithfully and fully perform the duties of my office, will make every endeavor to serve my full term, and will comply with all laws or ordinances of the City, County, and State of Florida, particularly those pertaining to the conduct of public office and the financial disclosure requirements, if applicable, to my position.**

☑ **I understand, if appointed, an updated application must be submitted to seek appointment to another advisory board.**

☑ **I understand that if appointed, I must take the oath of office prescribed in the Florida Statutes.**

☑ **I understand that I may sit on only one Commission appointed board.**

T. Nicolls - Cary
Signature of Applicant

2-24-2020
Date

Please Completely Fill Out & Return this Application to the City Clerk's Office for Processing. Town of Pembroke Park · 3150 SW 52 Avenue · Pembroke Park, FL 33023 · (954)966-4600 ext 235 . Email to: townclerk@townofpembrokepark.com
Applications will be valid for a period of three years

Voter Information Lookup

Please find your voter registration information below.

Full Name:
TONEA NICOLLS-CARY

Street Address:
3100 W HALLANDALE BEACH BLVD APT 511

City:
PEMBROKE PARK

Zip Code:
33009

County Name:
BROWARD

Voter Identification Number:
126541491

Date Of Registration:
12/17/2018

Party:
No Party Affiliation

Voter Status:
Active*

*An active voter refers to a registered voter who is eligible to vote.

Access Ballot and Precinct Information (https://www.electionsfl.org/VFLookup.php?fvrsid=126541491&ckey=1234567&county=BRO) available through your county Supervisor of Elections' website.

New Search (/en/CheckVoterStatus)

Please email BVRSHelp@dos.myflorida.com (mailto:BVRSHelp@dos.myflorida.com) for website assistance.

Ron DeSantis, Governor
Laurel M. Lee, Secretary of State

Privacy Policy (http://dos.myflorida.com/privacy-policy/)
| Accessibility (http://dos.myflorida.com/accessibility/)
| Site Map (http://dos.myflorida.com/site-map/)
| Communications (http://dos.myflorida.com/communications/)
| Connect (http://dos.myflorida.com/communications/connect/)

Questions or comments? Contact Us (mailto:BVRSHelp@dos.myflorida.com)

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Florida Department of State

R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250

Voter Assistance Hotline:
1.866.308.6739
Hours: Monday - Friday 8:00 AM - 5:00 PM (Eastern Time)
If hearing or speech impaired, please contact the Division using the **Florida Relay Service** (https://www.ftri.org/relay), 1.800.955.8771 (TTY) or 1.800.955.8770 (Voice) or 1-800-955-1339 (ASCII), or 1.877.955.8773 (español a español).

TOWN OF PEMBROKE PARK
3152 SW 52 Avenue, Pembroke Park, FL 33023
Broward (954) 966- 4600 Fax (954)966-5186

VIRTUAL SPECIAL COMMISSION MEETING MINUTES
Wednesday, April 8th, 2020 at 6:00 PM

Mayor Ashira Mohammed
Vice Mayor Howard Clark
Clerk Commissioner Geoffrey Jacobs
Commissioner Georgina A. Cohen
Commissioner Reynold Dieuveille

Assistant Town Manager Newall Daughtrey
Town Attorney Chris Ryan
Interim Deputy Clerk Marlen D Martell

INSTRUCTIONS TO ATTEND VIRTUAL SPECIAL COMMISSION MEETING

NOTICE IS HEREBY GIVEN that the Town Commission of the Town of Pembroke Park, Florida, will hold a "Virtual" Special Meeting utilizing communications media technology ("CMT"), in accordance with Governor Ron DeSantis' Executive Order No. 20-69, dated March 20, 2020, pertaining to conducting local government meetings while under the public health emergency related the spread of Novel Coronavirus Disease 2019 (COVID- 19).

Town Hall is closed to the public. Public access to this virtual meeting can be accomplished as follows:

You can dial in using your phone.
United States (Toll Free): 1 866 899 4679
United States: +1 (669) 224-3318
Access Code: 714-229-165

During the meeting you can submit a text at (305) 336-7953 or (954) 275-7467

Any member of the public wishing to comment publicly on any matter, including on items on the agenda, may submit their comments by email to the Interim Deputy Clerk at townclerk@townofpembrokepark.com.

ROLL CALL OF THE CITY OFFICIALS:
The meeting was called to order at 6:14 pm by Mayor Ashira Mohammed. Present at the meeting were Mayor Ashira Mohammed; Vice Mayor Howard P. Clark; Clerk Commissioner Jacobs; Commissioner Georgina A. Cohen and Commissioner Reynold Dieuveille.

Additional staff in attendance were: Town Assistant Manager Newall Daughtrey, Town Attorney Christopher Ryan; Interim Town Clerk Marlen D. Martell; Administrative Assistant to the Town Clerk Suzi Reutlinger; Administrative Assistant to the Commissioners Joy Brown; IT Director Mark Pakula; Public Service Director Todd Larson; Interim Building Official Miguel Nunez; Building Manager Lucie Manzerolle.

CALL TO ORDER by Mayor Mohammed at 6:14pm.

PLEDGE OF ALLEGIANCE: led by Mayor and Commissioners.

ADDITIONS, DELETIONS OR WITHDRAWLS TO THE AGENDA:
None

PUBLIC COMMENTS RELATED TO AGENDA ITEMS / GOOD & WELLFARE
No Public Comments

ADOPTION OF VIRTUAL MEETING PROTOCOL - TOWN ATTORNEY RYAN,
Motion by Vice Mayor Clark, seconded by Clerk Commission Jacobs. **MOTION PASSED 4-0**. Commissioner Cohen was unable to vote, technical difficulties.

NEW BUSINESS:

Extension of Emergency Declaration Order - Mayor Mohammed

Motion made by Vice Mayor Clark to adopt the Declaration of Emergency for 60 days, seconded by Clerk Commissioner Jacobs**, MOTION PASSED 4-0.** Commissioner Cohen had technical difficulties.

Motion made by Vice Mayor Clark to adopt the Emergency Declaration safer at home 04 01 2020 for 60 days, seconded by Clerk Commission Jacobs, **MOTION PASSED 4-0**. Commission Cohen had technical difficulties.

Pump Alarm System - Public Services Director Larson
Motion to Table until a quote of all pumps is submitted. Motion by Clerk Commissioner Jacobs, seconded by Commissioner Dieuveille, **MOTION PASSED 4-0**. Commissioner Cohen having technical difficulties.

Adoption of Minutes - Interim Deputy Clerk Martell, motion to approve the minutes by Clerk Commission Jacobs, seconded by Commissioner Cohen. **MOTION PASSED 5-0.** Workshop meeting - February 26, 2020, Regular Commission meeting - March 12, 2020

Cyber Security - Information Technology Director Pakula
FORWARDED to next week April 15th. It was then rescheduled to Thursday, April 16th.

Finance Department - Assistant Finance Director Taubenfeld
Bills over $500.00, motion by Clerk Commission Jacobs, seconded by Commissioner Cohen. **MOTION PASSED 5-0.**

Bill of Particulars - Mayor Mohammed and Elmer Ignacio Town Attorney will follow up.

RESOLUTIONS

Correction of utility location agreement percentage from 2.0 to 2.5% - Public Services Director Larson, motion by Vice Mayor Clark, seconded by Commissioner Cohen. **MOTION PASSED 5-0.**

RESOLUTION NO. 2020-043

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA, **AUTHORIZING THE TOWN TO MAKE AND ENTER INTO THE FIRST AMENDMENT TO UTILITY LOCATE AGREEMENT WITH CRAIG A. SMITH & ASSOCIATES, INC.; AUTHORIZING THE MAYOR TO EXECUTE AND DELIVER SAID FIRST AMENDMENT FOR AND ON BEHALF OF TOWN;** SUPERSEDING CONFLICTING RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

Correction of Vehicle Trackers - Public Services Director Larson

RESOLUTION NO. 2020-044, motion by Vice Mayor Clark, seconded by Commissioner Cohen, **MOTION PASSED 5-0.**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA**, AUTHORIZING THE TOWN TO MAKE AND ENTER INTO AN AGREEMENT WITH VERIZON FOR GPS VEHICLE AND REPORTING SERVICES;** AUTHORIZING THE MAYOR AND APPROPRIATE TOWN OFFICIALS TO EXECUTE SAID AGREEMENT FOR AND ON BEHALF OF TOWN; SUPERSEDING CONFLICTING RESOLUTIONS AND PROVIDING AN EFFECTIVE DATE

EMERGENCY PUCHASE

2nd Floor A/C Emergency Repair - Public Services Director Larson, MOTION by Vice Mayor Clark, seconded by Commissioner Cohen. **MOTION PASSED 5-0.**

PUBLIC COMMENTS RELATED TO AGENDA ITEMS / GOOD & WELLFARE
No public comment

ADJOURNMENT

With no further items for discussion, meeting adjourned at 7:30 pm. Vice Mayor Clark motioned for adjournment, seconded by Clerk Commissioner Jacobs. **MOTION PASSED 5-0.**

Commission approved on: _____

ATTEST:

(SEAL)

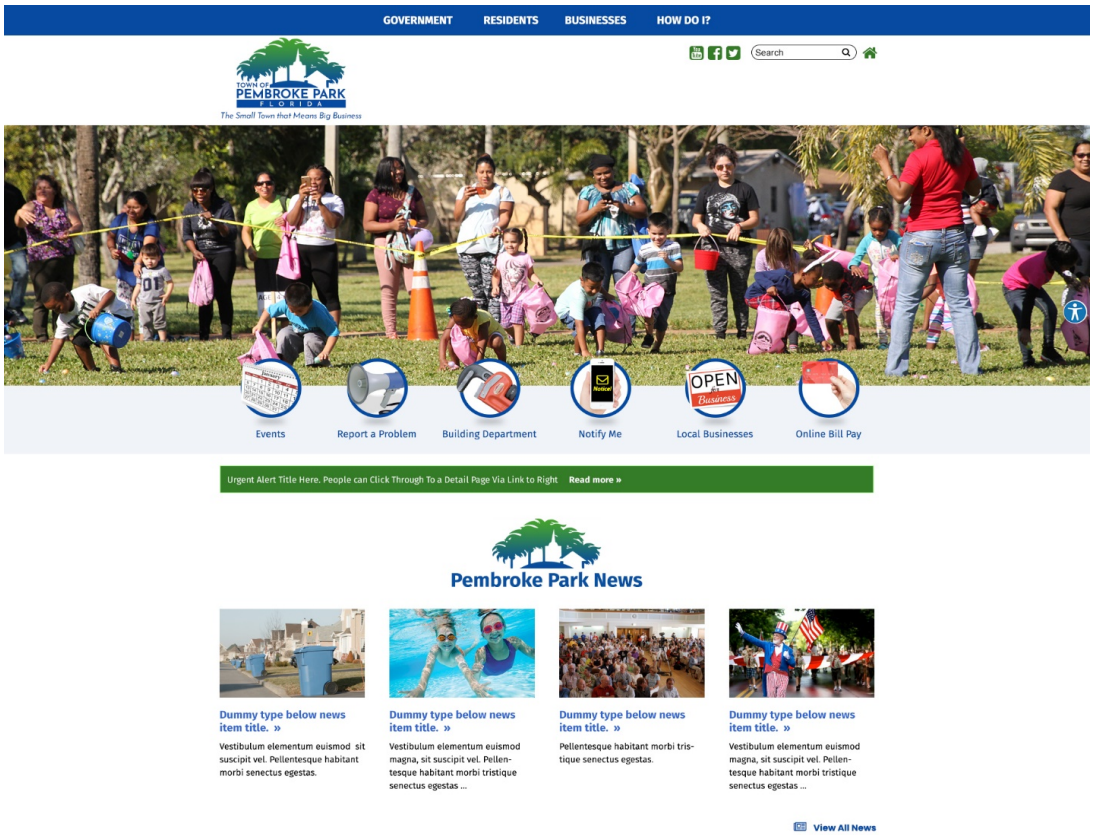
_____ _____

Ashira Mohammed, Mayor Marlen Martell, Interim Deputy Town Clerk

In accordance with the provisions of F.S. Section 286.0105, should any person seek to appeal any decision made by the Commission with respect to any matter considered at this meeting, such person will 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.

Any person requiring auxiliary aids and services at this meeting may call the Town Clerks Office at 954-966-4600 at least two calendar days prior to the meeting. If you are hearing or speech impaired please contact the Florida Relay Services by using the following numbers: 1-800-955-8770 (voice) or 1-800-955-8771 (tdd)

DECORUM - All comments must be addressed to the Commission as a body and not to individuals. Any person making impertinent or slanderous remarks, or who becomes boisterous while addressing the Commission, shall be barred from further audience before the Commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the Commission members present. No clapping, applauding, heckling or verbal outbursts in support or in opposition to a speaker or his/her remarks shall be permitted. No signs or placards shall be allowed in the Commission Chambers. Please mute or turn off your cell phone or pager at the start of the meeting. Failure to do so may result in being barred from the meeting. Persons exiting the Chamber shall do so quietly.


GOVERNMENT
RESIDENTS
BUSINESSES
HOW DO I?
Search
TOWN OF PEMBROKE PARK FLORIDA
The Small Town that Means Big Business
Events
Report a Problem
Building Department
Notify Me
Local Businesses
Online Bill Pay
Urgent Alert Title Here. People can Click Through To a Detail Page Via Link to Right Read more »
Pembroke Park News
Dummy type below news item title. »
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Dummy type below news item title. »
Vestibulum elementum euismod magna, sit suscipit vel. Pellentesque habitant morbi tristique senectus egestas ...
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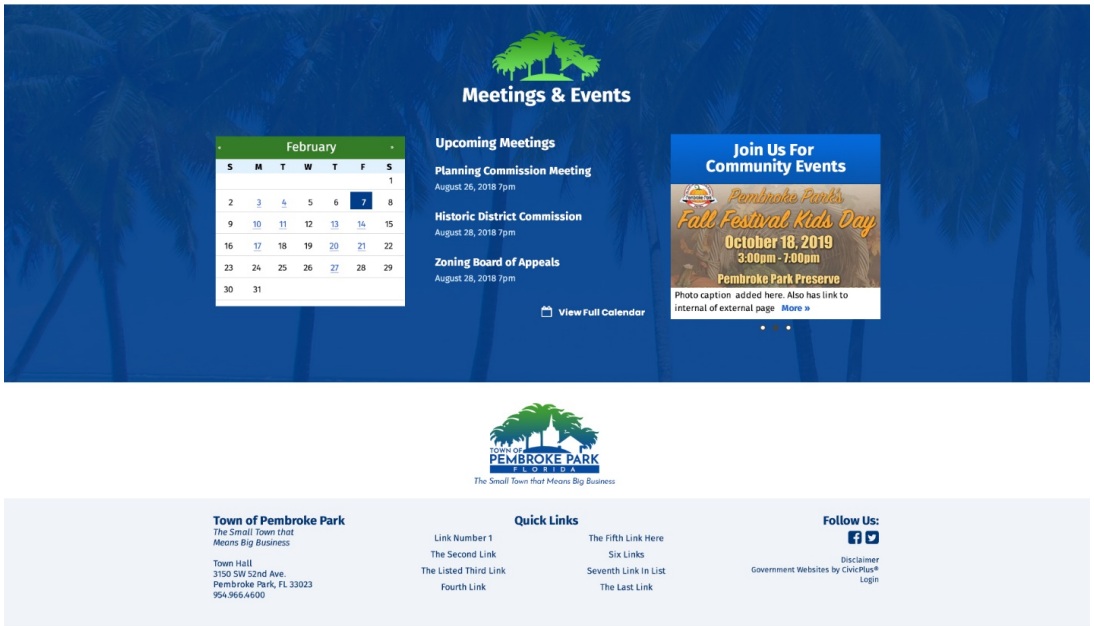
Vestibulum elementum euismod magna, sit suscipit vel. Pellentesque habitant morbi tristique senectus egestas ...
View All News


Meetings & Events
February
S M T W T F S
Upcoming Meetings
Planning Commission Meeting
August 26, 2018 7pm
Historic District Commission
August 28, 2018 7pm
Zoning Board of Appeals
August 28, 2018 7pm
View Full Calendar
Join Us For Community Events
Pembroke Park's
Fall Festival Kids Day
October 18, 2019
3:00pm - 7:00pm
Pembroke Park Preserve
Photo caption added here. Also has link to internal of external page More »
TOWN OF PEMBROKE PARK FLORIDA
The Small Town that Means Big Business
Town of Pembroke Park
The Small Town that Means Big Business
Town Hall
3150 SW 52nd Ave.
Pembroke Park, FL 33023
954.966.4600
Quick Links
Link Number 1
The Second Link
The Listed Third Link
Fourth Link
The Fifth Link Here
Six Links
Seventh Link In List
The Last Link
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AGENDA ITEM REPORT

To:
Subject: Waiver Request - V & L Debt Relief and Services, Inc.
Meeting: Agenda Regular Commission Meeting - April 08 2020
Department: Finance
Staff Contact: Michelle Grooms,

BACKGROUND INFORMATION:
See attachment

FINANCIAL IMPACT:
Decrease in revenue for penalty/ inspection fees.

POLICY IMPLICATIONS:
None

RECOMMENDATION:
Recommend waiving the penalty and inspection fees.

ATTACHMENTS:
Waiver Request-V & L Debt Relief

February 26, 2020

Town of Pembroke Park

3150 S.W. 52ND Avenue

Pembroke Park, FL 33023

REF: ACCOUNT NO.130380

V & L BEBT RELIEF AND SVCS., INC.

4500 W HALL BCH BLVD

PEMBROKE PARK FL 33023

Dear Sirs:

This letter goes to kindly ask you to eliminate or reduce the amount of penalty fee actually on my account, unfortunately year 2019 was a very bad year for my business and I have been struggling financially. If there is something you can do to help waive those fees will be highly appreciated.

Thank you in advance for your help and if there is something you need from me, please don't hesitate to contact me.

Best Regards,

Milqueya Luciano

Milqueya Luciano

Town Of Pembroke Park
3150 S.W. 52nd Avenue
Pembroke Park, FL 33023-5413
Phone: (954) 966-4600 EXT:214 Fax: (954) 966-5186

V & L DEBT RELIEF AND SVCS., INC.
4500 W HALL BCH BLVD
PEMBROKE PARK FL 330230000

ANNUAL BILLING STATEMENT

ACCOUNT NO.	***DATE***
130380	***3/30/2020***

BUSINESS DESCRIPTION
SERVICES-TAXES/HEALTH INS/NOTARY

BUSINESS ADDRESS
4500 W HALL BCH BLVD

DATE	***DESCRIPTION***	***AMOUNT***
FY 2019	*Annual Fire Department Inspection*	*85.00*
	- Re-Insp Fee	
FY 2019	*Penalty Fee / Late Charges*	*52.50*
	- Del. Penalty-Jan 1	
FY 2019	*Penalty Fee / Late Charges*	*250.00*
	- Mar 1-Penalty Fee(Town Code 15-40c)	
FY 2020	*Penalty Fee / Late Charges*	*74.15*
	- Penalty-Jan 1	
FY 2020	*Penalty Fee / Late Charges*	*250.00*
	- Mar 1-Penalty Fee(Town Code 15-40c)	

ATTENTION!! IMPORTANT NOTICE: Payments recieved by the Town will first be applied to the oldest outstanding balances due, if any, on your accounts payable to the Town and then to current account balances due. All outstanding account balances due to the Town must be paid in full prior to receiving a Business Tax Receipt renewal.

PAY ALL FEES BY SEPT 30th
TO AVOID THE FOLLOWING PENALTIES!! (F.S. 205.053)
Oct. 1st - 10% Nov. 1st - 15% Dec. 1st - 20% Jan. 1st - 25%
PAST DUE AMOUNT STARTING ON OR AFTER MARCH 1st
an additional penalty of $250.00 will be imposed (P.P. Code 15-40c)

SUB-TOTAL	***$711.65***
PLEASE PAY	***$711.65***

Town of Pembroke Park

3150 SW 52nd Ave
Pembroke Park, FL, 33023
Phone (954) 966-4600
Fax (954) 966-5310

SALES RECEIPT

Town of Pembroke Park	Sold To **V & L DEBT RELIEF AND SERVICES INC**
3150 SW 52nd Ave	4500 W HALL BCH BLVD
Pembroke Park FL, 33023	PEMBROKE PK, FL 33023
Phone (954) 966-4600 x211	Phone 0000011049
Fax (954) 966-5310	

Transaction #	Payment Method	Amount	Sale Date
21044	Money Order	$580.00	2/19/2020 5:24:18 PM

Date Applied	Application #	Qty	Item	Total
2/19/2020	AP-81041	52.50	Certificate Of Use - Deferred Billing	$52.50
2/19/2020	AP-81041	157.50	Business Tax - Deferred Billing	$157.50
2/19/2020	AP-81041	157.50	Business Tax - Deferred Billing	$157.50
2/19/2020	AP-81041	52.50	Certificate Of Use - Deferred Billing	$52.50
2/19/2020	AP-81041	160.00	Annual Fire Department Inspection	$160.00
	Total			**$580.00**

AGENDA ITEM REPORT

To:
Subject: Waiver Request - Jon Chistyakov
Meeting: Agenda Regular Commission Meeting - April 08 2020
Department: Finance
Staff Contact: Michelle Grooms,

BACKGROUND INFORMATION:
See attachment

FINANCIAL IMPACT:
Decrease in revenue for penalty fees.

POLICY IMPLICATIONS:
None

RECOMMENDATION:
Recommend waiving the penalty fees.

ATTACHMENTS:
Waiver Request-Jon Chistyakov

Hello. My name is Yan Chistyakov
address 2401 JP Lyons Ln F24-26

I could not pay everything on time
now I am Here paying $500 for license for whole time
Please waive whole remaining fees and penalties

Phone 786-970-1362 Yan

3-18-20

Town Of Pembroke Park
3150 S.W. 52nd Avenue
Pembroke Park, FL 33023-5413
Phone: (954) 966-4600 EXT:214 Fax: (954) 966-5186

ANNUAL BILLING STATEMENT

JON CHISTYAKOV
233 NE 14 AVE
HALLANDALE FL 33009

ACCOUNT NO.	***DATE***
037610	***3/30/2020***

BUSINESS DESCRIPTION

DIAGNOSTIC/RPR-VEHICLE ECU
(NO OUTDOOR STORAGE/RPR)

BUSINESS ADDRESS
2401 J P LYONS LN, F24-26

DATE	***DESCRIPTION***	***AMOUNT***
FY 2018	*Penalty Fee / Late Charges*	*38.75*
	- Del. Penalty-Jan 1	
FY 2018	*Penalty Fee / Late Charges*	*250.00*
	- Penalty Fee-Mar 1(Town Code 15-40c)	
FY 2019	*Penalty Fee / Late Charges*	*70.10*
	- Del. Penalty-Jan 1	
FY 2019	*Penalty Fee / Late Charges*	*250.00*
	- Mar 1-Penalty Fee(Town Code 15-40c)	
FY 2020	*Penalty Fee / Late Charges*	*39.38*
	- Penalty-Jan 1	
FY 2020	*Penalty Fee / Late Charges*	*250.00*
	- Mar 1-Penalty Fee(Town Code 15-40c)	

ATTENTION!! IMPORTANT NOTICE: Payments recieved by the Town will first be applied to the oldest outstanding balances due, if any, on your accounts payable to the Town and then to current account balances due. All outstanding account balances due to the Town must be paid in full prior to receiving a Business Tax Receipt renewal.

PAY ALL FEES BY SEPT 30th
TO AVOID THE FOLLOWING PENALTIES!! (F.S. 205.053)
Oct. 1st - 10% Nov. 1st - 15% Dec. 1st - 20% Jan. 1st - 25%
PAST DUE AMOUNT STARTING ON OR AFTER MARCH 1st
an additional penalty of $250.00 will be imposed (P.P. Code 15-40c)

SUB-TOTAL	***$898.23***
PLEASE PAY	***$898.23***

Town of Pembroke Park

3150 SW 52nd Ave
Pembroke Park, FL, 33023
Phone (954) 966-4600
Fax (954) 966-5310

SALES RECEIPT

Town of Pembroke Park	Sold To	**JON CHISTYAKOV**
3150 SW 52nd Ave		2401 J P LYONS LN, F24-26
Pembroke Park FL, 33023		PEMBROKE PK, FL 33009
Phone (954) 966-4600 x211		Phone 0000001182
Fax (954) 966-5310		

Transaction #	Payment Method	Amount	Sale Date
21171	Cash	$470.00	3/18/2020 5:24:29 PM

Date Applied	Application #	Qty	Item	Total
3/18/2020	AP-82858	105.00	Business Tax - Deferred Billing	$102.50
3/18/2020	AP-82858	52.50	Certificate Of Use - Deferred Billing	$52.50
3/18/2020	AP-82858	52.50	Certificate Of Use - Deferred Billing	$52.50
3/18/2020	AP-82858	105.00	Business Tax - Deferred Billing	$105.00
3/18/2020	AP-82858	105.00	Business Tax - Deferred Billing	$105.00
3/18/2020	AP-82858	52.50	Certificate Of Use - Deferred Billing	$52.50
	Total			**$470.00**

AGENDA ITEM REPORT

To:
Subject: Waiver Request - Point of Grace
Meeting: Agenda Regular Commission Meeting - April 08 2020
Department: Finance
Staff Contact: Michelle Grooms,

BACKGROUND INFORMATION:
See attachment

FINANCIAL IMPACT:
Decrease in revenue for penalty fees.

POLICY IMPLICATIONS:
None

RECOMMENDATION:
Recommend waiving the penalty fees.

ATTACHMENTS:
Waiver Request -Point of Grace

TOWN OF PEMBROKE PARK

3150 S.W. 52ND AVENUE · PEMBROKE PARK, FLORIDA 33023 · BROWARD (954) 966-4600 · FAX (954) 966-5186

MEMORANDUM

TO: Town Commission

FROM: Michelle Grooms, Billing Administrator

DATE: March 30, 2020

RE: Waiver request for Point of Grace Christian School

On March 1, 2020 the final penalty was assessed for annual billing statements still outstanding. Point of Grace Christian School was assessed that final penalty and remain outstanding fees as March 1, 2020. I contacted the Pastor of the church were the school is located prior to that deadline in February. The Pastor indicated that he was unaware of the situation and requested a copy of the outstanding billing.

As a result of that conversation a payment was received and processed on March 12, 2020. An email was received the same day, indicating a letter requesting waiver of penalty fees would be sent to the Town as soon as possible. As of March 30, 2020, I have not receive a waiver request by email or mail.

I am submitting this memorandum along with additional documentation to be considered for a waiver request of penalty fees.

Town Of Pembroke Park
3150 S.W. 52nd Avenue
Pembroke Park, FL 33023-5413
Phone: (954) 966-4600 EXT:214 Fax: (954) 966-5186

ANNUAL BILLING STATEMENT

POINT OF GRACE CHRISTIAN SCHOOL
ATTN: STEPHEN WRIGHT, PASTOR
3610 SW 48 AVE
PEMBROKE PK FL 33023

ACCOUNT NO.	***DATE***
085301	***3/30/2020***

BUSINESS DESCRIPTION
FIRE INSPECTIONS ONLY

(NO BTR-NEED TO APPLY)

BUSINESS ADDRESS
3610 SW 48 AVE

DATE	***DESCRIPTION***	***AMOUNT***
FY 2014	*Penalty Fee / Late Charges*	*250.00*
	- Pen Fee (Code 15-40c)11-12 (billed previously cs)	
FY 2014	*Penalty Fee / Late Charges*	*250.00*
	- Pen Fee (Code 15-40c) 12-13 (billed previously cs)	
FY 2014	*Penalty Fee / Late Charges*	*23.25*
	- For 2013-14 (billed previously cs)	
FY 2014	*Building Dpt Inspection Fee*	*50.00*
	- Insp Fee for BTR (billed previously cs)	
FY 2017	*Penalty Fee / Late Charges -JAN 1st*	*8.75*
FY 2017	*Penalty Fee / Late Charges - MAR 1st*	*1.33*
FY 2018	*Penalty Fee / Late Charges -JAN 1st*	*23.92*
FY 2018	*Penalty Fee / Late Charges - MAR 1st*	*250.00*
FY 2019	*Penalty Fee / Late Charges -JAN 1st*	*66.72*
FY 2019	*Penalty Fee / Late Charges - MAR 1st*	*250.00*
FY 2020	*Penalty Fee / Late Charges -JAN 1st*	*27.80*
FY 2020	*Penalty Fee / Late Charges - MAR 1st*	*250.00*

ATTENTION!! IMPORTANT NOTICE: Payments recieved by the Town will first be applied to the oldest outstanding balances due, if any, on your accounts payable to the Town and then to current account balances due. All outstanding account balances due to the Town must be paid in full prior to receiving a Business Tax Receipt renewal.

PAY ALL FEES BY SEPT 30th
TO AVOID THE FOLLOWING PENALTIES!! (F.S. 205.053)
Oct. 1st - 10% Nov. 1st - 15% Dec. 1st - 20% Jan. 1st - 25%
PAST DUE AMOUNT STARTING ON OR AFTER MARCH 1st
an additional penalty of $250.00 will be imposed (P.P. Code 15-40c)

SUB-TOTAL	***$1,451.77***
PLEASE PAY	***$1,451.77***

Town of Pembroke Park

3150 SW 52nd Ave
Pembroke Park, FL, 33023
Phone (954) 966-4600
Fax (954) 966-5310

SALES RECEIPT

Town of Pembroke Park	
3150 SW 52nd Ave	
Pembroke Park FL, 33023	
Phone (954) 966-4600 x211	
Fax (954) 966-5310	

Sold To

LAKE FOREST BAPTIST CHURCH/ POINT OF GRACE
3610 SW 48 AVE
HOLLYWOOD, FL 33023
Phone 0000007072

Transaction #	Payment Method	Amount	Sale Date
21156	Money Order	$805.00	3/12/2020 3:48:52 PM

Date Applied	Application #	Qty	Item	Total
3/12/2020	AP-78536	240.00	Annual Fire Department Inspection	$240.00
3/12/2020	AP-78536	240.00	Annual Fire Department Inspection	$240.00
3/12/2020	AP-78536	240.00	Annual Fire Department Inspection	$240.00
3/12/2020	AP-78536	85.00	Annual Fire Department Inspection	$85.00
	Total			**$805.00**

Town of Pembroke Park
3150 SW 52nd Avenue
Pembroke Park, FL 33023

Agenda Request

Meeting Date:	April 8, 2020
Subject:	Purchase of 4-passenger golf cart
Initiated by:	☐ City Commission ☐ City Attorney ☑ City Manager / Staff
Prepared by:	Name & Title: Stephanie Woodbury, Project Manager
Reviewed by:	Name & Title: Todd Larson, Public Services Director
Approved by Town Manager:	Signature:
Approved by Town Attorney:	Signature:
Attachments:	quote from Broward Electric Car & Equipment
Fiscal Impact:	price increase
Policy Question(s) for Commission Considerations:	
Summary:	
Background:	The Commission approved the golf cart purchase for $4,000. Unfortunately the 2016 golf cart is no longer available. the next lowest cost is for a 2018 and the cost is $4,299
Discussion/Analysis:	
Options:	
Advantages:	
Disadvantages:	
Possible action:	
Advantages:	
Disadvantages:	
Staff Recommendations:	None
Additional Action Needed:	None

Broward Electric Car & Equipment
4100 Ravenswood Road
Suite A
Ft. Lauderdale, FL 33312

P 954-925-2400 F 954-925-8444

www.browardelectriccar.com

CUSHMAN.

EZGO AUTHORIZED DEALER
A Textron Company

Vehicle Quote

Quote:	91551
Date	3/18/2020
Terms	Net 30
PO #	REQUIRED
Rep	MC

Bill To: 0001620

Pembroke Park, The Town Of
3150 SW 52nd Ave.
Pembroke Park, FL 33023

Ship To:

Pembroke Park, The Town Of
3150 SW 52nd Ave.
Pembroke Park, FL 33023

Ordered By:	Chris McKine	Phone	954-275-2804	email	cmckine@	@	townofpembrokepark.com
Make/Model	EZGO TXTE-4/P 48V PDS	Year	2018	S/N	T.B.D.		Electric
Charger	48V Automatic					NLI#	

Qty	Item	Description	Price	Total
1.00	18-TXTE-48V	EZGO 2018 TXTE 48V PDS Golf Car USED – RECONDITIONED Includes: reverse warning indicator, Tires: 18x8.50-8" Used Street Design, 48V electrical system, Power drive speed control PDS, 48V charger, 6-8V 2018 Battery Pack, Std Sun Top TAN, F/D Windshield, Std. Speed 14 +/- .5 mph. BEC LIMITED WARRANTY: 4- Months Parts & Labor Body Color: ALMOND, PREMIUM Seat Color: LIGHT BEIGE	3,900.00	3,900.00
1.00	PF12106-I	Seat Kit 4 Passenger Flip (TAN) TXT 1996-Current. Steel Frame, Seats, Cargo Deck & Footrest INSTALLED	550.00	550.00
1.00	Transport	Transportation Delivery: Vehcicle Sale	100.00	100.00
	Discount	The Town Of Pembroke Park	-251.00	-251.00
		We Currently Have 7 Vehicles Remaining In Stock. Lead Time 2-3 Days		

Vehicle Quote Terms

Quote is honored for 30-Days or while supplies last.

AUTHORIZED SIGNATURE is Required for Approvals. ALL Vehicle Sales are COD. Some Orders may be Require 50% Deposit.

PAYMENT: I.D. Required for All Checks and Subject to 7-10 day Hold, Credit Card Charges over $500 subject to 2.0% Convenience Fee.

Subtotal	$4,299.00
Sales Tax (0.0%)	$0.00
Total	**$4,299.00**

Accepted By: X

Print: _____ Date: _____

Thank You For The Opportunity To Provide This Quote on Our Line of Vehicles

Celebrating 30 YEARS

Town of Pembroke Park
3150 SW 52nd Avenue
Pembroke Park, FL 33023

Agenda Request

Meeting Date:	April, 2020
Subject:	Personal Policy extending probation from 6 months to 1 year
Initiated by:	☑ City Council ☐ City Attorney ☐ City Manager/Staff
Prepared by:	Name & Title: Ashira Mohammed Mayor
Reviewed by:	Name & Title:
Approved by Town Manager:	Signature:
Approved by Town Attorney:	Signature:
Attachments:	Audio from commission meeting
Fiscal Impact:	none
Policy Question(s) for Council Considerations:	Discussion was had direction was given but no formal vote was taken
Summary:	
Background:	
Discussion/Analysis:	
Options:	
Advantages:	
Disadvantages:	
Possible action:	
Advantages:	
Disadvantages:	
Staff Recommendations:	
Additional Action Needed:	

Personnel Policy Manual

TEMPLATE

(see template instructions following page)

Record of Changes

Instructions: Use the table below to record information regarding changes made to the document over time.

Action	Policy Revised or Added	Resolution #	Date
Adopted			
Revision			
New			

Personnel Manual

TEMPLATE INSTRUCTIONS

This document is a template to enable the Town to finalize a Local Government Personnel and Procedural Manual. The policies and/or procedures were developing by referencing current applicable laws and professional best practices for each field.

All instructional or guidance text appears in blue italicized font throughout this template, which should be deleted in the Final Document. In some cases, the specific language used for a policy may need to be replaced with information more specific to the Town's particular circumstances and some policies may need modification due to existing contradictory language in Town Documents. Finally, there may be practices in place that are inconsistent with existing policy and the Town needs to determine which policy practice shall be followed henceforth.

All Text and Tables that are not in blue italics are provided as boilerplate examples of wording and formats that may be modified if needed. However, caution should be used in making major changes to this text.

In order to maintain the integrity of the document and table of contents, follow these steps:

1. ***Do not modify fonts, styles (headings etc.).***
2. ***Do not delete any headings…all Headings are consistent with policies which should be included.***
3. ***Use the insert key when inserting to overwrite.***
4. ***Delete instructional guidance text when finished.***
5. ***Update Table of Contents and save in Final Format.***

Note: All Manuals should include a Creation and Revision Table to document changes over time.

Personnel Manual Instructions:

1. ***Review and Edit Conflicting language from Manual and Code***
2. ***Repeal all Code/ordinance language related to Personnel Policies and adopt Personnel Policies by Resolution for greater flexibility and to avoid future conflicts.***
3. ***Any amendments to the Personnel Manual in future should be adopted by resolution and added as language to the Manual which should then be updated (to include Table of Contents and Page Numbering)***

If needed, this consultant is available to produce the final manual and forms determined to be necessary to implement the processes, once final reviews are completed, preferably by the Town Manager and select staff in conjunction with the Town Attorney

Personnel Manual

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Personnel Manual

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Personnel Policy Manual

INTRODUCTION

Purpose

The purpose of these policies is to establish a uniform and equitable system of personnel administration for employees of the Town of Pembroke Park. Nothing in this manual shall be construed as contract terms for any Town employees.

These policies are not intended to be all-inclusive or to cover every situation that may arise. These policies may be amended at any time at the sole discretion of the Town and supersede all previous personnel policies. Revisions and amendments shall become effective upon approval by the Town Commission.

A separate procedural manual establishes in more detail the practices, processes and forms required to implement these policies.

Scope

These policies and procedures apply to all of the Town's employees unless specifically addressed in a formal employment contract or insurance plan document. Where such documents specifically differ from these policies, then the applicable provision(s) of the subject agreement shall ~~govern~~supersede these policies.

These policies are designed to work in combination with individual departmental policies and procedures; however, these policies shall prevail should they come into conflict with departmental policies or procedures.

No person, other than the Mayor and Town Commission or the Town Manager as authorized by the Town Commission, has the authority to enter into any agreement for employment with an employee for any specified period of time, or to make any agreement contrary to the provisions of this manual.

These policies govern regardless of past practices or former policies. This manual supersedes any previous verbal or written policies, statements, understandings or agreements concerning terms and conditions of employment, except in cases of formal employment contracts or other legally binding agreements.

The Town reserves the right to change, modify, or discontinue any provision of this manual, or create new policies for inclusion in this manual. No person, other than the Town Commission or the Town Manager as authorized by the ~~mayor and council~~Town Commission, has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the provisions of this manual.

Severability

If one or more provisions of this manual are superseded by or become in conflict with a formal employment contract, insurance plan documents, state or federal laws, or if they are determined by a court of competent jurisdiction to be inappropriate and voided, then the balance of the manual shall remain in effect.

Distribution and Revisions

A copy of this manual shall be provided to each employee, who shall be required to sign a standard form certifying his/her receipt and review of the manual.

Revisions or updates to the manual shall be provided to all employees in either paper form, by email, or by other electronic communication such as posting on the intranet. Employees are expected to review all changes and updates and remain abreast of all current personnel policies. Periodically employees may be required to provide an updated sign-off that they have received and reviewed the manual and changes in policy.

Disclaimer

All employees of the Town are employed at ~~shall~~ will and may quit, or be terminated at any time and for any or no reason. Nothing in any of the Town's rules, policies, handbooks, procedures or other documents relating to employment creates any express or implied contract or employment.

This handbook replaces any previously issued policies, practices and understandings, written or oral, governing employment. Nothing contrary to or inconsistent with the limitations in this paragraph creates any contract of employment unless:~~:~~

1) The terms are in writing;

2) The document is labeled "contract';

3) The document states the terms of employment; and

4) The document is signed by the Mayor and approved by a vote of the Town Commission.

GENERAL EMPLOYMENT POLICIES

Equal Employment Opportunity (EEO)

The Town of Pembroke Park is committed to providing equal opportunity in all areas of employment, including but not limited recruitment, hiring, demotion, promotion, transfer, selection, lay-off, disciplinary action, termination, compensation and selection for training.

The Town shall not discriminate against any employee or job applicant and prohibits discrimination against any person on the basis of race, color, sex, age, religion, national origin, marital or veteran status, height, weight, disability, political affiliation, or other protected classes.

The Town hires only United States Citizens and lawfully authorized alien workers.

The Town adheres to the following federal laws which prohibit workplace discrimination and are enforced by the U.S. Equal Employment Opportunity Commission (EEOC).

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

This law makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate applicants and employees sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.

THE PREGNANCY DISCRIMINATION ACT

This law amended Title VII to make it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

THE EQUAL PAY ACT OF 1963 (EPA)

This law makes it illegal to pay different wages to men and women if they perform equal work in the same workplace. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 (ADEA)

This law protects people who are 40 or older from discrimination because of age. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

TITLE I OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

This law makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

SECTIONS 102 AND 103 OF THE CIVIL RIGHTS ACT OF 1991

Among other things, this law amends Title VII and the ADA to permit jury trials and compensatory and punitive damage awards in intentional discrimination cases.

SECTIONS 501 AND 505 OF THE REHABILITATION ACT OF 1973

This law makes it illegal to discriminate against a qualified person with a disability in the federal government. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

THE GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008 (GINA)

This law makes it illegal to discriminate against employees or applicants because of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members (i.e. an individual's family medical history). The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Harassment and Discrimination

Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).

1. Harassment is unwelcome conduct that is based on race, color, religion, sex-gender (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where:

    A) ~~1) e~~Enduring the offensive conduct becomes a condition of continued employment, or

B) tThe conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

1.2. Sexual Harassment is harassment of a sexual nature.

Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Petty slights, annoyances, and isolated incidents (unless extremely serious) shall not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Harassment can occur in a variety of circumstances, including, but not limited to, the following:

1. The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
2. The victim does not have to be the person harassed but can be anyone affected by the offensive conduct.
3. Unlawful harassment may occur without economic injury to, or discharge of, the victim.

Prevention is the best tool to eliminate harassment in the workplace. Employers are encouraged to take appropriate steps to prevent and correct unlawful harassment. They should clearly communicate to employees that unwelcome harassing conduct shall not be tolerated. They can do this by establishing an effective complaint or grievance process, providing anti-harassment training to their managers and employees, and taking immediate and appropriate action when an employee complains. Employers should strive to create an environment in which employees feel free to raise concerns and are confident that those concerns shall be addressed.

Employees are encouraged to inform the harasser directly that the conduct is unwelcome and must stop. Employees should also report harassment to management at an early stage to prevent its escalation.

EMPLOYER LIABILITY FOR HARASSMENT

The employer is automatically liable for harassment by a supervisor that results in a negative employment action such as termination, failure to promote or hire, and loss of wages. If the supervisor's harassment results in a hostile work environment, the employer can avoid liability only if it can prove that:

1. It reasonably tried to prevent and promptly correct the harassing behavior; and
2. The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

The employer shall be liable for harassment by non-supervisory employees or non-employees

over whom it has control (e.g., independent contractors or customers on the premises), if it knew, or should have known about the harassment and failed to take prompt and appropriate corrective action.

When investigating allegations of harassment, the EEOC looks at the entire record,: including: the nature of the conduct, and the context in which the alleged incidents occurred. A determination of whether harassment is severe or pervasive enough to be illegal is made on a case-by-case basis.

If you believe that the harassment you are experiencing or witnessing is of a specifically sexual nature, you may want to see EEOC's information on sexual harassment.

SEXUAL HARASSMENT

The Town prohibits sexual harassment of an employee by another employee, management representative, supplier, volunteer, or business invitee. The Town prohibits sexual harassment from occurring in the workplace or at any other location at which Town sponsored activity takes place. Sexual harassment of non-employees by Town employees is also prohibited. The purpose of this policy is not to regulate personal morality or to encroach upon one's personal life, but to demonstrate a strong commitment to maintaining a workplace free of sexual harassment.

Unwelcome sexual advances, requests for sexual favors and other verbal, physical or visual conduct of a sexual nature constitute harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for an employment decision affecting the individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Regarding unwelcome sexual advances toward non-employees, requests for sexual favors and other verbal, physical or visual conduct of a sexual nature constitute harassment when:

1. Submission to such conduct is made either explicitly or implicitly in exchange for a benefit;
2. Submission to or rejection of such conduct by an individual is used as the basis for a decision affecting the individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's activities or creating an intimidating, hostile or offensive environment.

Sexual harassment may include unwanted sexual advances; offering employment benefits in exchange for sexual favors; visual conduct (leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters); verbal sexual advances, propositions or requests; verbal abuse of a sexual nature; graphic verbal commentaries about an individual's body; sexually degrading words used to describe an individual; suggestive or obscene letters, caricatures or representations of persons using electronically or physically altered photos, drawings, or images; notes or invitations; and/or, physical conduct (touching, assault, impeding

or blocking movements).

If an employee is witness to or believes that the employee has experienced sexual harassment, they must immediately notify their supervisor or other appropriate person.

Harassment of Town employees, in connection with their work, by non-employees may also be a violation of this policy. Any employee who experiences harassment by a non-employee, or who observes harassment of an employee by a non-employee should report such harassment to their supervisor. Appropriate action shall be taken against any non-employee.

Notification by employee to appropriate personnel of any harassment problem is essential to the success of this policy and the Town generally. The Town cannot resolve a harassment problem unless it is reported. Therefore, it is the responsibility of all employees to bring those kinds of problems to the attention of management so that steps are necessary to correct them.

Violation of this sexual harassment policy shall subject employees to disciplinary action, up to and including immediate discharge.

Drugs and Alcohol Policy

Commented [MLS1]: Review heavily

The Town recognizes that the possession or use of unlawful drugs and the abuse of alcohol pose a threat to the health and safety of all employees. Any employee who is observed by a supervisor or department head to be intoxicated or under the influence of alcohol or drugs during working hours or is under reasonable suspicion of same shall be immediately tested and is subject to discipline up to and including termination. The supervisor or Department Head shall immediately report any reasonable suspicions to the ~~(CEO title)~~ Town Manager.

An employee shall be required to submit to alcohol, drug or controlled substance testing when the employee's work performance causes a reasonable suspicion that that employee is impaired due to current intoxication, drug or controlled substance use, or in cases where employment has been conditioned upon remaining alcohol, drug, or controlled dangerous substance free following treatment. Refusal to submit to testing when requested may result in immediate disciplinary action, including termination. Supervisors or Department heads that observe behavior constituting reasonable suspicion are required to institute testing and do not have the option of sending the employee home as an alternative.

The manufacturing, distribution, dispensation, possession, and use of alcohol or unlawful drugs on Town premises or during work hours by employees is strictly prohibited.

Employees must notify their supervisor within five (5) days of conviction for a drug or alcohol related violation, whether or not the violation occurred in the workplace.

Employees who are required to maintain a Commercial Driver's License (CDL) are subject to random drug testing as required by the federal government.

Employees using prescription drugs that may affect job performance or safety must notify ~~[Position Title]~~their supervisor and Human Resources, who ~~is~~are required to maintain the confidentiality of any information regarding an employee's medical condition in accordance with the Health Insurance Portability and Protection Act. Town personnel who hold a Commercial Driver's License (CDL) are subject to the provisions of the Commercial Driver's Licenses Drug and Alcohol Testing Policy. A

program to assist employees who may have a drug/alcohol problem is provided through the Town's Employee Assistance Program. *Does the Town have an Employee Assistance Program, if not delete previous sentence)*

No prescription drug should be used by any person other than the individual to whom it is prescribed. Such substances or non-prescription (over-the-counter) drugs should be used only as prescribed or indicated. Employees are prohibited from consuming prescription drugs that are not prescribed in their name on Town property or while performing Town business. Soliciting or distributing prescription drugs for or to other employees is also strictly prohibited.

Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act, Title 29 U.S.C. (Sections 201-219) is the federal law requiring that covered employees be paid at least the federal minimum wage and overtime pay (at time and one-half of the employee's regular rate of pay) for all hours worked over 40 hours in a workweek.

The Town Personnel Manual refers to employees covered by FLSA as "non-exempt" and to those not covered by the FLSA minimum wage and overtime provisions as "exempt".

Veterans' Preference

Title 5 USC, Section 2108 and Chapter 295, F.S., set forth the requirements for public employers to provide preferences in employment, retention, and promotion to eligible veterans, spouses of veterans, and other veterans' preference eligible individuals.

Medical Examinations

You may eliminate this section if the Town does not or may not plan to use medical examinations.

The Town may require an employee to submit to a medical or psychological exam to determine fitness for duty provided the examinations are job related and consistent with business necessity. Tests for alcohol or illegal drug use are not considered medical examinations, nor are physical agility tests. Fitness for duty exams shall be conducted by a licensed professional designated by the Town and shall be paid for by the Town.

The Town shall comply with all applicable laws including ADA, FMLA, HIPAA, Worker's Compensation and related laws and guidelines in addressing circumstances where an employee is found to be unfit to perform some or all of their essential job functions. This policy in no way shall be construed to limit employees' rights under any federal or State Law.

Employees determined to be un-fit for duty and requiring associated leave, may access accrued leave banks and other paid or unpaid leave time consistent with the policies contained within this manual and state and federal laws.

Light duty or modified return-to-work arrangements are not guaranteed, and would not indicate continued employment if provided.

Workplace Violence

The Town of Pembroke Park is committed to reducing the potential for workplace violence. In this

regard, it is the policy of the Town to prohibit acts or threats of verbal or physical violence by any party, directed toward employees, citizens, elected officials, and visitors to the Town's facilities or others.

The Town is committed to providing a safe and health~~fuly~~ work environment, consistent with health and safety rules and shall take prompt remedial action, up to and including discharge or criminal prosecution, against any employee who engages in threatening behavior or acts of violence.

The Town shall take appropriate action against any non-employee who engages in threatening behavior including former employees and visitors to Town facilities, up to and including criminal prosecution.

Employees who display a tendency to engage in violent, abusive or threatening behavior shall be referred to the Town's health plan for counseling or other appropriate treatment. Such employees shall also be subject to disciplinary action, up to and including immediate discharge.

Additionally, it is the responsibility of Town employees to assist in identifying problem employees. The Town Manager should be immediately notified of situations or incidents involving threats, acts of violence, aggressive behavior, threatening or offensive comments and similar acts. Employee reports made pursuant to this policy shall be held in confidence to the maximum possible extent. The Town shall not tolerate retaliation against any employee reporting a violation of this policy.

Safety and Right to Know

The Town complies with federal and state Right-To-Know laws and shall make every effort to provide information to employees about any hazardous chemical to which they may be exposed. Right-To-Know information is posted near the areas in which employees may be exposed to chemicals or other potentially hazardous materials. Employees are required to read and be familiar with all posted materials.

TERMS OF EMPLOYMENT

Personnel Files

The ~~City~~Town maintains a personnel file on each employee. The personnel file includes such information as the employee's job application, resume, records of training, documentation of performance appraisals and salary increases, and other employment records. It is important that personnel records be kept up to date by employees and will be updated at performance reviews.

Employees should notify ~~[Position Title]~~Human Resources, when any of the following personal information changes:

Name	**Education status**
Address	**Military status**
Telephone number	**Driver's license status**
Marital status	**Licensing, certification, and training, or**
Emergency notification contacts	**Other information which may impact the job requirements**
Beneficiary Information	

Personnel files are the property of the ~~City~~Town, and access to some of the information those files contain may be restricted in accordance with state and or federal law. Personnel records are subject to the Florida Public Records Law and contents must be provided as may be required by the Florida Public Records Law, Chapter 119, Florida Statutes, except for information that is exempt and confidential pursuant to law.

Anyone who wishes to review a personnel file should contact the ~~[Position Title]~~Human Resources Department. With reasonable advance notice, personnel files may be reviewed in the ~~City~~Town's offices and in the presence of an individual appointed by the ~~City~~Town to maintain the files. An employee may view personal (associated with that employee) personnel records at any time in their entirety.

No originals of any personnel records shall be kept at the Department level. All originals shall be maintained by the ~~[Position Title]~~Human Resources Department.

Hiring of New Employees

The Town Manager and the Divisional Directors have final approval of hiring new employees. If a disagreement arises between the Town Manager and a Divisional Director, then the matter shall be brought to the Town Commission for a final decision.

However, the Town Commission shall have the sole authority to hire the Town Manager, Divisional Directors, and Department Heads. The Town Commission also has the sole authority to hire independent contractors.

Hiring of Former Employees

It shall be the policy of the Town of Pembroke Park that any individual who has been formerly employed

by the Town may be considered for re-employment provided the individual left the Town in good standing. If the individual did not leave the Town in good standing, he/she must reasonably demonstrate improved work ability and attitude before re-employment is considered.

If the candidate for re-employment is hired, he/she may not continue to receive disbursements from the Town's retirement plan. The Town shall follow all applicable laws and regulations related to retirement benefits when rehiring a former employee.

Individuals interested in applying for re-employment with the Town should follow the appropriate application process for an open position. The application shall indicate that the individual is applying for re-employment. The Department Head shall examine the application to determine if any additional information is needed and make a recommendation of whether or not to rehire the applicant. The Town Manager shall have final approval of all new hires including re-employments.

Nepotism/Employment of Relatives

No elected official or town employee with supervisory authority, shall employ, promote, advance or advocate the employment, promotion, or advancement of an individual who is a relative, to a position in the agency over which he or she exercises jurisdiction or control.

Relatives include: father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister. [Section 112.3135, F.S.].

Employment Status

PROBATIONARY EMPLOYEE

New eEmployees who receive a new position within the Town shall have a one (1) year probationary period. or areIf an employee is promoted to a new position, the employee shall have a job probationary period of six (6) months. This gives an employee the opportunity to demonstrate their skill and ability in performing the requirements of the new position. The Town may extend the job probationary period, not to exceed one year, to allow an employee more time to learn the new job requirements and fully master their position or learn the processes of the Town.

The employee's supervisor shall prepare a performance evaluation report at the end of thea probation period.

A department head may terminate a probationary employee anytime during the probationary period if, in the department head's opinion,, the employee is unable or unshawilling to perform the duties of the position satisfactorily or that work habits and dependability do not merit continuance in the position. The employee so terminated shall be notified in writing of the termination.

Probationary employees do not have any proprietary rights to their position and may be terminated from the Town at any time during their probationary period without the right of appeal.

The Town may, however, return a~~the~~ promoted employee to their previous position if the requirements of the new job are not being met, provided the prior position is vacant.

Employees who are hired and serve at the pleasure of the Town Commission do not serve a probationary period of employment but will be subject to evaluation at six (6) months. These employees may be terminated at any time with or without cause, in the Town Commission's sole discretion.~~to applicable laws.~~

FULL-TIME EMPLOYEES

Full-time employees are regularly scheduled to work forty (40) hours per week and are eligible for the Town's employee benefits program, as outlined in later sections.

PART-TIME EMPLOYEES

Part-time employees are regularly scheduled to work less than 40 hours per week on a year-round basis. Part-time employees are not eligible for the Town's insurance benefits, but may be covered by certain statutory protections such as Family Medical Leave and worker's compensation.

SEASONAL OR TEMPORARY EMPLOYEES

Temporary employees may be scheduled to work on a full- or part-time basis, as dictated by operational needs, for specific, limited time periods. Seasonal or temporary employees are not eligible for employee benefits.

EXEMPT OR NON-EXEMPT

Based on job content, job duties, salary status and other criteria set by the Fair Labor Standards Act, each position within the Town is classified as either "exempt" or "non-exempt".

Changes in Employment Status

TRANSFERS

A transfer is an assignment to a position with comparable duties, responsibilities, authority, and compensation.

PROMOTIONS:

A promotion is a change in work assignment that results in an expanded scope of job duties and responsibilities. An employee can be promoted to fill an existing, vacant classification; or an employee's position can be reclassified if duties and responsibilities have been expanded over time. Promotions may result in an increase in pay.

DEMOTIONS:

A demotion is a change in work assignment that results in a reduced scope of job duties and responsibilities. An employee can be demoted to fill an existing, vacant classification; or an employee's position can be reclassified if duties and responsibilities have been reduced over

time. Demotions may result in a decrease in pay.

TEMPORARY RE-ASSIGNMENTS:

In order to be considered a temporary re-assignment, the re-assignment must last at least two full pay periods. The Town Manager may choose to temporarily fill a vacancy during the selection process. Temporary assignments are not generally made unless it is anticipated that it shall take more than 30 days to fill the position.

Work Hours

Instruction: This Section and its Subsections need to be reviewed and clarified consistent with current practices. It was my understanding the Town was now working a 40 hour week, but the Current Language reads: Every full-time regular employee shall report to work at 830 a.m. and work until 500 p.m. Department heads shall advise employees when they shall be able to take breaks and lunch times in order to ensure department efficiency at all times. Any questions regarding this shall be directed to the Town Manager. In certain departments, the department heads may allow their staff to begin work at 800 a.m. and finish at 430 p.m. All such hours must be approved by the Town Manager.

With an hour for lunch…This needs to be revised if working 40 hours before overtime.

To ensure employee availability and accountability to the public the ~~city~~Town serves, all full-time employees (exempt and non-exempt) are to be at work or available to the public and co-workers during the **normal** workdays Monday through Friday and the hours of 8:00 am to 5p.m *(Current Language reads 8:30 a.m. to 5 p.m.,)*, except on recognized holidays or away from the work site for an approved work-related activity or on approved leave. However, the work period is 7 days – Monday through Sunday, for the purposes of calculating overtime.

Commented [MLS2]: Needs to be reviewed heavily

Employee work schedules shall be established by supervisors with the approval of the Town Manager.

TIME CLOCKS

The Town may wish to have more detail in this policy to ensure that employees do not abuse overtime with early or late check-in or out i.e. and establish repercussions for continued failure to clock in correctly. However, the Suggested management guidelines in the Personnel Procedural Guidelines for Manager may be sufficient.

All employees (Exempt and Non-Exempt) are required to follow established guidelines to accurately record hours of work by using the designated ~~timeclock~~time-clock system for recording actual hours worked. A missed clock in/out is a violation of this policy and includes:

1 Failure to clock in/out on the Town's designated time clock at the beginning and/or end of their assigned shift consistent with established procedures;

2 Failure to clock in/out on their designated time clock for the meal break;

3 Failure to accurately and timely report time worked; or~~.~~

4 Clocking in/out early, late or not at all when working an assigned shift.

ON CALL , STAND BY STATUS & CALL IN/CALL BACK

The Town has extensive responsibilities during an emergency. As such, any employee may be

called in to work at unscheduled times and may be required to perform duties outside his/her normal job function. As with mandatory overtime, employees are expected to be available and as flexible as possible to meet operational demands.

The Town reserves the right to require employees to be in a "stand-by" status, meaning that the employee needs to be available to report to work during an off-duty. Stand-by status may be instructed verbally or in writing by the department supervisor, or the employee may be named on the official call-back roster.

To provide a policy that clearly defines what standby/on call status is, as well as what call back Is AND

Commented [MLS3]: Unfinished?

CALL BACK

Current Language: Hourly employees who are called back to work after having completed a normal work day or are called into work on their day off shall be paid for three (per existing 1997 policy-Note Industry Standard is two) hours or the actual time worked, whichever is greater. These call backs shall be paid at time and a half of the employee's straight hourly rate. -Do you wish to include these hours in overtime, if you are already committing to 3 hours regardless of how long the work?

An employee required to work off hours due to an emergency or other urgent situation, shall be paid for the actual time worked or a minimum of three (3) hours, whichever is greater.

Call Back time shall be paid or compensatory time accrued as straight time, and not added to the employee's total hours for the week so as to constitute overtime.

Compensatory time shall be paid at the employee's current rate of pay on the day earned.

(or taken? What is the preference?)

STANDBY/ON CALL

In order to provide coverage for services during off-duty hours, it may be necessary to assign and schedule certain employees to standby duty. A standby duty assignment is made by the department head who required an employee to be available for work due to an urgent situation which occurs during off-duty time which may include nights, weekends, or holidays.

MEAL BREAKS AND REST PERIODS

Again this language needs to be resolved based on a 40 hour work week. If working from 8:30 to 5 is it a 30 minute lunch? Or is it 8 to 5 with one hour?

Department heads or supervisors are responsible for scheduling lunch or rest periods that do not interfere with work requirements.

Employees are expected to use the rest and lunch breaks provided as intended and shall not be permitted to adjust work start time, end time, or lunch time by saving these breaks.

Rest period - a fifteen (15) minute rest period may be allowed during each half of a full-time employee's shift. Such rest periods are to begin and end at the employee's assigned work area. Department heads are responsible for scheduling rest periods that do not interfere with work requirements.

Lunch Period - An unpaid sixty (60) minute lunch period is provided when an employee works eight (8) or more consecutive hours. The lunch period shall begin and end at the employee's assigned work area and the employee shall "clock out" for the duration of the lunch period.

Non-exempt employees shall not be allowed to work during their lunch break.

ADVERSE WEATHER CONDITIONS

Town facilities shall generally be open during adverse weather, i.e. hurricanes. Due to individual circumstances, each employee shall have to evaluate the weather and road conditions in deciding to report to work (or leave early). Employees not reporting to work for reasons of personal safety shall not normally have their pay reduced as a result of this absence. Employees shall be allowed to use accrued vacation time or compensatory time, or with supervisor approval, may modify the work schedule or make other reasonable schedule adjustments.

Decisions to cancel departmental programs (special events, recreation programs, etc.) shall be made by the Town Manager.

WORK CANCELLATION

On the sole authority of the Town ~~Manager~~Mayor, if the Town is forced to temporarily close its operations for one day or less, employees who are scheduled and available for work shall be paid the regular pay they would have received if the closure had not occurred. Employees are expected to remain available to return to work throughout the regular work day. Closures of more than one day shall be addressed on a case-by-case basis, with the Town Manager providing timely directive.

TOWN-SPONSORED EVENTS

From time to time, employees may be asked to attend events that are sponsored by the Town. Employees are expected to honor these requests unless there is a conflict due to religious reasons or documented medical issues.

Classification and Compensation

Compensation and Benefit levels are tempered by the Town's ability to pay, overall financial condition, and general fiscal responsibility to the taxpayers, as well as an individual's performance on the job. The value of a position is established in the Town's Classification Plan.

CLASSIFICATION PLAN

The position classification structure is based upon a systematic internal job evaluation and an analysis of the external labor market, which shall occur at a minimum every five years.

A comprehensive job analysis is used to establish written job descriptions for all positions which serve as the basis for all internal and external evaluations and comparisons.

Each job description includes a title, a general statement of duties and responsibilities, a determination on whether or not the position is exempt from overtime pay, a listing of essential job functions, a statement of required knowledge, skills, and abilities, and the physical demands

of the position. These factors are used to determine classification and pay range for each position.

Job descriptions shall be reviewed annually to ensure they are up to date.

Pay Ranges shall be adjusted annually depending upon resources to reflect cost of living adjustments to the system and approved by the Town Commission.

Individual employee compensation, or placement in and progression through the respective pay range, is based upon time-on-the-job, performance, qualifications, experience, education level, and other job-related factors established by a comparative ratio to ensure pay based on objective standards.

Newly hired employees shall be paid at or near the minimum rate in the pay range. However, the Town Manager may approve a starting salary up to 5% above the minimum based on objective factors such as experience, qualifications, and/or other job-related factors consistent with salaries of Town employees with similar experience. Any starting salary that is more than 5% above the minimum rate in the pay range must be approved by the Town Commission along with a written report from the Human Resources Department.

WAGES

Merit Increases

Merit increases may only be applied to individual salaries if budgeted and approved in advance by the Town Commission during the annual budget process.

Merit increases shall be based on an annual performance evaluation process based on clearly established standards applied equally and consistently across all positions.

Merit increases may only be given when sufficiently documented through an annual performance evaluation reflecting performance above and beyond the duties required of the assigned position.

Merit Increases shall only be given as an annual bonus to avoid compression of the competitively established classification and compensation plan.

Performance Evaluations

~~From time to time or Annually?~~Semi-annually, employees shall be provided with a formal evaluation of their performance by their supervisors, which shall also be reviewed by the Town Manager ~~or~~ and Town Commission, or its designee. A performance evaluation is an ongoing assessment process that assists employees and employers in reaching their goals by providing a formal opportunity to develop goals and objectives, to identify strengths, and to define training or improvement programs for areas requiring development. Completion of the performance evaluation form and discussion of noted ratings shall facilitate communication and an understanding of expectations while providing a history of employee progress and development.

The results of evaluations support various employment actions and decisions such as promotion, discipline, and compensation. Employees shall have an opportunity to meet with and discuss the results of their evaluation with their supervisor, and submit additional comment or points of

disagreement to be included within their personnel file.

Cost of Living Increase

An annual cost of living raise may be applied to the minimum and maximum ranges of the pay plan and to each individual's salary if approved by the Town Commission during the annual budget process.

Overtime - Exempt Employees

Exempt employees, as defined by the Fair Labor Standards Act (FLSA) are not eligible to receive overtime compensation and are required to work the normal workweek and any additional hours needed to fulfill their responsibilities.

Time off consideration for large amounts of additional hours may be provided with the Town Manager's prior approval and at the sole discretion of the Town Manager.

Overtime - Non-Exempt Employees

Non-Exempt employees, as defined by the Fair Labor Standards Act (FLSA), are subject to the overtime provisions of the Act. Depending on work needs not personal needs, Non-Exempt employees may be required to work overtime and are expected to work overtime upon request.

Non-exempt employees shall be compensated for overtime work at the rate of time and one-half (1.5) for all hours **actually** worked over forty (40) hours in a 7-day work week. For purposes of overtime calculation, time off (not working) with or without pay shall not be calculated as hours worked.

Compensation may be in the form of wages or compensatory time off. If compensatory time in lieu of wages is used, the compensatory time off must be taken within three months ~~he two (2) pay periods~~ immediately following the accrual of compensatory time. If not used within that time period, the employee shall be paid for the unused compensatory time consistent with FLSA.

The Town reserves the right to substitute cash payments for accumulated compensatory time at its discretion. Similarly, employees may request that accrued compensatory time off be converted to monetary payment, which shall be made in the next applicable payroll.

Overtime including compensatory time may not be authorized by the Department Head and the Town Manager unless funds are provided for and adopted in the annual Town budget.

For non-exempt employees, overtime shall be scheduled in a manner most advantageous to the Town and consistent with the operational needs of the Town.

In some cases, at the Town's option, hours may be adjusted within a 40-hour work week to avoid overtime. Any adjustments and or overtime hours worked must be approved in advance by the employee's supervisor and must be based on work needs not personal needs.

Non-Exempt employees working overtime without prior approval shall be subject to disciplinary action.

Change in Status Pay

1 Promotion Pay shall be the minimum of the new pay grade or current pay plus 5%, whichever is greater.

2 Temporary Reassignment to a higher pay grade and additional responsibility shall be the minimum of the new pay grade or current pay plus 5%, whichever is greater. Upon return to the former position, the pay shall return to the original pay amount.

3 Demotion Pay shall be calculated based on a comparative ratio formula (.—i.e. if employee is 50% of the way through current pay grade, the demoted salary shall be at the 50% level of the new pay grade.)

PAY PERIODS AND DIRECT DEPOSIT

Pay periods for Town of Pembroke Park employees cover two weeks, beginning at 12:00 a.m. every other Saturday. The pay period covers two seven day work periods of 40 hours for regular employees. Paydays are every other Friday. When a payday falls on a holiday, employees shall be paid the day prior to the holiday.

All payroll payments are by direct deposit only.

PAYMENT FOR ACCUMULATED LEAVE:

The explanation of payment for accumulated earned leave time is included in the sections on sick and vacation leave.

TRAVEL REIMBURSEMENT AND ADVANCES

Commented [MLS4]: Needs heavy review

On occasion, employees may be required to travel on Town business or attend professional development and training functions as a part of the job. Employees must always be mindful that they are stewards of the public's trust and resources. Work-related travel must never be abused, treated as a "perk" or seen as opportunity to spend lavishly. The Town shall not cover expenses for spouses or other non-employees during Town travel, unless prior approval is received from the Town Manager. Travel on Town business, including professional development, must demonstrate respect for the public's trust and prudence with their resources.

Expenses related to professional conferences, seminars, technical meetings, trainings, or other professional development functions may be paid by the Town or reimbursed to the employee if the expense has been adopted in the budget. Requests for reimbursements that are not included in the budget require approval from the Town Manager.

Whenever possible, a Town vehicle should be used to travel for Town business and employees should carpool to limit travel expenses. Employees who are required to use their personal vehicle for work-related travel shall be reimbursed at the rate established by the IRS for up to 250 miles. Employees are to record the exact number of miles traveled, by most direct route, from the first place of business to the next. No reimbursement shall be made for travel between home and a normal place of business.

Employees shall be reimbursed for reasonable, actual meal expenses incurred in conjunction with a program or meeting that provides a primary benefit for, or serves the best interests of, the Town. Luxury meals, costs for alcohol, or excessive reimbursement claims shall not be

reimbursed without approval of the Town Manager.

Employees shall be reimbursed for reasonable, actual lodging expenses when a full day's work must be performed a considerable distance from the Town, or under other appropriate circumstances with prior Town Manager approval. Luxury lodging or excessive claims shall not be reimbursed.

Employees should avoid using unnecessary convenience services such as valet parking, in-room movies, laundry and room service. Only under specific circumstances where a reasonable need for such services is clearly demonstrated shall such items be reimbursed.

Employees submitting reimbursement requests for travel expenses, or those requiring a travel advance, should use the appropriate form and must submit all receipts.

PROFESSIONAL & SERVICE MEMBERSHIPS

The Town encourages department heads to take part in the activities of professional and service organizations and may pay the cost of certain job-related memberships to professional organizations, job-related trainings, seminars, conferences and related events that enhance the employee's job knowledge and performance.

The Town may pay the cost to become licensed or certified in a job-related field, and may pay the cost to remain so qualified. Employer-paid memberships, training, licensing and certifications are subject to budgetary approval and require advance approval.

Any employee within the Town whose position requires a professional certification must keep such certification active and current. The employee must notify their supervisor in the event such certification is lost or lapses.

EDUCATIONAL ASSISTANCE AND TRAINING POLICY:

Subject to sufficient funds in the budget and with prior approval of the Town Manager, employees may apply for reimbursement of tuition expenses incurred for training or college courses directly related to the employee's work. The Town Manager shall be the sole judge of whether a particular course or program is "directly related" to the employee's work.

Employees must obtain approval before enrolling in a course or program.

Employees may receive reimbursement for up to ___ percent of the tuition cost for training or college courses that they take on their own initiative. The reimbursement must be repaid if the employee leaves (local unit title) employment within twenty-four months of receipt.

Commented [MLS5]:

CONFERENCE AND SEMINAR POLICY

Requests to attend a conference or seminar must be budgeted and approved by the Department Head and the Town Manager.

Benefits

Instruction: This language should be general language as benefits are not constant and may overtime be impacted by budgetary considerations. Annually a summary benefits plan should be presented to

employees that reflects any changes in benefits.

The Town of Pembroke Park provides full time regular employees with a wide range of benefits. The type of benefits and level of benefits provided is subject to change. The Town reserves the right to change provider networks, claims agents, and insurance mechanisms. At a minimum the town provides Health Insurance Policy and a Retirement Policy for full time regular employees.

Detailed descriptions of current benefits are outlined in the annual summary of benefits plan.

Benefits provided to these employees may include but are not limited to Dental Insurance

Commented [MLS6]: Unfinished?

Prior to an offer of employment with the Town, prospective employees shall be given a list of the various benefits offered to full-time regular employees. Questions regarding any of the listed benefits shall be referred to the Town Manager.

CONTINUATION OF BENEFITS (COBRA)

The Federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives employees and qualified beneficiaries the opportunity to continue, for a limited period, health insurance coverage under the Town's group health insurance plan when a "qualifying event" would normally result in the loss of coverage. Some common qualifying events are termination of employment (other than for gross misconduct), or death of an employee; a reduction in Your hours ; a divorce or legal separation; and a dependent child no longer meeting eligibility requirements.

Under COBRA, the employee pays the full cost of coverage at the Town's group rates plus an administration fee.

The Town provides group short-term disability insurance to full-time employees. Benefits are payable from the 1st day of disability due to accidental bodily injury or from the 8th day of disability due to sickness, for a period not to exceed 26 weeks for any one period of disability. Check with the Treasurer for plan documents and additional detail.

UNEMPLOYMENT COMPENSATION

The Town participates in the State of Florida unemployment insurance program according to statutory guidelines. Terminated employees are advised to refer questions of benefit eligibility to the appropriate State office.

WORKERS COMPENSATION POLICY:

Employees who suffer job related injuries and illnesses may be entitled to medical expenses, lost income and other compensation under the Florida Workers Compensation Act. Worker's Compensation Employees are responsible for immediately reporting any work-related injury, no matter how slight, to their supervisor.

SOCIAL SECURITY

Employees are covered by Social Security, a federally administered plan for supplemental old age retirements and survivor's insurance. Questions concerning Social Security benefits and coverage should be directed to any Social Security office.

Paid and Unpaid Leave

Instruction: Manual and Code were inconsistent... Review and ensure current practices and the Town Commission's desires are provided for.

HOLIDAYS

All regular hourly employees working a minimum of forty (40) hours per work week and all salaried employees shall be granted leave with pay on the following holidays unless otherwise provided for in a collective bargaining agreement.

Select the correct list for inclusion from the code or the 1998 manual.

1998 Manual List	Sec. 19-26.
New Year's Day	**New Year's Day;**
Martin Luther Kings' Birthday	
President's Day	**President's Day;**
Memorial Day	**Memorial Day;**
Independence Day (Fourth of July)	**Independence Day;**
Labor Day	**Labor Day;**
Columbus Day	**Columbus Day;**
Veterans Day	**Veteran's Day;**
Thanksgiving Day	**Thanksgiving Day;**
Day after Thanksgiving	**Friday following Thanksgiving Day;**
Christmas Day	**Christmas Day;**
	One (1) Personal Day;

All officers and employees not required by their department heads to work on such days shall be excused from work but shall be compensated for the day as if the officer or employee had performed his normal work schedule.

In order to qualify for holiday pay, the officer or employee must be present on his or her scheduled working days before and after the applicable holiday.

Officers or employees who take unpaid leave time before or after a holiday shall not be eligible for holiday pay.

If an officer or employee is on authorized paid leave when a holiday occurs, that holiday shall not be charged against such officer's or employee's leave.

VACATION/ANNUAL LEAVE

Accrual Rate

Note the difference in the Manual and Code and decide which it is supposed to be.

Fire Department Language was removed.

Manual

Manual	Code	Manual	Code

Number of Months of Continuous Employment	Hours Accrued Each Week		Number of Hours Per Year	Nothing
0 to 48	1.539	1.538	80.00	Nothing
48 to 120	2.308	2.307	120.00	Nothing
120 or more	3.077	Nothing	160.00	Nothing

Rules

No officer or employee shall be entitled to utilize accrued vacation time until such officer or employee shall have completed six (6) months service with the Town.

No vacation time shall be granted in advance of accrual thereof.

All vacation schedules shall be determined by the department heads giving recognition to the seniority of officers or employees in the determination of when vacation time shall be granted.

An officer or employee may use accrued vacation time for sick leave provided such officer or employee has used all existing accrued sick leave time.

An officer or employee may divide his or her vacation time as is desired with the prior approval of such officer's or employee's supervisor.

Annual leave shall b~~h~~e requested in advance using the appropriate form and submitted to the department head who shall have the right to determine if the work schedule permits the absence of the employee during the requested period. Vacation leave may ~~h~~be denied when department operations ar~~c~~e hindered due to staff scheduling, workload assignments or a legitimate emergency exists.

Upon reasonable notice to the employee a department head may require an employee to use annual leave.

Accumulation of Annual Leave Credits

Note the language in the code and manual are slightly different the 400 hours is not included in both.I have included it here. It is standard practice to limit the payout liability. 400 hours is an acceptable amount.

Earned leave not used during the calendar year in which it is eligible to be taken may be carried over or accumulated to the following calendar year subject to the approval of the Town Manager.

Upon the effective date of termination of employment with the Town an employee shall he entitled to a lump sum payment for earned and unused annual leave not to exceed 400 hours. The effective date of termination shall be the last day worked.

SICK LEAVE

TO ensure intent of Commission is achieved, the language from both Code and Manual are included. The Correct language if different must b chosen.

Language not in the Code must be approved and accepted if the intent is for it to be policy.

Accrual Rate

Code: Officers or employees of the Town shall accrue sick leave time at the rate of one (1) day for each month of continuous service with the Town provided the individual is a full-time regular officer or employee.

Manual: All full-time employees of the Town shall accrue sick leave time at the equivalent rate of one day (8 hours) for each full month of continuous service. Full month means a full calendar month starting on the first day of the month.

Rules

Code: Sick leave time shall not be utilized by an officer or an employee for purposes other than illness or disability.

Code: Any officer or employee, while on sick leave, shall continue to receive the benefits to which such officer or employee would be entitled had such officer or employee been performing his or her normal duties.

Manual: Sick leave is intended to be used for personal illness, injury or quarantine due to exposure to contagious disease for the employee. Sick leave may also be used for medical or health treatment which cannot be arranged outside of working hours. Sick leave may be used for critical illness or death in the immediate family. Immediate family is defined as the spouse, grandparents, brothers, sisters, children, and grandchildren of both the employee and the spouse. Sick leave may also be used for reasons of pregnancy and maternity.

Conversion to Special Vacation Time

Code: Any officer or employee shall be entitled to convert one-fourth of each year's accrued but unused sick leave time to special vacation time. Such special vacation time, once so converted, which conversion must be in writing, shall be taken within the following year or it shall thereafter be disallowed.

Manual: Employees shall be entitled to convert one-fourth (l/4) of each year's accrued, but unused, sick leave time to special vacation time. Such special vacation must be used during the calendar year following the one in which it was accrued. Conversion must be requested within the first two (2) weeks of a calendar year or it shall be disallowed. Thereafter, it shall be disallowed (if the conversion privileges of this paragraph have been exercised) and the credits shall revert to the employee· s sick leave balance.

Payment for Accumulated Sick Leave

Code: Every officer or employee, or his or her beneficiary in the event of the death of the officer or employee, upon termination for whatever reason, or upon death, shall be entitled to receive payment for accrued sick leave up to a maximum payment of five hundred dollars ($500.00).

Manual: Every employee or beneficiary in the event of death, upon termination for whatever reason shall be entitled to receive payment for accrued sick leave. Such payment is limited to a maximum of five hundred dollars (S500.00).

Use and Restrictions

Code: Any officer or employee who shall utilize three (3) or more days of sick leave on a continuous basis shall submit to his department head a doctor's certificate as to the illness or injury for which sick leave was utilized.

Code: The Town shall have the right to require a doctor's certificate for any officer or employee reporting in as sick, as well as the right to visit the place of confinement of the sick or ill officer or employee.

Code: If an officer or employee repeatedly utilizes sick leave, the Town shall have the right at the Town's expense to require such officer or employee to submit to a physical examination by a doctor selected by the Town to determine if such officer or employee is physically fit for continued employment by the Town.

Current Manual

Manual: Sick leave is a privilege extended to employees as opposed to an expected benefit provided by the Town. In order to preclude sick leave abuse, ~~:~~ any employee who

Manual: Takes more than 48 hours sick leave~~.~~ or leave without pay during the previous 12-month period (said time taken in four or more increments during this period) shall not be paid for the first day off in the succeeding 12-month period, without a physician· s statement and/or special approval from the department head.

Manual: Takes sick leave of more than two continuous days in duration may be required to submit a certificate from a physician and the supervisor may, with the Clerk-Commissioner's approval~~.~~ cause such investigation as deemed necessary.

Manual: Employees are required to notify their immediate supervisor on the first day of sick leave not later than 30 minutes after the shift of which they are employed is scheduled to report for duty. This shall be followed for each day the employee is unable to work, unless prior approval is given by the department head. Failure to comply may result in the absence being charged as leave without pay.

In the event an employee repeatedly uses sick leave or is on leave for an extended duration, the Town shall have the right at Town expense to require the employee to submit to a physical examination by a physician designated by the Town to determine if the employee is physically fit for continued employment.

Job Injury Workers Compensation and Use of Sick Leave

This is the current language which is confusing and does not fully address FMLA and other considerations.

Current Manual/Code Language: When, after discussion between the Clerk-Commissioner and the concerned department head, any permanent, full time employee of the Town who is required to be off work due to an on the job injury may receive injury pay from the Town as follows (These conditions are dependent upon the specific approval of the Clerk-Commissioner after direct consultation with the appropriate department head).

The injured employee shall receive regular pay from the Town for the first seven calendar days off the job.

2.For the next fifty-three calendar days. or portion thereof. the employee remains off duty because of a job incurred injury, the Town shall pay to the employee the difference between the

regular straight time wages and the amount being paid per week by Workers Compensation Insurance such pay to total 80% of the employee's regular straight time pay. Employees have the option of applying annual leave to bring the salary to a figure not to exceed I00% of normal straight time pay.

-3.Sick leave shall not be charged for time missed as a result of an on the job injury.

4.For absences in excess of fourteen days i1 which case Workers Compensation becomes retroactive to the day of injury, any such disability benefits received by the employee for the first seven calendar days or a portion thereof shall be reimbursed to the Town.

The following language is suggested as best practice as it addresses the intent of sick leave to provide short term disability and the requirements and use of FMLA. IF this is acceptable, delete all the language in blue and allow this language to stand.

Employees who are eligible to receive workers' compensation (including temporary employees) are entitled to work-related injury leave with full pay for up to five scheduled workdays (40 hours or normal number of hours scheduled in a week). This leave, for illness or injury arising out of and in the course of employment, is not charged to vacation leave or sick leave.

Absence from work of five days or more due to a work-related injury shall reduce the 12 weeks of eligibility for family/medical leave.

Employees receiving workers' compensation for job-related injuries or disease may use sick and/or vacation leave to supplement the payment up to, but not to exceed, their regular rate of pay.

After all sick and vacation leave has been exhausted, employees are not entitled to leave or pay benefits other than workers' compensation. Employees may be put into a leave without pay status during this time without adjustment in the service date.

For a regular employee disabled with a work-related injury, a position shall be held open as long as the department can function with the vacant position. At some point (not later than one year after the date of injury) the employee, if unable to return to work, shall be separated from Town employment. If during the one-year period following the injury the separated employee is released by the attending physician for any kind of work duty, the employee shall be entitled to benefits under the reduction-in-force policy.

The following language replaces existing with standard language currently in use.

JURY DUTY

An employee required to render jury service shall be entitled to be absent from work during that service and shall be paid the difference between any payment received for jury duty and the employee's regular salary.

BEREAVEMENT/FUNERAL LEAVE

Leave may be granted by an employee's immediate supervisor without loss of pay for death in the immediate family. Up to three days or twenty-four hours of pay shall be allowed an employee to attend a funeral within an immediate family. Immediate family shall include spouse, mother, father, children, brother, sister, grandparents, in-laws, step-children, grandchildren, aunt, uncle, or first cousin.

FAMILY AND MEDICAL LEAVE

In accordance with the Family and Medical Leave Act of 1993 (FMLA), an employee may be eligible to request and receive an unpaid leave of absence as outlined below.

Eligibility

All regular full-time or part-time employees who have worked for the ~~City~~Town for at least twelve months and for at least 1,250 hours during the twelve months preceding the start of the leave shall be eligible for leave under this policy.

Conditions of Leave

Leave may be taken only for the following reasons:

Commented [MLS7]: Reasons?

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:

Twelve workweeks of leave in a twelve-month period for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- to care for the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of the employee's job;
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" or
- Twenty-six workweeks of leave during a single twelve-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

If medically necessary for a serious health condition of the employee or spouse, child, or parent, leave may be taken on an intermittent or reduced leave schedule. If leave is requested on this basis, however, the ~~City~~Town may require an employee to transfer temporarily to an alternative position which better accommodates recurring periods of absence, provided the position has equivalent pay and benefits.

Any leave granted due solely to the birth or adoption of a child must be taken consecutively unless otherwise agreed to by the ~~City~~Town and must be completed within twelve months of the qualifying event.

Spouses who are both employed by the ~~City~~Town are entitled to a combined total of twelve weeks (rather than twelve weeks each) for the birth or adoption of a child.

Any accrued vacation/PTO/sick leave, as applicable, must be taken concurrently as part of the twelve weeks of leave requested.

In determining eligibility, the twelve-month period shall be calculated by using a rolling 12-month period measured backward from the first day of the new leave period the employee is requesting.

Notification Requirements

When need for leave is foreseeable, such as the birth, adoption or placement of a child, or planned medical treatment, the employee must provide thirty days' notice to an immediate supervisor and must make efforts to schedule leave so as not to disrupt ~~City~~Town operations. If the need for leave is not foreseeable, notice must be given as soon as practicable, generally within one or two days of learning of the need for leave.

Request Procedures

All requests for family and medical leave should be made by contacting the [Position Title]. If possible, the request should be made thirty days in advance of the effective date of the leave. The [Position Title] shall ask for the following information:

- The date FMLA leave shall begin;
- The probable/approximate duration of the leave; and
- The qualifying reason for the leave.

The employee shall be sent a packet indicating initial eligibility with instructions to complete the Certification of Physician or Practitioner form, and return the form to the [Position Title] where final approval shall be determined.

If the employee takes leave without previously advising the ~~City~~Town of the medical or family reasons for leave and desires that leave be counted as FMLA leave, the employee must notify an immediate supervisor within two business days of returning to work that the leave was for an FMLA reason.

Status of Employee Benefits During Leave

Employee health insurance benefits shall be maintained as if the employee were actively working, but at the employee's expense. The employee must submit a check to the [Position Title] to cover the amount of the employee's contribution. Payments must be made at the same time as they would normally be made through payroll deductions. Alternatively, advance payments may be made to cover an agreed upon period. The Town shall not advance the funds to pay for these benefits. If payments are missed the employee's health and life benefits shall be no longer be maintained.

Basic life insurance benefits shall continue at no additional cost to the employee. Optional life insurance and personal accident insurance (if applicable) may be continued at the employee's expense.

Benefit accruals, such as vacation, sick leave, or holiday benefits, shall be suspended during the unpaid leave and shall resume upon return to active employment.

So that an employee's return to work can be properly scheduled, an employee on medical leave is requested to provide the ~~City~~Town with at least two weeks advance notice of the date the

employee intends to return to work. When a medical leave ends, the employee shall be reinstated to the same position, if it is available, or to an equivalent position for which the employee is qualified.

If an employee fails to return to work on the agreed upon return date, the ~~City~~Town shall assume that the employee has resigned.

MILITARY LEAVE

A military leave of absence shall be granted to employees who are absent from work because of service in the U.S. ~~u~~Uniformed ~~services~~ Services in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and Florida law. Advance notice of military service is required, unless military necessity prevents such notice or it is otherwise impossible or unreasonable.

Employees shall be paid full pay for the first thirty days of military leave in accordance with Chapter 115, Florida Statutes. After the first thirty days of military service and upon presentation of satisfactory military pay verification data, employees shall be paid the difference between their normal base compensation and the pay (excluding expense pay) received while on military duty.

Employees are entitled to up to 240 hours (annually) paid administrative leave for reserve or guard training in accordance with Section 115.07, Florida Statutes.

Continuation of health insurance benefits is available as required by Florida law and USERRA based on the length of the leave and subject to the terms, conditions and limitations of the applicable plans for which the employee is otherwise eligible.

Leave benefits shall continue to accrue during a military leave of absence.

Employees on military leave for up to thirty days are required to return to work for the first regularly scheduled shift after the end of service, allowing reasonable travel time. Employees on longer military leave must apply for reinstatement in accordance with USERRA and all applicable state laws.

An employee returning from military leave shall be placed in a position otherwise attained had employment continued or a comparable position depending on the length of military service in accordance with USERRA. The employee shall be treated as though employment were continuous for purposes of determining benefits based on length of service.

Contact the [Position Title] for more information or questions about military leave.

UNPAID LEAVE/LEAVE WITHOUT PAY

Any regular employee who has been employed with the Town for a period of twelve (12) continuous months may be granted a leave of absence without pay for a period not to exceed six months. Failure to return to work at the end of the leave without pay, may be grounds for termination.

In no instances shall an employee be granted a leave without pay until all accumulated paid leave is used.

The reason for such leave shall be attributable to an extraordinary condition not directly covered by the provisions of the Family and Medical Leave Policy.

Requests for leave without pay must be submitted in writing and approved by the Town Manager and authorized by the Town Commission.

No annual or sick leave shall be accrued while an employee is on leave without pay.

Employee health and life insurance benefits may be maintained as if the employee were actively working, but at the employee's expense. The employee must submit a check to the [Position Title] to cover the amount of the employee's contribution. Payments must be made at the same time as they would normally be made through payroll deductions. Alternatively, advance payments may be made to cover an agreed upon period. The Town shall not advance the funds to pay for these benefits. If payments are missed the employee's health and life benefits shall be no longer be maintained.

Employees who qualify for a leave without pay shall initiate a request for such leave by sending a written request to their immediate supervisor. Such request shall be made not less than two (2) weeks prior to the requested leave date unless it is an unforeseeable emergency. Such request shall include the purpose of the leave and an estimate of the amount of time needed for such leave.

Separation from Employment

VOLUNTARY TERMINATION

Voluntary Terminations are initiated by the employee and include

1. Resignation – voluntary employment termination initiated by an employee.
2. Retirement – voluntary employment termination initiated by the employee meeting age, length of service, and any other criteria for retirement from the organization.

Notice Required for Voluntary Terminations

1. All regular full-time and part-time employees are requested to give a minimum of two (2) weeks' notice, in writing, prior to leaving Town employment in order to resign in good standing.
2. Department heads and other management personnel are requested to give a minimum of thirty (30) days' notice in order to allow for adequate replacement in order to resign in good standing.
3. In the case of retirement, it is recommended that an employee provide the Town with as much notice as possible; a minimum of 6 weeks is requested. This advance notice shall ensure that retirement issues are satisfactorily addressed prior to the actual date of retirement.

DISCHARGE/INVOLUNTARY TERMINATION

Discharge is an involuntary employment termination initiated by the organization generally for cause.

Layoff and Recall

If the Town determines that a reduction in staff or "layoff" is necessary, affected employees shall be notified of the effective date, pertinent benefits information and possibility of recall, if any, as soon as it is practical.

All layoffs and recalls of positions shall be based upon the Town's operational needs, financial position and the employee's employment history, performance and job-related qualifications and abilities as determined by the Town. Seniority may also be considered in making non-union layoff and recall determinations.

Impact on Benefits

Employee benefits shall be affected by employment termination as follows. All accrued, vested benefits that are due and payable at termination shall be paid. Some benefits may be continued at the employee's expense if the employee so chooses. The employee shall be notified in writing of the benefits that may be continued and of the terms, conditions, and limitations of such continuance.

Exit Interview

In the event of separation, voluntary or involuntary, the employee is encouraged to engage in an exit interview with the Town Manager.

All employees who resign in "good standing" must take part in exit interviews to be eligible for rehire. The exit interview is on the clock and the employee shall be paid for participating.

Return of Property

An employee separating from employment with the Town shall return all Town-owned equipment, uniforms, property, Town identification badges, and all building and equipment keys before picking up a final paycheck. The Town may not, and shall not withhold earnings for failure to return property, but shall take appropriate action including legal prosecution for any Town-owned items that are not returned by a separating employee.

Disciplinary Action

It is the intention of the Town to utilize disciplinary action in a constructive manner to motivate the employee toward proper conduct in the future. Situations of a minor nature are expected to be handled informally by the employee's immediate supervisor and may result in a verbal warning which may be documented and retained in the employee's personnel file.

Formal disciplinary action shall be administered by the Department Head in coordination with the Town Manager.

Suspensions and discharge are officially administered by the Town Manager based on Department Head recommendation.

Is the Town going to continue to have the Mayor and or a Commissioner involved in termination actions. Strongly recommend this be turned over to the Town Manager who has a matter of course should keep the Commission informed of such actions.

Disciplinary actions may include any or all of the following, which are not necessarily administered in order, nor are all types of disciplinary action required prior to discharge. The Town may immediately discharge an employee.

1 Oral Reprimand is a verbal notice to an employee that his/her behavior or performance must be improved or corrected. A written record of the oral reprimand shall be placed in the employee's personnel file and a copy provided to the employee.

2 Written Reprimand is a written notice to an employee that his/her behavior or performance must be improved or corrected. Written reprimands shall be placed in the employee's personnel file and furnished to the employee.

3 Suspension is the temporary removal of an employee from duty, with or without pay. Suspensions shall vary in length depending upon the seriousness of the offense or frequency of occurrence. Suspensions shall be documented and placed in the employee's personnel file.

4 Discharge (also may be referred to as Dismissal or Involuntary Termination) is the removal of an employee from the employ of the Town.

Employees may submit written explanations or responses to disciplinary actions to their personnel file. In some cases, particularly discharge, an employee may have certain additional due process rights.

CAUSES FOR DEMOTION, SUSPENSION OR DISMISSAL

A permanent employee may be demoted, suspended, or dismissed when, in the judgment of the department head the employee's work or misconduct so warrants. When the department head takes such action, he or she shall file a written notification with the [Position Title] containing a statement of reasons for the action. The employee shall be notified of the effective date of the action. Employees may be demoted, dismissed, or suspended without pay for violation of these rules which include, but are not limited to, the following:

1 Violation of town and/or personnel policies, procedures or rules.;

2 Incompetency or inefficiency in the performance of assigned duties;

3 Offensiveness in conduct toward fellow employees or the public;

4 Violation of any lawful official regulation, or order, or failure to obey any lawful and reasonable direction given by a supervisor when such violation or failure to obey amounts to insubordination or serious breach of discipline which may reasonably be expected to result in lower morale in the organization or result in a loss, inconvenience, or injury to the Town's service or to the public;.

5 Solicitation or taking for personal use a fee, gift, or other valuable thing in the course of work, or in connection with it, when such fee, gift, or other valuable thing solicited or given might be construed to be a means of receiving a favor or obtaining better treatment than that accorded other persons either on a present or future basis;.

6 Failure to pay or make reasonable provisions for payment of just debts owed the Town in a timely manner;

7 Conviction of a felony or other serious crime;

8 Inattention to duty, tardiness to excess, laziness, carelessness, and unnecessary breakage or loss of property;

9 Absence from work for three days in a row without proper notification to immediate supervisor as required by the personnel policies and procedures;.

10 The employee has been subject to an excessive number of accidents, resulting in personal injury or injury to others;.

11 The employee has been guilty of attempting to use political influence in securing or attaining a position or salary increase. Soliciting elected officials to intercede for or attempt to influence officers or supervisory employees in personnel matters shall be construed as violations of these rules;.

12 Dishonesty in connection with assigned duties and responsibilities as an employee of the Town;

13 Immorality or lack of integrity in connection with assigned duties and responsibilities as an employee of the Town;

14 Violation of departmental rules;

15 Shallful Willful violation of any safety rule or practice;

16 Guilty of conduct unbecoming of an employee of the Town's service whether on duty, or off; or

17 Intoxicatedion while on duty, or use of alcoholic beverages, or any form of intoxicants, or narcotics, except such drugs as are being used upon the advice and prescription of a physician, during working hours.

None of the foregoing shall be deemed to prevent the demotion, dismissal, or Ssuspension of an employee for any reason which is justifiable, even though such cause is not among those enumerated, provided, however, that an employee shall have the right of appeal. Any action taken against an employee for violation of these rules shall take into consideration the employee's service record.

Employee Procedural Rights

INVOLUNTARY TERMINATION AND PROCEDURAL RIGHTS

The Town Manager, Divisional Directors, and Department Heads serves at the pleasure of the Town CouncilCommission. Termination of aAll other employees are made bymay be terminated by the Town Manager.

Terminated employees have certain due process rights prior to discharge or other adverse employment decisions if they have a liberty or property interest that is affected by the adverse

employment action.

Where an employment decision could be stigmatizing to the employee, and the Town intends to place a record of the action in the employee's personnel file (which makes it potentially subject to public disclosure) or if the action would foreclose a definite range of future employment opportunities, an employee shall be provided notice of the action and an opportunity to respond prior to the employment action.

Stigmatizing reasons for discipline or discharge may include dishonesty, immorality, moral turpitude, criminality, racism, harassment, falsifying forms, drug use, engaging in prostitution, use of position to obtain kickbacks or other privileges, or other charges impugning the employee's moral character.

Charges of incompetence, negligence, poor attendance, insubordination, failure to meet performance standards, failure to submit required forms or documentation and related performance-based criteria have typically been held to be insufficiently stigmatizing to trigger a liberty interest.

In cases where public disclosure of stigmatizing information is possible, the employee shall receive oral or written notice of the charges, an explanation of the evidence and an opportunity to respond and clear his/her name prior to the decision being finalized and documented in the personnel file. The employee shall direct their response to the Town Manager, who may consult with the Town Attorney, Mayor and/or Commission as needed.

This process is a procedural protection and in no way limits the Town's at-~~shall~~ will employment status. The findings of the Town Manager are final, shall be stated in writing and provided to the employee as well as documented within the personnel file.

RIGHT OF APPEAL

Any permanent employee who is discharged may appeal such action in writing to the Town Manager within 5 days after such action is taken. As promptly as possible, the employee shall be granted a hearing by the Town Manager and the department head concerned, at which time the employee and immediate supervisor may present relevant evidence regarding the action and the reasons therefore. When the disciplinary action is personally initiated by the Town Manager, the hearing shall be conducted by the Mayor. During the course of any investigation or hearing, the Town Manager, or the Mayor, as the case may be, ~~.~~ may direct any employee to attend and give testimony. Probationary employees who are terminated during the probation period are not permitted the right of appeal.

Any permanent employee who is demoted or suspended~~,~~ may appeal such action by filing a written grievance in keeping with the Town's grievance procedures. Any such grievance shall be filed within five (5) working days from the date of action against the employee.

GRIEVANCE PROCEDURES

The Town intends to provide a constructive, positive work environment in which employees are empowered to contribute to the continuous improvement in the operations and services provided by the Town. To this end a formal grievance procedure is available to help resolve

complaints of employees who believe they are not receiving fair treatment in the workplace.

STEP 1: Verbal Communication with Supervisor

Employees are encouraged to share their suggestions, as well as discuss any complaints or issues that may arise related to their employment and work environment with their immediate supervisor within five (5) working days from the time of the occurrence. The supervisor shall provide a verbal response to the complaint within five (5) working days of the discussion with the employee.

STEP 2: Written Communication with Department Head

Should an employee not find adequate resolution through verbal discussion with their immediate supervisor, the ~~complaint~~ employee shall respond in writing to the employee's department head within five (5) working days from the oral response in Step 1.

The employee shall submit ~~his/her~~a written grievance to their department head which must include:

- ✓ Date of incident,
- ✓ Description of incident,
- ✓ Summary of previous discussion(s) with supervisor regarding the incident,
- ✓ Desired resolution, and
- ✓ Employee's printed name, signature and date of submission.

The department head shall provide a written response to the employee within five (5) working days of the receipt of the grievance.

STEP 3: Written Communication with Town Manager

If the grievance is not resolved in the first two steps, the employee may request a meeting with the Town Manager. This request must be in writing, dated and submitted within five (5) working days after receiving the response from Step 2. The department head shall be copied on the request.

The meeting with the Town Manager and the employee shall occur within ten working days of receipt of the request to meet, or on a date mutually convenient for all parties. At the Manager's discretion this meeting may include the department head and/or supervisor, and/or other Town representatives as appropriate. At the employee's option, the meeting may include a fellow employee or other representative.

The Town Manager, or designated representative, shall provide a written response to the employee within ten working days of the meeting. The Town Manager's response to the grievance is final.

WORK RULES AND CODE OF CONDUCT

The work place brings together many different types of people whose unique perspectives and individual skills and talents add tremendous value to the Town of Pembroke Park. All employees,

officers, and volunteers, at every level within the organization, are expected to treat each other as respected and valuable colleagues.

Code of Ethics

Employees and officials of the Town of Pembroke Park are bound by the both the State of Florida and the Town's Code of Ethics.

FLORIDA CODE OF ETHICS FOR PUBLIC OFFICERS AND EMPLOYEES

Chapter 112 (Part III) of the Florida Statutes and the "Code of Ethics for Public Officers and Employees" which states in part, that "no officer or employee of a state agency or of a county, city or other political subdivision of the state. shall have any interest, financial or otherwise, direct or indirect, engage in any business transaction or professional activity or incur any obligation of any nature which is in substantial cont1flict with the proper discharge of this duties in the public interest."

All Town employees shall be furnished with a copy of Florida Statutes Chapter 112 (Part III) during their orientation. All employees are required to review the Statute along with the employment Rules and Regulations for their respective department. This information shall serve as a guide for employee conduct while in the employ of the Town.

PEMBROKE PARK EMPLOYEE CODE OF ETHICS

Article IX, Chapter 2, 260 of the Town Code states, "Employees of the Town hold their positions to serve and benefit the public, and not for obtaining unwarranted personal or private gain in the exercise and performance of their official duties. Further, Town employees must act in a manner that promotes public trust and confidence in government with complete transparency and honesty in their services, and must avoid even the appearance or perception of impropriety. The Town Commission recognizes that, in the furtherance of these fundamental principles, there is a need for clear and reasonable standards of ethical conduct. This Pembroke Park Employee Code of Ethics establishes those standards." The following sections provide the expected code of conduct employees of the Town shall follow.

Gifts

Town employees shall not solicit or accept any gift, regardless of value, in their official capacity as employees, nor shall they solicit or accept any gift in either an official or personal capacity that may be reasonably perceived to be given to encourage or discourage them from taking any action in connection with their Town employment.

Lobbying

Town employees should avoid even the appearance of impropriety in their interaction and dealings with lobbyists registered with the Town and in their interaction and dealings with Town vendors and prospective vendors.

To promote full and complete transparency, lobbyists, Town vendors, and prospective vendors who intend to meet or otherwise communicate with a Town employee, either at such

employee's office or elsewhere on Town government premises, for the purpose of influencing a decision to be made by the Town Commission, a decision to be made by any decision-making body under the jurisdiction of the Town Commission, or a final procurement decision to be made by a Town employee, must complete a contact log as prepared and maintained by the Town Manager. This contact log shall be completed for each individual Town employee with whom the lobbyist, Town vendor, or prospective vendor intends to meet or communicate. The contact log shall be legibly completed contemporaneously with the meeting, and shall be available for public inspection in a database designated by the Town Manager.

To further promote full and complete transparency, a Town employee shall disclose any meeting outside of his or her Town office, any telephonic discussion, or electronic communication with a registered lobbyist, Town vendor or prospective vendor, during or in which meeting, discussion or other communication the lobbyist, Town vendor, or prospective vendor seeks to influence a decision to be made by the Town Commission, decision to be made by any decision-making body of the Town, or a final procurement decision to be made by a Town employee.

A Town employee is prohibited from lobbying on behalf of an outside principal or employer for compensation, Town Commissioners, members of any Town Selection/Evaluation committee, or the governmental unit in which he or she is employed. Lobbying does not include providing information, advice or recommendations to any Town Commissioner or member of a Selection/Evaluation committee in furtherance of the employee's job responsibilities. Except as stated in this paragraph, Town employees may engage in lobbying activities provided such activities would not be inconsistent with their public duties or the provisions of Chapter 112, Florida Statutes.

Outside Employment~~.~~

For purposes of this section, other employment means any compensated employment performed by a Town employee aside from his or her employment with the Town, including any part-time employment, self employment, or consultant-related employment. Town employees may engage in other employment provided:

1. ~~the~~ The other employment will not be inconsistent with the employee's public duties or the provisions of Chapter 112, Florida Statutes; or
2. ~~the~~ The individual or business entity for whom the Town employee will engage in other employment is not a vendor under contract with Town or a prospective vendor seeking to do business with Town.

Prohibition On Use of Town Position For Personal Or Private Gain~~.~~

No Town employee shall use his or her municipal position or powers and duties to secure a financial benefit for himself or herself, an immediate family member or any private organization in which he or she is deemed to have an interest.

Future Employment~~.~~

No Town employee may ask for, pursue or accept a private post-government employment opportunity with any person or organization that has a matter requiring the exercise of discretion pending before the Town employee, either individually or as a member of a Town

Committee, while the matter is pending or within the 30 days following final disposition of the matter.

Use of Town Resources.

Town resources shall be used solely for lawful Town purposes. Town resources include, but are not limited to, Town personnel, and the Town's money, vehicles, equipment, materials, supplies or other property.

No Town employee may use or permit the use of Town resources for personal or private purposes, but this provision shall not be construed as prohibiting:

1. Any use of Town resources authorized by law or Town policy;
2. The use of Town resources for personal or private purposes when provided to a Town officer or employee as part of his or her compensation; or
3. The occasional and incidental use during the business day of Town telephones and computers for necessary personal matters such as family care and changes in work schedule.

Nepotism.

No Town employee may participate in any decision specifically to appoint, hire, promote, discipline or discharge an immediate family member for any position at, for, or within the Town.

Political Solicitations.

No Town employee shall directly or indirectly compel or induce a subordinate employee to make, or promise to make, any political contribution, whether by gift of money, service or other thing of value.

No Town employee may act or decline to act in relation to appointing, hiring or promoting, discharging, disciplining or in any manner changing the official rank, status or compensation of any Town employee, or an applicant for a position as a Town employee, on the basis of the giving or withholding or neglecting to make any contributions in money or service or any other valuable thing for any political purpose.

Elected Public Office.

A Ttown employee seeking elected public office is not permitted to engage in any activity related to seeking the office during working hours or in other ways which might constitute an inappropriate use of Town time and resources or lead to the impression that the Town government endorses his or her candidacy.

The prohibition against the use of Town time and resources in a campaign for elective office includes a ban against using Town equipment, including vehicles, telephones, copy machines, inter-office mail, or other equipment owned by the Town. The employee/candidate is prohibited from participation in campaign activities off duty wearing a Town uniform or driving a Town vehicle.

Town employees are prohibited from soliciting campaign contributions or any in kind gifts to support his or her campaign, including soliciting campaign workers or contributions from among

Town employees when the solicitation takes place on duty or when the solicitation could be reasonably construed as having a connection to a real or expected employment decision. The employee/candidate for public office must avoid the appearance or reality of a conflict of interest between their employment with the Town and the outside candidacy.

A Town employee choosing to run for elected public office must disclose his/her candidacy to the employee's immediate supervisor and the head of their Department within three (3) business days after the time the employee becomes an official candidate by filing the necessary candidate papers. All campaign-related activities by an employee/candidate occurring before official candidacy are also subject to these restrictions.

The employee/candidate must take reasonable steps, with approval by his or her supervisor, to minimize the prospect of a conflict of interest between the employee/candidate's work duties and campaign activities. These steps may include the use of annual leave, personal days, or unpaid leave of absence following approval in advance by his/her supervisor pursuant to Town policies.

Confidential Information:

No Town employee who acquires confidential information in the course of exercising or performing his or her powers or duties may disclose or use such information unless the disclosure or use is required by law or in the course of exercising or performing his or her official powers or duties.

Enforcement Procedures:

The authority to investigate alleged violations of the Pembroke Park Employee Code of Ethics is vested in the Town Manager. A Town employee may appeal the decision of the Town Manager by filing a written appeal to the Town Commission within fifteen (15) days of the final decision of the Town Manager is rendered. The Town Commission may affirm, modify or reverse the disciplinary decision rendered by the Town Manager.

The authority to investigate alleged violations of the Pembroke Park Employee Code of Ethics by the Town Manager, Assistant Town Manager or any Department Head is vested in the Town Commission.

Town Commission shall have the authority to investigate alleged violations of the Pembroke Park Employee Code of Ethics when the Town Manager fails to do so, or when the Town Commission determines that such investigation is required.

Freedom of Information Act and Public Records Act

It is the policy of the Town of Pembroke Park to comply fully with the Freedom of Information Act. All individuals are entitled to certain and specific information regarding the affairs of government and the actions of public officials and public employees.

All FOIA requests are to be immediately directed to and processed by the Town Clerk or his/her designee. Requests for public information may be either oral or written and ideally are handled within five business days after the request has been received. In some cases, an extension may be required, and certain information may be denied or redacted. Originals of any documents shall not be allowed to

leave Town property, and the costs associated with compiling and providing the information shall be charged.

Public Records

Under no circumstance may an employee remove documents, photos, reports, personal or personnel information or any sensitive material that is the property of the Town of Pembroke Park.

Employees found to be in violation of this policy may be disciplined, up to and including discharge.

Personal Conduct

All persons employed by the Town must remain constantly aware of their responsibilities to the public and of the fact that they are representatives of the Town. It is expected that their conduct and appearance shall be commensurate with the positions which they hold.

Town employees are frequently called upon to express opinions and to provide information concerning the Town government,~~.~~ its operations and its policies. Expressions of opinions should be carefully weighed in the light of their probable affect and should be based upon facts within the knowledge of the employee. A Town employee is not deprived of the rights of citizenship which affords the right of free speech. He should be keenly aware of responsibilities and privileges as an employee of the Town, ~~.~~ and understand that personal opinions shall often be interpreted by others as representing the official opinion of the Town.

Employees shall be well informed concerning the policies and operations of Town government. Such responsibilities increase with the importance of the position held. Admitting lack of knowledge concerning a question asked is far superior to an incorrect answer, but if the situation requires it, the employee, ~~.~~ under such circumstances, should refer the questioner to the proper source of information or obtain the actual facts and inform the person making the inquiry.

Employees are expected to refrain from repeating rumors and from creating dissension within the organization.

Employees shall visit departments other than those in which employed only on official business. Reasonable breaks in routine work may be taken as long as the privilege is not abused but loitering is expressly forbidden. Any employee who has completed assigned tasks, or the work for which that employee is responsible shall report to a supervisor for assignment of other duties.

Outside Employment Guidelines

Full-time Town employees wishing to hold supplemental, part-time employment in addition to his or her Town employment must request approval in writing to their department head, and must do so each year that supplemental employment is held on their Town anniversary date.

The request should include the:

- Name of the ~~E~~employer;
- ~~nature~~ Nature of the employment and duties to be performed; and
- ~~approximate~~ Approximate number of hours to be worked per week.

The Town Manager shall determine whether a conflict of interest exists or if the employee's ability to effectively perform their Town work shall be hampered and shall inform the employee in writing of his or her determination.

A conflict of interest may include, but is not limited to:

- aAny employment, activity, or enterprise which involves for private gain the use of the Town's time, facilities, equipment, supplies, or prestige or influence of the Town Office;.
- Any activity which involves receipt or acceptance of any money or other consideration from anyone other than the Town for performance of an act with the employee should be required or expected to render in the regular course of their Town employment;.
- Any activity which involves a performance of an act other than in their capacity as a Town employee which may later be subject to the control, inspection, review, or enforcement by the employee or the department in which they work; or.
- Any activity which involves so much of an employee's time that it impairs their attendance or efficiency in the performance of their duties.

Employees may not wear a Town uniform, work shoes/boots, or any other apparel furnished by the Town in performing outside work. Outside work may not be performed during regularly scheduled Town work hours or at a Town facility, and no Town resources, equipment, tools or supplies may be used for outside work.

Political Activity and Voting Time

All employees should register to vote and should exercise this privilege at each opportunity afforded. It is Town policy that it is in the public interest and at governmental benefit to remove career employees from the arena of partisan political activity. Florida statutes impose certain restrictions on the political activities of state, county, and municipal officers and employees.

Also, those employees in positions supported in whole or in part by Federal funds may be subject to those restrictions contained in the federal "Hatch Act." The following prohibitions shall apply to all Town officers and employees:

- No person shall promise, attempt, or use political position, influence, or coercion in an effort to erode the merit system nature of the Town work force by patronage or favoritism for past or future political influences or services, either implied or actual.
- The Town of Pembroke Park shall not permit the use of its equipment, property, facilities or supplies for partisan political purposes.
- Employees shall not take an active political role on behalf of any candidate or incumbent for Town elective office.
- Employees shall not be solicited for contributions, or any other sort of support or influence for any political party, office, or candidate, either from other employees, superiors, elected officials, or candidates.

- A Town employee who becomes a candidate for any public elective office shall, at the time of formally qualifying, resign in good standing from the Town service.

Violations of any of these restrictions shall result in disciplinary action including discharge, as determined by the provisions of these rules.

Full-time regular employees shall be granted one (1) hour off to vote at the start or end of their shift, provided such time does not result in the Town having to replace employees at overtime rates of pay and coverage is maintained in, each department.

Employees interested in utilizing voting time must request the use of such time at least twenty-four (24) hours in advance of using such time. Granting the use of such time under all conditions shall be made at the discretion of the department head.

Active political campaigning or solicitations for political contributions while on duty is strictly prohibited.

Political Activity and General Solicitation

The Town does not discourage political participation or activity. However, certain restrictions are imposed to insure the integrity and impartiality of the Town. In this regard:

- Employees of the Town shall not engage in political activities on behalf of a candidate for partisan or non-partisan election during those hours when the employee is being compensated for the performance of his/her duties as a Town of Pembroke Park employee. This includes distributing or circulating literature or paraphernalia for or against an issue or candidate.
- Solicitation and/or distribution of literature, including signing and circulating petitions for candidates, propositions and other political matters, is prohibited during working hours or in work areas. Working hours include the actual working time of both the individual performing the solicitation or distribution and the employee to whom it is directed.
- Employees of the Town shall not solicit, receive or in any way participate in soliciting or receiving any assessment, subscription or contribution for any political party or any political purpose whatsoever, during those hours when the employee is being compensated for the performance of his/her duties as a Town of Pembroke Park employee.
- Employees involved with political campaigns shall do so as private citizens. Employment status with the Town shall not be referenced when campaigning for or against any candidate or ballot issue, question or proposal. Employees involved with political activity shall neither claim to represent the Town nor claim their views or opinions reflect the views or opinions of the Town.
- Equipment, materials and supplies belonging to the Town, including the Town's letterhead, business cards or other such material supplied by the Town, shall not be used in support of political activities.

Employees who become candidates for the Town Commission of the Town of Pembroke Park shall be required to take a leave of absence without pay when that employee complies with the candidacy filing requirements or sixty (60) days before any election relating to that position, whichever date is closest to the election. Employees who are elected to Town Commission must resign their Town employment prior to the commencement of their term of office.

Customer Service

The Town of Pembroke Park requires employees to represent the Town in a positive manner and treat customers and residents with courtesy and respect at all times.

Employees should be prepared to listen patiently to complaints and deal with them in a helpful, professional manner. Residents or customers who become unreasonable, abusive or harassing should be referred to the employee's supervisor.

Public Statement/Press Calls

Unless otherwise delegated, the Town Manager is the official designated spokesperson for Town staff. Employees should refer all requests for formal statements, interviews, and related activities to the Town Manager. Employees may not make formal statements on behalf of the Town, except in cases of sharing routine, factual information, without prior authorization.

The Work Place and Town Resources

Appearance

Your appearance is important to demonstrating the professionalism of Town organization. For this reason, each employee is expected to report for work each day with appropriate hygiene, appearance and attire for his or her position.

Personal cleanliness is a must for all employees. Body odors, strong perfume or smoke may all be particularly offensive to the public or coworkers. Employees should take pride in their personal hygiene and appearance and report to work clean and groomed appropriately.

Attire should be consistent with job responsibilities and should not jeopardize the safety of the employee or distract others. Anyone reporting to work in inappropriate clothing shall be sent home to change.

It is impossible to describe or define every possible acceptable or unacceptable example of attire. Generally speaking, clothing should be in keeping with the image of a professional organization; the following is prohibited:

- Excessively worn, torn or dirty clothing,.
- Clothing with suggestive or offensive logos, pictures, insignia, etc.,.

Very tight, revealing or otherwise sexually suggestive clothing, and.

-
- Exercise attire including "sweats"

If in doubt, ask prior to wearing the item. Your supervisor shall determine whether or not attire is acceptable.

Use of Town Resources

Vehicles, materials, facilities and equipment owned by the Town are intended for Town business

use only. Further, Town employees are expected to perform work related only to Town business while on work time. Specifically:

1 Mail & Letterhead - Employees may not use the Town's postage for personal mail. Additionally, employees should not routinely receive personal mail or package deliveries while at work. Town letterhead is to be used for official Town business only.

2 Phone - All phone lines are to be kept available for the Town's business. Personal calls must be held to a minimum. Employees are expected to reimburse any expense associated with personal long-distance calls or excessive personal calls made using a Town telephone.

3 Cell Phone - Personal calls on Town cell phones are to be held to a minimum and are allowed provided only where personal use does not result in an overage of the contracted minutes. If the minutes are exceeded, the employee is required to pay the additional charges or costs.

4 Vehicles – Town-owned vehicles are to be used for official Town business only, unless otherwise approved by the Town Manager.

5 Equipment, Facilities and Supplies - Equipment, facilities and supplies are to be used for Town business only, including tools, machinery, computers, copiers, faxes and other office machines.

6 Personnel – Town personnel are only to perform work related to Town business and/or projects while on work time.

The Town's resources, including Town vehicles, may not be borrowed for personal use by employees.

EMPLOYEE IDENTIFICATION

It is the policy of the Town of Pembroke Park that all employees be photographed as a method of establishing proper identification and records for the employee. The identification shall be handled by the [Position Title] during orientation.

The [Position Title] shall issue picture identification cards to all employees with the exception of the Fire Department.

Town identification cards are to be presented upon request. The cards are only to be used for employment purposes.

Upon separation of employment, identification cards shall be turned into the employee's department and submitted to the [Position Title] along with a completed "Surrender of Town Property Form" which shall authorize the tendering of the employee's last paycheck.

Employees are to report lost identification cards immediately. Replacement identification cards shall be reissued at a fee of five dollars ($5.00) each.

Upon expiration, the identification card is to be exchanged for a new card.

Identification cards shall expire five (5) years from the date of issuance and it shall be the employee's responsibility to get a new one from the [Position Title].

KEY DISPERSAL

Keys to Town buildings, facilities, vehicles or equipment may be issued to employees. Keys are never to be duplicated, given or lent to anyone else, including a fellow employee. Lost or stolen items must be immediately reported to the Town Manager.

UNIFORMS AND SAFETY ATTIRE

The Town may issue directly, provide allowance for, or reimburse employees in certain departments for safety attire, work shoes/boots, uniforms, etc. These items are to be clean and worn with reasonable care. The Town shall replace worn or damaged items as needed and within reason, generally not more than once per year. Town attire or uniforms are considered Town property and are to be worn while on duty for Town business only.

PERSONAL ARTICLES IN THE WORKPLACE & SEARCH OF PROPERTY

The Town is not responsible for lost or damaged personal articles brought into the workplace. All property belonging to the Town, including Town vehicles, computers, phones, desks, file cabinets, lockers and other storage areas, is subject to inspection or search at any time without notice to retrieve work-related materials or to investigate a violation of workplace rules. Employees should not have any expectation to privacy with regard to Town premises.

PERSONAL WORKSPACE & DISPLAYS

Personal workspace is also considered property of the Town and is oftentimes accessible and viewable by co-workers and the public. Reasonable, tasteful displays of personal pictures, decorations, and related items are acceptable. However, any personal displays that violate harassment, code of conduct, or other policies shall be addressed as a violation according to those procedures. Your department head and/or the Town Manager have the final authority to determine what is acceptable.

SMOKE-FREE WORKPLACE AND SMOKELESS TOBACCO USE

Smoking is strictly prohibited within all work areas and public spaces including Town vehicles, conference rooms, private offices, reception areas, restrooms, stairwells, hallways, work stations, and all other enclosed areas. This policy applies to all employees, customers, contractors and visitors.

Employees who wish to smoke may do so only during regular break periods, and may smoke only outdoors in designated areas. Employees may not litter and must properly dispose of smoking materials.

Persons observing a violation of this policy report it to their supervisor or the Town Manager. All complaints shall be investigated and all personnel are expected to cooperate fully.

Employees or individuals smoking in violation of this policy shall be asked to stop. If they refuse, they shall be asked to leave the work area and may be subject to civil fines ($100 first offense, $500 subsequent violations). In addition, employees who refuse to comply shall be considered insubordinate and shall be subject to related disciplinary action up to and including discharge.

Retaliation against individuals for reporting violations of this policy or for exercising their rights under the law shall not be tolerated. If you believe you are being retaliated against, immediately report it to your supervisor or the Town Manager. Those engaging in retaliation are subject to disciplinary action up to an including discharge.

CARE OF EQUIPMENT

Employees are expected to follow prescribed safety procedures for equipment and vehicle usage, refrain from and/or report equipment abuse and guard against equipment loss.

Should an employee encounter equipment malfunction or be involved in an accident, the incident should be immediately reported to the appropriate supervisor or department head. Intentional equipment abuse, careless use of equipment, or habitual loss of equipment shall not be tolerated and may result in disciplinary action, up to and including discharge.

VEHICLE USAGE

The Town allows certain job classifications to use Town-owned vehicles with prior supervisor approval.

Employees who use their personal vehicles for Town business shall be reimbursed at a rate set by the Town ~~Council~~Commission.

Any employee driving on Town business, whether using their own vehicle or the Town's, must have a valid Michigan driver's license and a satisfactory driving record. Any restrictions on, or revocation of, an employee's legal right to drive must be immediately reported to the appropriate department head.

Employees who drive a vehicle on Town business must exercise due diligence to drive safely, observe all traffic laws, speed limits and related rules of the road, and maintain the security of the vehicle and its contents. Drivers are responsible for any driving infractions or fines that result from their driving and must report them to their supervisor.

No one other than authorized Town employees is authorized to drive or ride in Town vehicles, unless prior approval has been obtained from the Town Manager.

Smoking is strictly prohibited in Town vehicles.

CREDIT CARDS

The Town recognizes that in certain instances, it is in its best interests to issue a Town credit card to certain employees. Town credit cards are limited to employees in positions that demonstrate that having a credit card shall assist them in performing their assigned responsibilities. Any issuance of a Town credit card must first be authorized by the Town Manager.

The credit card may only be used for the purchase of goods or services related to the official business of the Town. It is not to be used for any personal business.

Any employee that is issued a Town credit card is responsible for the card's protection and custody and shall immediately notify [Position Title], if the card is lost or stolen.

The issuance of a Town credit card is a privilege that may be revoked at any time. Any card holder found in violation of this policy may be forced to surrender the card and may be subject to discipline. Employees shall surrender their ~~League~~ Town credit card upon request, including at the time of termination.

Use of Communication Systems

The Town of Pembroke Park provides its employees with the necessary communication equipment for prompt and efficient execution of Town business such as telephones, cell phones, voice mail, radios, etc. Supervisors are responsible for instructing employees on the proper use of communications equipment for both internal and external Town communications.

All Town communications equipment and services, including personal messages transmitted or stored by them, are Town of Pembroke Park property. As they are Town property, all Town communications, services and messages are also subject to all Freedom of Information Act (FOIA) requirements and may be required to be made public upon request. In addition, the Town may access and monitor internal and external communications as deemed appropriate.

Improper use of Town of Pembroke Park communication equipment or systems shall result in discipline, up to and including termination. Improper use includes communication that violates the harassment policy or policies regarding personal use or abuse of Town property or any other policy contained within this manual.

Computer, Internet and E-Mail Policy

All documents, e-mail, and other electronic work products originating from or received by the Town computer systems are the property of the Town of Pembroke Park, and are not considered private information. Employees should have no expectation of privacy with regard to computer use and communications.

General Computer Policies

Only those persons given permission are permitted to use any computer resource owned, rented or leased by the Town of Pembroke Park.

Only designated personnel or persons contracted by the Town may install software or hardware on any Town computer system. Prior approval from the Town Manager's office is required before installing anything on a Town computer.

All disks, CDs or any other file storage device brought from any outside entity must be scanned for viruses before being loaded on the Town's computer system.

Unlawful copying of any software is strictly forbidden. This includes loading unlicensed software on Town computers or loading Town software on computers that are not owned, rented or leased by the Town.

Employees may not delete or destroy any electronic records or documents related to official Town business except as provided in official record retention and disposal policies of the Town Clerk.

INTERNET USE

Access to the Internet is provided as a tool for official Town-related research and communication.

Use of the Town's computer resources or Internet service for any unlawful purpose is strictly prohibited.

The Town actively monitors incoming and outgoing Internet traffic; employees should have no expectation of privacy.

Inappropriate or unlawful use of the Internet may result in the loss of access for the user and/or disciplinary action up to and including discharge.

E-MAIL USE

E-mail usage is for official Town communication purposes only, whether it is internal or external.

Electronic mail may constitute a public record under certain circumstances and may be accessible or obtainable by individuals, agencies and others outside the Town of Pembroke Park.

Employees may not delete or destroy any email communications related to official Town business except as provided in official record retention and disposal policies of the Town Clerk.

The Town actively monitors incoming and outgoing email; employees should have no expectation of privacy.

WEBSITE

The purpose of the Town of Pembroke Park's website is to provide information about Town operations and governance as well as information of general interest to the community. The Town Manager or his/her designee has final approval of any links or postings to the website.

DEFINITION OF TERMS

Purpose: To provide a listing of definitions applicable to the Personnel Policies and Manual.

Anniversary Date – The calendar date on which any of the following occur: Completion of probationary period, Promotion or demotion to another position

Appointing Authority – The Town Commission or department heads who have the authority to appoint or remove employees under their jurisdiction.

Classification – A position or group of positions which involve a comparable level of duties and responsibilities and similar qualifications and is designated by a title indicative of the kind of work and for which the same pay range can be applied with reasonable equity.

Classification Plan – A thorough compilation of job descriptions which have been organized according to class.

Compensation – Wages.,— salaries, fees,,— allowances, and all other forms of valuable consideration or the amount of any one or more of them paid to an employee, by reason of service rendered in any position, but not including any allowances for expenses authorized and incurred as incidental to employment and which may be separately authorized and/or reimbursed.

Compensation Plan – A schedule of compensation established for each position classes.p of positions so that all positions of a given class shall be paid in the same pay range established for the class.

Department Head – Employees of the Town designated to be head of a department.

Demotion – A change in employment status from a position of one class to a position of another class having a lower maximum pay rate than the original class.

Dismissal – Complete separation of an employee from the employment of the Town.

Employee – Any employee of the Town covered by the provisions of these rules and regulations.

(FLSA) Exempt Employment – Employees who are exempt from the overtime provisions under the definitions of the Fair Labor Standards Act (i.e. salaried employees).

Full Time Employee – .aAn employee who has successfully completed the probationary period.— and who works 40 or more hours per week.

Temporary Employee – Employee whose tenure is intended to be of limited duration (i.e., filling in for illness, vacations,,— summer months,,— maternity leave) and usually not to exceed six months in duration. Such employment may be either full or panrt time.

Job Description – A narrative statement describing the current duties, responsibilities, general requirements, and qualifications for a single position.

Layoff – Separation of a permanently appointed employee from a position in the personnel system because of the reduction on workload available,,— lack of funds by the Town, abolishment of the position after study, material alteration in the organization or for other related causes.

Overtime – Overtime is any hours worked in excess of the scheduled work hours.

Performance Evaluation – The periodic evaluation or appraisal of an employee's work performance.

Part-Time Employee – aAny employee who works less than forty (40) hours per week.

Probationary Employee – An employee who has:

- Not completed the required probationary period; or.
- Been placed into probationary status for cause.

Probationary Period – A working test period and an integral part of the evaluation, testing, and/or examination process during which the employee is required to demonstrate fitness for the position by satisfactory performance of the duties of the position and by satisfactory conduct and attendance as prior conditions to receiving permanent status. Initial probationary periods shall normally be one year for Fire Department personnel included in the collective bargaining unit and six months for all other employees. Employees placed on probation for CaU3ecause may be placed into that status for durations determined by their department heads or the Town Commission.

Promotion – The upgrading of an employee from a position of one class to a position of another class which has a higher maximum pay rate.

Reclassification – The action taken to officially change an existing position to a different appropriate class because of a change in the duties,. responsibilities, and/or requirements of the existing position,. or because of a revision to the classification.

Resignation – The voluntary termination of employment by an employee.

Suspension – Enforced leave of absence, without pay, of an employee for disciplinary purposes or, with or without pay, as determined by the Town Commission,. during the investigation of alleged misconduct of the employee.

Temporary employee – An employee employed for a period of up to 90 days, when permanent employment for the job to be performed is not anticipated.

Transfer – Change of an employee from one position to another.

Vacancy – A position established in a current budget as duly created and not currently occupied by an incumbent.

From: Ashira Mohammed Subject: telephone and email protocol Date: April 18, 2019 at 7:24:30 AM EDT To: Natasha Joseph Cc: Chris Ryan , swoodbury@townofpembrokepark.com To all staff: Pease be advised that after receiving numerous complaints from the public, as well as, other staff members this memo is to be circulated to all staff members and to go into effect immediately.Maintaining high standards in business communication is a sign of professionalism. Poorly structured and untimely responses whether via email, postal mail or voicemail make people feel underappreciated and undervalued and makes us look unprofessional. We are professionals and represent a government agency and need to conduct ourselves accordingly. Telephone protocol : Please answer the phone by the third ring. When communicating with the public always be courteous. Use respectful and considerate words and phrases, such as: ? "I'm sorry. ? "Thank you. ? "Please. ? "May I take a message? ? "Would you like to leave your number? ? "May I put you on hold? ? "I'm sorry to keep you waiting. ? "He's away from his desk. May I have him return your call? Don't use words and phrases such as: ? "Huh? ? "Yeah. ? "I don't know where he is. ? "She's at lunch. Call back later. ? "He's not here. ? "I don't know where he is or when he'll be back. Voicemail Please return calls within 48 hours. In the event that the voice message comes in on a Friday please respond by the end of business on Monday. If someone is on vacation please set an auto response to respond advising that said person is out of the office for the duration of time and if this item needs responding to before then who they should contact. If a response requires time to investigate please acknowledge the message by returning the call and informing the person that it will take time to complete the request and give an estimate of how long it will take to complete the task. Please keep voicemail boxes free to receive additional messages. Under no circumstances should mailboxes be full and unable to accept a message. This is very unprofessional for a business. Email protocol: Please open and respond to all emails within 48 hours is good etiquette. In the event that the email comes in on a Friday please respond by the end of business on Monday. If someone is on vacation please set an auto response to respond advising that said person is out of the office for the duration of time and if this item needs responding to before then who they should contact. If a response requires time to investigate please acknowledge the email by replying that it will take to complete the request and give an estimate of how long it will take to complete the task. Email Subject Line Use an appropriate heading in the email subject line. A heading that is specific to the customer's concerns lets him know you have crafted an individual response rather than sending along a form letter. For example, the heading "response time issues" works better than "your recent concerns. When sending email both internal and external from the copy machine always include a relevant subject line send data from MFP11839410 is not a relevant subject line. Email or Letter Content Open the letter or email with an expression of thanks, such as "Thank you for your recent correspondence regarding ... ." This lets a sender know you read his note and sets the stage for a reasoned response. It also conveys gratitude that the sender took the time to write to us. Next, get straight to the point, addressing the sender's concern directly and succinctly. Provide any explanation as to why the sender encountered a problem, or what steps are necessary to complete his request and timeframe to complete request. Close the letter by thanking the sender for his input and providing a phone number or email address to which he can forward further concerns or follow up regarding his request. Those failing to comply will be disciplined, failure to repeatedly comply will result in termination. /********** EMAIL DISCLAIMER **********/ Please note: Florida has a very broad public records law. Most written communications to or from Town Officials and employees regarding Town business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.

Oel Wingo Management Consulting Services

Memo

To: Ashira Mohammed, Mayor, Town of Pembroke Park

From: Oel Wingo, Ph.D. ICMA-CM

cc:

Date: March 15, 2018

Re: Exempt Employees and Time Clock Use

Per your request, the following outlines the latest legal opinion regarding Fair Labor Standards Act regarding the questions of whether or not employers may require exempt employees to use a time clock. **The simple answer is YES.** The following provides the details.

The following legal analysis was extracted from the "FindLaw for Legal Professionals" online site: In addition, I have attached the referenced FLSA2005-5 DOL to this memo. DOL 29CFR541 is attached as a separate pdf file to the email.

Timekeeping and Exempt Employees

http://corporate.findlaw.com/human-resources/timekeeping-and-exempt-employees.html

The Department of Labor (DOL) has issued an opinion letter clarifying confusion about timekeeping and exempt employees. [DOL: FLSA2005-5.] The opinion is supported by the preamble to the new DOL regulations 29 C.F.R. 541.

Non-Exempt Employee Time Keeping

Under the Fair Labor Standards Act ("FLSA"), employers are required to track and record time for non-exempt employees. The information that employers are required to maintain for each employee is codified in 29 CFR 516.2.

The FLSA does not mandate what type of timekeeping device should be utilized for nonexempt employees as long as accurate records of time are kept. Employers can use a variety of methods, such as time clocks, time cards, or timesheets. The employer is ultimately responsible for the accuracy of the time records, even though it is possible for employees to track or record their own time. As long as the

employer is able to correctly pay the employee for all time worked, including overtime, then the employer is in compliance with the statute.

Who is an Exempt Employee?

The FLSA calls for an exemption from minimum wage and overtime pay for executive, administrative, profession, outside sales, and computer employees. To be considered exempt a basic duties test was established that has remain unchanged since 1954. The basic test requires three criteria to be met:

the employee must be paid a predetermined and fixed salary, not an hourly wage;

the amount of the salary must meet minimum specified amounts; and

the employee's job duties must primarily involve managerial, administrative, or professional skills.

Changes to the FLSA exemption rules allow for salary deductions for absences for suspensions for violation of work place conduct rules. Salary deductions are not allowed for short-term business needs, if the employee is ready, willing and able to work. However, deductions can be allowed for employee instigated voluntary time off work. [See DOL Opinion Letter FLSA2009-14 (January 15, 2009).]

Exempt Employee Time Keeping

How does timekeeping relate to exempt employees? According the FLSA, nonexempt employees must be paid a minimum wage, as well as time and one-half their regular rate for all hours worked over 40 in a defined work week. Conversely, exempt employees are paid on a salary basis and based on other qualifying reasons, are exempt from overtime wages even if they work more than the designated 40 hours in a defined work week.

Employers, though, for a myriad of reasons, may still ultimately decide to track the time worked by exempt employees. Some of those reasons include easier payroll administration and benefits management. Even though an employee may be exempt from both minimum and overtime pay requirements, federal regulation still require employers to maintain and preserve employment records. 29 CFR 516.11.

Record Keeping Should be Separate

Employers should track time for nonexempt and exempt employees differently. Nonexempt employees time worked is calculated by the hour. Calculating exempt employees time can be a bit more challenging. This can be done in different ways. Some employers track the days worked by exempt employees, yet do not track hours. Other employers track time worked by applying any vacation or sick leave. In other words, the assumption is made that an exempt employee will be paid a regular salary unless any vacation or sick leave is utilized.

This way, an employer can correctly record the time an exempt employee has worked, calculate any vacation time or sick leave that was used, yet avoid tracking the exempt employee by the hour. As long as the timekeeping method does not conflict with the salary basis test under the FLSA, employers will be in good shape.

Dear ***Name*** *Note: * The actual name(s) was removed to preserve privacy.*

This is in response to your request for an opinion on whether a draft timekeeping policy would be inconsistent with the requirement of the Fair Labor Standards Act (FLSA) that certain exempt employees must be paid on a salary basis.

You have enclosed a copy of the timekeeping rules which you say are intended “to assist the City in keeping track of the amount of time in an employee’s leave bank, as well as determine whether any full day deductions are warranted” consistent with the provisions of the FLSA. Weekly time sheets are to be completed. The policy includes provisions which require exempt employees to notify their supervisors or directors when they plan to arrive after 9:00 a.m., and of the reason for full days of absence, such as for illness, vacation, jury duty, or compensatory time off.

As you know, in order to qualify for exemption under Section 13(a)(1) of the FLSA, an employee must meet all of the pertinent tests relating to duties, responsibilities, and salary, as discussed in 29 CFR Part 541. As section 541.602(a) explains, subject to exceptions found in Section 541.602(b),“an employee will be considered to be paid ‘on a salary basis’ within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee’s compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. ”You state that the timekeeping policy “has NOT been established for the purpose of wage payment tied to hours actually worked.” Based on the information you have provided, the requirements of the policy do not conflict with the “salary basis” of payment under the FLSA. As the preamble to the new Part 541 Regulations explains, employers may require exempt employees to record and track their hours and to work a specified schedule, and may take deductions from accrued leave accounts without affecting the employees’ exempt status (69 Fed. Reg. 22122, 22178(April 23,2004)).

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that the above information is responsive to your inquiry.

Sincerely, Alfred B. Robinson, Jr. Acting Administrator

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WWW.FINDLAW.COM

DEPARTMENT OF LABOR
Wage and Hour Division
29 CFR Part 541
RIN 1215-AA14
Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees
AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.
ACTION: Proposed Rule and Request for Comments.

SUMMARY: The Department of Labor proposes to update and revise the regulations issued under the Fair Labor Standards Act (FLSA) implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales and computer employees. These exemptions are often referred to as the FLSA's "white collar" exemptions. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than specified minimum amounts. The basic "duties" tests were originally established in 1938 and revised in 1940. The duties tests were last modified in 1949 and have remained essentially unchanged since that time. The "salary basis" test has remained essentially unchanged since 1954. The salary levels required for exemption were last updated in 1975, and the amounts adopted at that time were intended as an interim adjustment. Suggested changes to the Part 541 regulations have been the subject of public commentary for years, including a review of the regulations by the U.S. General Accounting Office (GAO) in 1999. GAO recommended that the Secretary of Labor comprehensively review and make necessary changes to the Part 541 regulations to better meet the needs of both employers and employees in the modern work place, and to anticipate future work place trends. During 2002, the Department of Labor convened a series of stakeholder meetings, and heard suggestions for changes from over 40 interest groups representing employees and employers. The Department of Labor has carefully examined issues of concern raised by various interested parties in developing this proposed rule. The Department now invites public comment on all aspects of the proposed rule.

DATES: Submit written comments on or before (insert the date that is 90 days after publication in the Federal Register).

ADDRESS: Address written comments to Tammy D. McCutchen, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210. Commenters who would like to be notified that their comments were received should include with their comments a self-addressed, stamped postcard or submit them certified mail, return receipt requested. As a convenience, comments of 20 pages or less may be submitted by facsimile ("FAX") machine to (202) 693-1432, which is not a toll-free number, or by e-mail to: whd-reg@fenix2.dol-esa.gov. Because we continue to experience delays in receiving mail in our area, commenters are encouraged to submit any comments by mail early, or to transmit them electronically by FAX or e-mail.

FOR FURTHER INFORMATION CONTACT: Richard M. Brennan, Deputy Director, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3506, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 693-0745 (this is not a toll-free number). Copies of this proposed rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling

(202) 693-0023 (not a toll-free number). TTY/TDD callers may dial toll-free 1-877-889-5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this notice may be directed to the nearest Wage and Hour Division District Office. Locate the nearest office by calling our toll-free help line at 1-866-4USWAGE (1-866-487-9243) between 8:00 am and 5:00 p.m. in your local time zone, or log onto the Wage and Hour Division's website for a nationwide listing of Wage and Hour District and Area Offices at:
http://www.dol.gov/esa/contacts/whd/america2.htm

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains no new information collection requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The information collection requirements for employers who claim exemption under 29 CFR Part 541 are contained in the general FLSA recordkeeping requirements codified at 29 CFR Part 516, which were approved by the Office of Management and Budget under OMB Control number 1215-0017. See 29 CFR §§ 516.0 and 516.3.

II. Background

The FLSA generally requires covered employers to pay their employees at least the federal minimum wage (which is currently $5.15 an hour), and overtime premium pay of time-and-one-half the regular rate of pay for all hours worked over 40 in a work week. However, the FLSA includes a number of exemptions from the minimum wage and overtime requirements. Section 13(a)(1) of the FLSA, codified at 29 U.S.C. § 213(a)(1), exempts from both minimum wage and overtime pay "any employee employed in a bona fide executive, administrative, or professional capacity … or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act…)."

The FLSA does not define the terms "executive," "administrative," "professional," or "outside salesman." However, pursuant to Congress' grant of rulemaking authority, implementing regulations have been issued, at 29 CFR Part 541, defining the scope of the Section 13(a)(1) exemptions. Because the FLSA delegates to the Secretary of Labor the power to define and delimit the specific terms of the exemptions through notice-and-comment rulemaking, the regulations so issued have the binding effect of law.[1]

These exemptions have engendered considerable confusion over the years regarding who is, and who is not, exempt. The implementing regulations generally require each of three tests to be met for the exemption to apply: (1) the employee must be paid a predetermined and fixed salary, not an hourly wage that is subject to reductions because of variations in the quality or quantity of work performed (the "salary basis test"); (2) the amount of salary paid must meet minimum specified amounts (the "salary level test"); and (3) the employee's job duties must primarily involve managerial, administrative or professional skills as defined by the regulations (the "duties tests").

Legislative History

Section 13(a)(1) was included in the original FLSA of 1938, and was based on provisions contained in the earlier National Industrial Recovery Act and state law precedents. Specific references in the legislative history to the employee exemptions contained in Section 13(a)(1) are scant. However, the

[1] See *Batterton v. Francis,* 432 U.S. 416, 425 n. 9 (1977).

exemptions were premised on the belief that the workers exempted typically earned salaries well above the minimum wage, and they were presumed to enjoy other compensatory privileges such as above average fringe benefits, greater job security and better opportunities for advancement, setting them apart from the nonexempt workers entitled to overtime pay.[2] Further, the type of work they performed was difficult to standardize to any time frame and could not be easily spread to other workers after 40 hours in a week, making enforcement of the overtime provisions difficult and generally precluding the potential job expansion intended by the FLSA's time-and-a-half overtime premium.[3]

Initially, persons employed in a "local retailing capacity" were also exempt, but Congress eliminated that language from the Section 13(a)(1) exemptions in 1961 when the FLSA was expanded to cover retail and service enterprises.[4] Teachers and academic administrative personnel were added to the exemption when elementary and secondary schools were made subject to the FLSA in 1966. The Education Amendments of 1972 made the Equal Pay provisions, Section 6(d) of the FLSA, expressly applicable to employees who were otherwise exempt from the FLSA under Section 13(a)(1). A 1990 enactment expanded the exemption to include computer systems analysts, computer programmers, software engineers, and similarly skilled professional workers, including those paid on an hourly basis if paid at least 6 _ times the minimum wage.[5] The compensation test for computer-related occupations was subsequently capped at $27.63 an hour (6 _ times the former $4.25 minimum wage) when Congress increased the minimum wage to its current $5.15 rate and enacted the new Section 13(a)(17) exemption for such computer employees as part of the 1996 FLSA Amendments.[6]

Regulatory History

The FLSA became law on June 25, 1938, and the first version of Part 541 was issued later that year in October (3 FR 2518; Oct. 20, 1938). In 1940, after receiving many comments on the original regulations, the Wage and Hour Division convened a series of public hearings for interested parties to express views on the regulations and to propose amendments. Revised regulations were issued in October 1940 (5 FR 4077; Oct. 15, 1940).[7] Further hearings were initiated in 1947, leading to revised regulations that were issued in December 1949 (14 FR 7705; Dec. 24, 1949).[8] An explanatory bulletin interpreting some of the terms used in the regulations was published as Subpart B of Part 541 on December 28, 1949 (14 FR 7730), and became effective on January 25, 1950. On March 9, 1954, the Department issued proposed revisions to the regulatory interpretations of "salary basis" (19 FR 1321), followed by a final rule issued on July 17, 1954 (19 FR 4405). The regulations were revised in 1958 to adjust the salary levels (23 FR 8962; Nov. 18, 1958).[9] Further changes were made to accommodate

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[2] Report of the Minimum Wage Study Commission, Volume IV, pp. 236 and 240 (June 1981).

[3] Id.

[4] Public Law 87-30, 75 Stat. 65 (May 5, 1961). Although Congress eliminated the separate, broad exemption for retail employees in 1961, such employees could still qualify as exempt executive, administrative or professional employees if they met the requirements for these exemptions, and Congress relaxed the duties tests solely to make it easier for such firms to meet the exemption requirements.

[5] Public Law 101-583, 104 Stat. 2871 (Nov. 15, 1990).

[6] 29 U.S.C. § 213(a)(17), as added by the 1996 FLSA Amendments (Sec. 2105(a), Public Law 104-188, 110 Stat. 1755 (Aug. 20, 1996)).

[7] See, "Executive, Administrative, Professional … Outside Salesman" Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer (Harold Stein) at Hearings Preliminary to Redefinition (Oct. 10, 1940) ("Stein Report").

[8] See, Report and Recommendations on Proposed Revisions of Regulations, Part 541, by Harry Weiss, Presiding Officer, Wage and Hour and Public Contracts Divisions, U.S. Department of Labor (June 30, 1949) ("Weiss Report").

[9] See, Report and Recommendations on Proposed Revisions of Regulations, Part 541, under the Fair Labor Standards Act, by Harry S. Kantor, Presiding Officer, Wage and Hour and Public Contracts Divisions, U.S. Department of Labor (March 3, 1958) ("Kantor Report").

statutory amendments to the FLSA and/or to increase the salary levels in 1961, 1963, 1967, 1970, 1973, and 1975.[10] The existing salary rates were last revised on an interim basis in 1975 (see 40 FR 7092; Feb. 19, 1975). Revisions to increase the salary rates in January 1981 (issued at the end of the Carter Administration) were stayed indefinitely by the incoming Reagan Administration (46 FR 11972; Feb. 12, 1981). Based on petitions from industry groups to address other parts of the rules, and developing case law, the Department began a more comprehensive review leading to a 1985 Advance Notice of Proposed Rulemaking (ANPRM) that reopened the public comment period and broadened the review to all aspects of the regulations (50 FR 47696; Nov. 11, 1985).

The Department revised these regulations in the early 1990s to address two specific issues. A 1990 law (Public Law 101-583; Nov. 15, 1990) required regulations to be issued permitting computer systems analysts, computer programmers, software engineers, and other similarly-skilled workers in the computer field to be exempt, including those paid on an hourly basis if the hourly rate exceeded 6 _ times the applicable minimum wage. (57 FR 46744; Oct. 9, 1992). Also, in 1992, the Department issued a final rule to modify the exemption's requirement for payment on a "salary basis" as applied in the public sector for otherwise exempt employees paid according to pay and leave systems based on principles of public accountability. Under 29 CFR § 541.5d (57 FR 37677; Aug. 19, 1992), an otherwise exempt public sector employee does not lose exempt status under a regulated public sector pay and leave system that requires partial-day (or hourly) deductions from pay for employee absences not covered by accrued leave, or for budget-driven furloughs.

Overview of Existing Requirements

The implementing regulations in Part 541 contain specific criteria that define each category of exemption provided by Section 13(a)(1). The applicability of any particular exemption is not presumed under the FLSA, but must be affirmatively established. Job titles, nomenclature, or job descriptions do not determine the exemptions, nor does paying a "salary" rather than an hourly rate. Rather, whether an exemption applies depends on the specific duties and responsibilities of each employee's job, how much salary the employee is paid, and whether the salary is guaranteed without regard to the quality or quantity of work performed, as defined by the regulations.

The duties tests differ for each category of exemption. Two different salary (or fee) levels exist for each of the exemptions for executive, administrative, and professional employees. The salary requirements do not apply to certain licensed or certified doctors, lawyers and teachers, or to outside sales employees. Employees paid below the applicable lower salary rate are not exempt regardless of their duties. Those paid above the higher (or "upset") salary rate are exempt if they meet a "short" duties test. Those paid between the higher and lower salary rates must meet a more detailed "long" duties test.

The salary tests were originally designed to operate as a ready guide to assist employers in deciding which employees were more likely to meet the duties tests in the exemptions. In fact, the salary levels specified in the regulations were once viewed as the best indicator of exempt status. As last revised effective April 1, 1975, the salary required for executive and administrative employees under the current "long" test is $155 per week; professional employees are exempt at $170 per week. The short test salary level (requiring fewer duties to be satisfied) for all three exemptions is $250 per week. Because these salary levels have not been raised in 28 years, virtually all employees are tested for exemption today under the "short" duties tests. Moreover, while the existing salary tests ($155, $170, and $250 per week) still reflect the interim 1975 rates, a full-time minimum wage worker today earns $206 per week for a 40-hour work week. Consequently, the existing salary tests no longer provide employees or employers any help in distinguishing between bona fide executive, administrative, and

[10] See, 26 FR 8635 (Sept. 15, 1961); 28 FR 9505 (Aug. 30, 1963); 32 FR 7823 (May 30, 1967); 35 FR 883 (Jan. 22, 1970); 38 FR 11390 (May 7, 1973); and 40 FR 7091 (Feb. 15, 1975).

professional employees and those who should not be considered for exemption. Moreover, the outdated salary tests and complex duties tests in the current regulation cause employees to be erroneously misclassified as exempt and thus not paid properly.

Under the currently applicable "short" test exemption requirements, an exempt "executive" employee must be paid at least $250 per week on a salary basis, have a primary duty is to manage the enterprise or a customarily recognized department or subdivision thereof, and regularly direct the work of two or more other employees. An exempt "administrative" employee must be paid at least $250 per week on a salary or fee basis, have a primary duty of office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers (or similar functions in the administration of a school system or educational institution in work directly related to academic instruction), and perform work requiring the exercise of discretion and independent judgment. An exempt "professional" employee must be paid at least $250 per week on a salary or fee basis; have a primary duty of (1) work requiring knowledge of an advanced type in a field of science or learning customarily acquired by prolonged, specialized, intellectual instruction and study, or (2) work that is original and creative in a recognized field of artistic endeavor, or (3) teaching in a school system or educational institution, or (4) work as a computer systems analyst, computer programmer, software engineer, or other similarly-skilled worker in the computer software field; and perform work requiring the consistent exercise of discretion and judgment, or work requiring invention, imagination, or talent in a recognized field of artistic endeavor. Under the professional exemption, the salary or fee requirement does not apply to certain licensed or certified doctors, lawyers and teachers; or to certain computer-related occupations if paid on an hourly basis at $27.63 or more per hour. An "outside sales" employee who is customarily and regularly engaged away from the employer's places of business making sales or obtaining orders or contracts for services or use of facilities, and who does not exceed a twenty percent tolerance per work week performing duties unrelated to his or her own outside sales or solicitations, is exempt. There are no salary or fee requirements for outside sales employees.

Employees meeting the foregoing requirements are excluded from the Act's minimum wage and overtime protections. Thus, they may work any number of hours in the work week and are not subject to the Federal law's overtime pay requirements. Some state laws have stricter exemption standards than those just described. The FLSA does not preempt any such stricter State standards. If a State or local law establishes a higher standard than the provisions of the FLSA, the higher standard applies. See Section 18 of the FLSA, 29 U.S.C. § 218.

The executive and administrative exemptions apply generally to certain management and staff-level positions within an employer's organization. For example, department heads with management as their primary duty, who regularly supervise two or more full time employees in their department, may qualify as executives if they are paid a predetermined salary of $250 or more per week. An administrative employee must primarily perform office or nonmanual work of substantial importance to the management of the business, but is not required to supervise other employees. Persons with functional (rather than departmental) management authority, or who perform "staff" rather than production or sales work, may qualify as administrative employees if their duties include "discretion and independent judgment" or decision-making responsibilities on important matters in managing the employer's general business operations (*e.g.,* if they primarily determine or affect management policies in a particular area, such as credit, personnel, or labor relations). Executive assistants delegated decision-making authority to carry out parts of an exempt executive or administrative employee's management responsibilities may also qualify as exempt administrative employees.

The professional exemption (aside from the artistic, teaching, and computer-related categories) applies to the recognized professions requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study (*i.e.,* the "learned" professions, such as doctor, lawyer, architect, engineer, *etc.*), and is typically characterized

by possession of the appropriate academic degree for the particular profession. Outside sales employees must regularly work away from their employer's place of business making sales or obtaining orders or contracts; they may not exceed a 20 percent tolerance for performing duties unrelated to their own outside sales work. "Inside sales" employees are not included within the scope of the exemption for "outside sales" employees.

Under the regulatory "salary basis" test codified at 29 CFR § 541.118, partial-day deductions from pay based on the number of hours worked ("pay-docking") are generally not allowed in the private sector (unless made in the first or last weeks of employment or due to unpaid leave taken pursuant to the Family and Medical Leave Act, 29 U.S.C. 2601 *et seq.*). Disciplinary deductions from pay also violate the "salary basis" test (except for safety rules of major significance, such as no-smoking rules in oil refineries and coal mines). These concepts clarify the intended meaning of the requirements for payment of a guaranteed salary – *i.e.,* the predetermined salary amount may not be reduced because of variations in either the quality or quantity of the work performed by the employee. Pay practices not meeting the guaranteed "salary basis" requirements cause the exemption to be declared inapplicable, in some cases for entire classes of employees.[11]

Public Commentary and the GAO Report

Suggested changes to the Part 541 regulations have been the subject of extensive public commentary for years, including a report issued by the General Accounting Office (GAO) in September 1999.[12] In this report, GAO chronicled the background and history of the exemptions, estimated the number of workers who might be included within the scope of the exemptions, identified the major concerns of employers and employees regarding the exemptions, and suggested possible solutions to the issues of concern raised by the affected interests. In general, the employers contacted by GAO were concerned that the regulatory tests are too complicated, confusing, and outdated for the modern work place, and create potential liability for violations when errors in classification occur.[13]

Employers were particularly concerned about potential liability for violations of the complex "salary basis" test and the exacting requirements of the so-called "no-docking" rule, which has been the focus of lawsuits against employers in recent years brought collectively by groups of highly paid managerial and professional employees. This test in effect limits employers' ability to "dock" exempt employees' pay for partial-day personal absences and disciplinary violations, which limits employers' ability to hold exempt employees accountable for their time and actions. In addition, employers believed that limiting the administrative and professional exemptions to "nonproduction" employees did not account for the effects of modern technology on employment today. They also noted the traditional limits of the exemptions have blurred in the modern work place, citing highly skilled and highly paid technical workers without college degrees who do not qualify as exempt professionals but who perform essentially the same job as exempt engineers who have the required academic degrees. Manufacturing employers pointed to new technology used in factories, which requires advanced technical skills but far less traditional "manual" labor. They also told GAO that, while these workers may have to follow precise written guidelines to perform their work, prescribed procedures were important to modern quality control. Employers also believed adherence to precise written guidelines – one major distinction between exempt and nonexempt workers under the existing regulations – is necessary in a

[11] As noted, a special rule applies to employees of public agencies paid according to regulated pay and leave systems that require deductions for partial-day absences not covered by accrued leave, and for budget-driven furloughs (see 29 CFR § 541.5d).

[12] *Fair Labor Standards Act: White Collar Exemptions in the Modern Work Place* (GAO/HEHS-99-164, September 30, 1999).

[13] Under the FLSA, employees may sue their employer (individually or collectively) for up to two, or in some cases three, years of back wages, plus an equal amount in liquidated damages and attorney fees and court costs, for violations of the FLSA's minimum wage and overtime requirements.

modern, efficient work place. Employers also complained that the discretion and independent judgment requirements for administrative and professional employees are confusing and applied inconsistently by Wage and Hour Division investigators in classifying similarly-situated employees, and are particularly difficult to apply. Thus, employers were unsure how to classify administrative personnel. GAO's discussions with employers and Wage and Hour Division investigators, and its review of compliance cases, confirmed that this part of the duties test involved particularly difficult and subjective determinations, for both the employers and the investigators, and that it was a source of contention in Department audits.

Employee representatives contacted by GAO, in contrast, were most concerned that the use of the exemptions be limited to preserve existing overtime work hour limits and the 40-hour standard work week for as many employees as possible. They believed the tests have become weakened as applied today by judicial rulings and do not adequately restrict employers' use of the exemptions. When combined with the low salary test levels, the employee representatives felt that few protections remain, particularly for low-income supervisory employees. They believed that inflation has severely eroded the salary-level limitations originally envisioned by the regulations. Because of inflation, according to the employee representatives, the current salary test levels are now near the minimum wage level, rendering application of the regulations to the current work force virtually meaningless.

GAO's report noted that the conflicting interests affected by these rules have made consensus difficult and that, since the FLSA was enacted, the interests of employers to expand the white collar exemptions have competed with those of employees to limit use of the exemptions. To resolve the issues presented, GAO suggested that employers' desires for clear and unambiguous regulatory standards must be balanced with employees' desires for fair and equitable treatment in the work place. The GAO recommended that the Secretary of Labor comprehensively review the regulations and restructure the exemptions to better accommodate today's workplace and to anticipate future work place trends.

The House Subcommittee on Workforce Protections of the Committee on Education and the Workforce held a hearing in May 2000 to receive testimony from GAO and other interested parties on GAO's September 1999 report. Testimony provided by the GAO, representatives of business and labor organizations, and the Department of Labor confirmed GAO's assessment of the issues and the difficulty in moving forward with constructive changes due to the differing views of the many affected and interested parties, and the potential impact of possible changes. Representatives of worker interests opposed making changes that would remove overtime protections for workers now covered, while business interests and employer groups advocated modernizing the regulations to exempt more classifications of workers from overtime pay.

III. Summary of Current Regulatory Proposal

Structure and Organization

Part 541 presently contains two subparts. Subpart A provides the regulatory tests that define each category of the exemption (executive, administrative, professional, and outside sales). Subpart B provides interpretations of the terms used in the exemptions. Subpart B was first issued as an explanatory bulletin effective in January 1950 to provide guidance to the public on how the Wage and Hour Division interpreted and applied the exemption criteria when enforcing the FLSA. The Department proposes to eliminate the current distinction between the "regulations" in Subpart A and the "interpretations" in Subpart B. This will consolidate and streamline the regulatory text, reduce redundancies, and make the regulations more understandable and easier to decipher when applying them to particular factual situations, providing much-requested simplification. In addition, eliminating the distinction between the Subpart A "regulations" and the Subpart B "interpretations" will eliminate confusion regarding the appropriate level of deference to be given to the provisions in each subpart.

The proposed rule reorganizes the subparts according to each category of exemption, and consolidates common elements (such as a new subpart containing common definitions), in order to eliminate unnecessary duplication and repetition of regulatory text. Thus, after several introductory provisions in Subpart A, the proposed new Subpart B would pertain to the executive exemption; Subpart C would pertain to the administrative exemption; Subpart D would pertain to the professional exemption; Subpart E would contain provisions regarding computer employees; and Subpart F would contain provisions regarding outside sales employees. The proposed Subpart G would include provisions regarding salary requirements applicable to most of the exemptions, including salary levels and the salary basis test. Subpart G would also include a section on highly compensated employees. Proposed Subpart H would contain definitions and other miscellaneous provisions applicable to all or several of the exemptions. Finally, numerous editorial changes are proposed throughout the rule to streamline and improve its clarity, delete outdated references and illustrations, and remove gender-specific references.

Current Section 541.6, entitled "Petition for amendment of regulations," has been deleted in this proposed rule. The substance of that section, originally adopted in 1938 and providing for interested persons to petition the Administrator for desired changes in these regulations, has been superseded and supplanted by enactment of the Administrative Procedure Act, 5 U.S.C. § 553(e).

Finally, the proposed rule deletes a number of discussions regarding application of the exemption to specific occupations. These discussions appeared to be outdated, relating to occupations and duties which may not exist in the 21st Century economy. However, because most stakeholders find such examples useful in applying the regulations to specific occupations, we invite comments on specific occupations and duties which should be discussed in the regulations. In particular, we invite comments on occupations the exempt status of which has been the subject of confusion and litigation including but not limited to pilots, athletic trainers, funeral directors, insurance salespersons, loan officers, stock brokers, hotel sales and catering managers, and dietary managers in retirement homes. The Department anticipates that the final rule will include additional provisions on the application of the exemptions to such borderline occupations, but requires more information about the particular job duties and responsibilities generally found in such occupations. We invite comments on which occupations should be included in the final rule and whether such occupations should be treated as exempt or nonexempt, including detailed information about job duties in such occupations.

Subpart A, General Regulations, §§ 541.000 - .002

The current regulations have several general, introductory provisions scattered in various locations. The proposed regulations would gather these provisions together into proposed Subpart A. Thus, the

proposed Section 541.000 combines an introductory statement currently located at Section 541.99 and information currently located at Section 541.5b regarding the application of the equal pay provisions in Section 6(d) of the FLSA to employees exempt from the minimum wage and overtime provisions of the FLSA under Section 13(a)(1). Proposed Section 541.000 also contains new language to reflect legislative changes to the FLSA regarding computer employees and information regarding the new organizational structure of the proposed regulations. Proposed Section 541.001 relocates definitions of "Act" and "Administrator" from their current location in Section 541.0. Finally, proposed Section 541.002 contains a general statement that job titles alone are insufficient to establish the exempt status of an employee. This fundamental concept, equally applicable to all the exemption categories, currently appears in Section 541.201(b) regarding administrative employees.

Subpart B, Executive Employees, §§ 541.100 - .107

To qualify as an exempt executive under the current regulations, an employee must be compensated on a salary basis at a rate of not less than $155 per week and meet the "long" duties test, or at a rate of not less than $250 per week and meet an abbreviated "short" duties test. The long test requires that an exempt executive employee: have a primary duty of managing the enterprise (or a recognized department or subdivision thereof); customarily and regularly direct the work of two or more other employees; have authority to hire or fire other employees or have particular weight given to suggestions and recommendations as to hiring, firing, advancement, promotion or other change of status; customarily and regularly exercise discretionary powers; and devote no more than 20 percent (or as much as 40 percent in retail or service establishments) of hours worked per week to activities that are not directly and closely related to performing exempt managerial work. The percentage restrictions on performing nonexempt work in the long test do not apply to an employee who is in sole charge of an independent or physically separate branch establishment, or to an owner of at least a 20 percent interest in the enterprise in which the employee is employed. The executive short duties test requires that the employee have a primary duty of managing the enterprise (or a recognized department or subdivision thereof) and customarily and regularly direct the work of two or more other employees.

The proposed regulations would streamline the current regulations by eliminating the separate long and short tests, and substituting a single standard duties test in proposed Section 541.100. The proposed standard duties test would provide that an exempt executive employee must: (1) have a primary duty of managing the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (2) customarily and regularly direct the work of two or more other employees; and (3) have the authority to hire or fire other employees or have particular weight given to suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees. This standard test, consisting of the current short test requirements plus a third objective requirement taken from the long test, represents a middle ground between the current long and short tests.

This streamlining and simplification of the current executive exemption regulations will eliminate the long test subsections regarding the percentage restrictions on nonexempt work and the discretionary powers requirement. We propose to eliminate these subsections for several reasons. Because of its outdated salary level, the long test has, as a practical matter, not been operative for many years. Reintroducing its requirements now would add new complexity and burdens to the exemption tests. The tests are complex and require time-testing managers for the duties they perform, hour-by-hour in a typical work week. Employers are not generally required to maintain any records of daily or weekly hours worked by exempt employees (see 29 CFR § 516.3), let alone perform a moment-by-moment examination of an employee's specific duties performed or discretionary powers exercised. Yet reactivating the long test's limitations on nonexempt work could impose such significant new monitoring requirements (and, indirectly, new recordkeeping burdens) for employers to analyze the substance of each particular employee's daily and weekly tasks in order to be confident

of any claimed exemption. Further, historically, deciding which specific activities were not inherently an "essential part of and necessarily incident to" the exempt work proved to be a subjective and difficult standard to apply for employers, employees, as well as Wage and Hour Division investigators. The discretionary powers test has similarly proved to be a subjective and difficult standard to apply. Moreover, making such finite determinations would be made even more difficult in the aftermath of the decisions in *Donovan v. Burger King, Corp.*, 675 F.2d 516 (2nd Cir. 1982), *Donovan v. Burger King Corp.*, 672 F.2d 221 (1st Cir. 1982), and similar judicial rulings which hold that an exempt employee's managerial duties can be carried out at the same time the employee performs nonexempt manual tasks. Accordingly, given these developments in judicial construction of the law, the Department is of the view that the discretionary powers provision and the percentage limitations on particular duties formerly applied under the now dormant long test are not useful criteria that should be reintroduced for defining the executive exemption in today's work place.

The proposed regulations at Section 541.101 would recognize as an exempt executive any employee who owns at least a 20 percent equity interest in the enterprise in which the employee is employed. Section 541.102 of the proposed regulations would continue the principle that an employee in "sole charge" of an independent establishment or a physically separated branch establishment may qualify as an exempt executive. "Sole charge" of an establishment is defined to include the senior employee with authority to make decisions regarding day-to-day operations and to direct the work of other employees. These provisions appear in the current regulations as exceptions to the percentage restrictions on non-exempt work under the former long test, in recognition of the due weight to be given the freedom from direct supervision and the high degree of executive responsibility enjoyed by the top person in charge of a separate business location, as well as the special status of a partial equity owner of an enterprise. The Department believes that these continue to be valid concepts for special status as executives under the proposed restructured regulations as well. The Department seeks comments on whether the salary level and/or salary basis requirements should be eliminated as unnecessary for sole charge executives and business owners. We have proposed to eliminate those requirements only for the 20 percent owner, based upon our belief that such an individual likely will share in the profits of the enterprise and that this is an adequate substitute indicator of exempt status.

The proposed regulations also would reorganize, simplify, streamline and update the regulations in other ways. The proposed regulations utilize objective, plain language in an attempt to make the regulations understandable to employees and employee representatives, small business owners and human resource professionals. We also propose to eliminate outdated and uninformative examples and to update definitions of key terms and phrases. The proposed regulations would move a number of sections pertaining to salary issues (current §§ 541.117, 541.118) to a new Subpart G (discussed below), where all such provisions will be consolidated. Other sections relevant to several or all of the exemption categories (such as the definition of primary duty and a section regarding application of the exemptions to trainees) would move to a proposed new Subpart H (Definitions and Miscellaneous Provisions) to eliminate unnecessary repetition. The following sections of the current regulations have been edited and moved to proposed new Subpart H:

Current Section…	Moved to…	Proposed Section
541.101 General		541.702
541.103 Primary duty		541.700
541.108 Work directly and closely related		541.703
541.109 Emergencies		541.705
541.110 Occasional tasks		541.706
541.111 Nonexempt work generally		541.702
541.116 Trainees		541.704

Section 541.102 of the current regulations, entitled "Management," has been modified and moved to proposed Section 541.103.

Section 541.115 of the current regulations, entitled "Working foremen," has been moved to proposed Section 541.106 and renamed, "Working supervisors," although no substantive changes are intended. A new provision on supervisors in retail establishments has been added as proposed Section 541.107. Both 541.106 and 541.107 address the difficult issue of classifying employees who have both exempt supervisory duties and non-exempt duties, and the Department invites comments on whether these sections have appropriately distinguished exempt and non-exempt employees. Section 541.106 provides, as in the current regulation, that an employee with a primary duty of ordinary production work is not exempt even if the employee also has some supervisory responsibilities. This situation often occurs in a factory setting where a collective bargaining unit employee who works on a production line also has some responsibility to direct the work of other bargaining unit employees. Another example is a police officer who directs the work of other police officers on the conduct of an investigation but is also a member of a bargaining unit. Bargaining unit members do not become exempt employees simply because they are given some supervisory responsibilities.

The definition of the term "department or subdivision" remains at Section 541.104, and the definition of "two or more employees" remains at Section 541.105. The Department invites comments on whether the supervision of "two or more employees" required for exemption should be modified to include "the customary or regular leadership, alone or in combination with others, of two or more other employees."

Section 541.106 of the current regulations, entitled "Authority to hire or fire," is proposed to be deleted. The text in this section does not contribute to any further explanation of the requirement, and no further explanation seems necessary. Section 541.107 of the current regulations, entitled "Discretionary powers," and Section 541.112 of the current regulations, "Percentage limitations on nonexempt work," are also deleted from the proposed rule for the reasons discussed above.

Subpart C, Administrative Employees, §§ 541.200 - .207

To qualify as an exempt administrative employee under the current regulations, an employee must be paid on a salary or fee basis at a rate of not less than $155 per week and meet the "long" duties test, or earn $250 per week and meet the "short" duties test. The long test requires that an exempt administrative employee have a primary duty of either performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers; or performing functions in the administration of a school system, or educational establishment or institution, in work directly related to academic instruction or training. In addition, the current regulations require that an administrative employee: customarily and regularly exercise discretion and independent judgment; regularly and directly assist another exempt employee *or* perform work along specialized or technical lines requiring special training, experience or knowledge under only general supervision or perform special assignments and tasks under only general supervision; and devote no more than 20 percent (or as much as 40 percent in retail or service establishments) of work hours in a week to activities that are not directly and closely related to the performance of exempt work. The short test requires that the employee have a primary duty of performing office or non-manual work directly related to management policies or general business operations, which must include work requiring the exercise of discretion and independent judgment. Under both tests, when considering whether an employee's work is "directly related to management policies or general business operations" the regulations and the courts assess whether the work is "related to the administrative operations of the business as distinguished from production" – known as the "production versus staff dichotomy" – and whether the work is "of substantial importance to the management or operation of the business."

The current duties test for administrative employees is the most difficult to apply of all the duties tests. The requirement that the employee exercise "discretion and independent judgment," for instance, has generated significant confusion and litigation, as noted in the GAO report discussed above. This rule has been interpreted to deny the exemption to an employee who follows a procedures manual, even though most employees in the modern workplace are required to operate within standard procedures. The "production versus staff dichotomy" also is difficult to apply uniformly in the 21st Century workplace.

The proposed regulations at Section 541.200 would retain the requirement that an exempt administrative employee have a "primary duty" of "performing office or non-manual work related to the management or general business operations of the employer or the employer's customers," but replace the "discretion and independent judgment" requirement with a new requirement that the employee hold "a position of responsibility" with the employer.

The primary duty requirement of "performing office or non-manual work related to the management or general business operations" is defined in a new Section 541.201. New Section 541.201 clarifies that this requirement refers to the type of work performed by the employee and includes an illustrative list of the types of work areas that meet this requirement: tax, finance, accounting, auditing, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations and similar activities. The Department invites comments on any other areas that should be included in this list and on any areas that should be deleted. Like the proposed changes to the executive exemption, the proposed administrative exemption focuses on "primary duty" and eliminates the percentage restrictions on non-exempt work currently required by the now-inoperative long duties test, for the same reasons discussed above under the executive exemption.

The proposed rule would also reduce the emphasis on the so-called "production versus staff" dichotomy in distinguishing between exempt and non-exempt workers, while retaining the concept that an exempt administrative employee must be engaged in work related to the management or general business operations of the employer or of the employer's customers. These changes are needed to reflect emerging case law in this area. For example, the court in *Piscione v. Ernst & Young*, 171 F.3d 527 (7th Cir. 1999), examined whether an employee's duties were directly related to Ernst & Young's management policies or general business operations or those of the firm's clients. The employee worked as a consultant in the firm's Human Resources Consulting Group on several multi-million dollar defined benefit plans and defined contribution plans in which thousands of individuals participated. The employee's work involved benefits calculations, actuarial valuations, government filings, compliance testing, and client advice. The court stated that this work influenced the internal business operations and policies of Ernst & Young's clients with regard to their benefit plans. The employee was the primary contact for several clients; the employee identified problems with their plans and suggested solutions, and the employee offered suggestions to clients regarding how to improve their efficiency. The court rejected the argument that, because the employee provided clients with reports and government forms to file, the work was production work. Rather, the employee was an advisory specialist or consultant whose work was exempt. In addition, the court found that the employee contributed to the management policies of Ernst & Young because the employee played a major role in developing new methods for improving client services and the timeliness of firm operations.

The proposed Section 541.200 also contains a second requirement for the administrative exemption relating to the importance of the work performed or the high level of competence required by the work performed – a requirement that an exempt employee must hold a "*position of responsibility.*" The term "position of responsibility" is defined in the proposed regulations at new Section 541.202. To meet this new "position of responsibility" requirement, an employee must either (1) perform work of substantial importance, or (2) employ a high level of skill or training. The concept of "work of

substantial importance" has been in the interpretive regulations since 1950, as a factor for determining whether a worker is an exempt administrative employee. The proposed regulations at new Section 541.204 define this phrase based on language in the current regulations and include a revised list illustrating the types of activities that are generally considered of "substantial importance" for purposes of the exemption including: formulating or interpreting management policies; providing consultation and expert advice to management; making or recommending decisions that have a substantial impact on business operations or finances; analyzing and recommending changes to operating practices; planning long or short-term business objectives; analyzing data, drawing conclusions and recommending changes; and handling complaints, arbitrating disputes or resolving grievances. The Department invites comments on any additional activities that should be included in this list and on any activities that should be deleted. The second alternative for meeting the "position of responsibility" requirement, "work requiring a high level of skill or training," defined in the proposed regulations at new Section 541.205, would ensure that the administrative exemption is not denied to a highly trained and skilled employee who performs administrative functions merely because the employee uses a procedures manual, so long as the manual contains information that can only be interpreted properly by someone with a high level of specialized skills or training, as opposed to a manual in which the employee simply looks up the correct answer for a particular set of circumstances. As reflected in the GAO report noted above, it has become commonplace for employees in the modern work place to use procedures manuals and written guidelines as standard practices for achieving quality control and efficiency.

The administrative exemption is the most challenging of the Section 13(a)(1) exemptions to define and delimit, and the "discretion and independent judgment" requirement has become increasingly difficult to apply with uniformity in the 21st Century workplace. Thus, the Department proposes to delete this requirement and replace it with the requirement that an employee hold a "position of responsibility." The Department specifically seeks comments on whether the "discretion and independent judgment" requirement should be deleted entirely, retained as a third alternative for meeting the "position of responsibility" requirement, or retained by itself but modified to provide better guidance on distinguishing exempt administrative employees. The Department invites commenters to submit alternative proposed regulatory language for either "discretion and independent judgment" or "position of responsibility." The Department solicits comment on how employers currently interpret the "discretion and independent judgment" requirement, and whether individuals currently exempt under that requirement would continue to be exempt under the new "position of responsibility" requirement.

Finally, the proposed regulations also would reorganize, simplify, streamline and update the regulations in other ways. The proposed regulations utilize objective, plain language; eliminate outdated and uninformative examples; and update definitions of key terms and phrases. As with the executive exemption, the proposal for the administrative exemption would move a number of sections pertaining to salary issues (current §§ 541.211, 541.212 and 541.213) to Subpart G, and other sections relevant to several or all of the exemption categories would move to the proposed Subpart H (Definitions and Miscellaneous Provisions) to eliminate unnecessary repetition. For example, current Section 541.203 entitled "Nonmanual work" is moved to proposed new Section 541.703. Current Section 541.206 entitled "Primary duty" is merged with current Section 541.103 and moved to proposed new Section 541.700. Current Section 541.208 entitled "Directly and closely related" is combined with current Sections 541.108, 541.202, and 541.307 and moved to proposed new Section 541.702. Current Section 541.210 entitled "Trainees, administrative" is combined with current Section 541.116 ("Trainees, executive") and current Section 541.310 ("Trainees, professional") and moved to proposed new Section 541.704. Provisions related to the administration of educational institutions in current Sections 541.2, 541.201(c), 541.202(e), and 541.215 have been consolidated and moved to new Section 541.206; no substantive changes are intended by this consolidation.

Subpart D, Professional Employees, §§ 541.300 - .304

The current regulations pertaining to the professional exemption contain four separate categories of exempt employees: learned professionals, artistic professionals, teachers, and computer professionals. As with the executive and administrative exemptions, the regulations contain both "short" and "long" duties tests, depending upon the salary level of the employee. The long test contains a separate primary duty requirement for each of the four categories of employees. The long test for learned professionals requires that the primary duty consist of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes. For creative professionals, the primary duty must consist of work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee. For teachers, the primary duty must consist of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge by an employee who is employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which the person is employed. The duties tests for computer employees are discussed in Subpart E. The long test also requires that an exempt employee: perform work requiring the consistent exercise of discretion and judgment; do work that is predominantly intellectual and varied in character, such that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and devote no more than 20 percent of work hours in a week to activities that are not an essential part of and necessarily incident to exempt work. The short test in the current regulations for both learned professionals and teachers contains the specific primary duty requirement discussed above, and requires that the employee perform work requiring the consistent exercise of discretion and judgment. For artistic professionals, the work must require invention, imagination or talent in a recognized field of artistic endeavor.

The proposed regulations pertaining to the professional employee exemption would make changes similar to those we propose for the executive and administrative exemptions. The goal is to clarify and simplify the regulations defining the professional employee exemption, while remaining consistent with the purposes of the FLSA. For ease of reference, and making no substantive changes, we propose to move the provisions pertaining to computer professionals to new Subpart E, which will contain all information pertinent to such employees. We also propose to simplify the regulations by eliminating the separate short and long tests for each of the remaining three categories and substituting a single standard duties test for each. This restructuring and simplification would eliminate the percentage limitation on nonexempt work and the consistent exercise of discretion and judgment requirement. As discussed above in connection with similar proposed changes to the executive and administrative exemptions, we are proposing to eliminate these subsections because they have proven difficult standards to apply uniformly.

For learned professionals, the proposed new standard test in Section 541.301 would provide that employees qualify for exemption as a learned professional if they have a primary duty of performing office or non-manual work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by an equivalent combination of intellectual instruction and work experience. This proposed standard test for learned professionals would focus on the knowledge of the employee and how that knowledge is used in everyday work, not on the educational path followed to obtain that knowledge. Although some flexibility to focus on the worker's knowledge exists in the current regulation, it is very limited and rarely used. The clarified test reflects changes in the 21st Century workplace in how some "knowledge workers"

acquire specialized learning and skills: in the modern workplace, some employees acquire advanced knowledge through a combination of formal college-level education, training and work experience, even where other employees in that field customarily acquire advanced knowledge by obtaining a baccalaureate or advanced degree. The proposed changes would clarify that, so long as such an employee's level of advanced knowledge is equivalent to the knowledge possessed by an employee with the typical academic degree generally required by the profession, the employee may qualify as an exempt professional. Thus, for example, an employee who obtained advanced knowledge by completing college courses in a field such as engineering, and who worked in that field for a number of years, could qualify for exemption if the knowledge acquired was equivalent to that of an employee with a baccalaureate degree in engineering. We have not proposed any specific formula in the regulations for determining the equivalencies of intellectual instruction and qualifying work experience, although some examples from the current rule have been included and expanded. Public comments are invited on whether the regulations should specify such equivalencies.

The view that several years of specialized training plus intensive on-the-job training for a number of additional years may be equated with a college degree in certain fields has found support in reported judicial decisions. For example, the professional exemption has been applied to employees with a combination of training and academics in *Leslie v. Ingalls Shipbuilding, Inc.*, 899 F. Supp. 1578 (D. Miss. 1995). In *Leslie*, the court concluded that an employee who had completed three years of engineering study at a university and had many years of experience in the field of engineering was properly classified as a professional employee, even though the employee did not satisfy one of the usual minimum qualifications for an engineering position of having a bachelor's degree in an engineering discipline. The court considered the employee's combination of education and experience as satisfying the requirement for a prolonged course of specialized intellectual instruction and study.

For creative professionals, we propose to adopt the current short test, slightly modified, as the new standard test in proposed Section 541.302. This new standard test would apply the creative professional exemption to any employee with the primary duty of "performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor." This language, although simplified, is not intended to make any material changes from the existing regulations. This standard was applied in the case of *Freeman v. National Broadcasting Company, Inc.*, 80 F.3d 78 (2nd Cir. 1996), in which employees who researched facts, developed story elements, interviewed subjects, wrote scripts, and supervised the editing of videotape were deemed to have been correctly classified as artistic professional employees. On the other hand, employees of small news organizations who spent their time gathering facts about routine community events such as municipal, school board, and city council meetings, and gathering information from the police blotter and real estate transaction reports, and then reporting those facts in a standard format were deemed not to be artistic professional employees in *Reich v. Newspapers of New England*, 44 F.3d 1060 (1st Cir. 1995) and *Reich v. Gateway Press, Inc.*, 13 F.3d 685 (3d Cir. 1994).

The standard test for teachers in proposed Section 541.303 would be unchanged from the current short test, with the exception of the deletion of the requirement that the employee's work require the consistent exercise of discretion and judgment, a requirement that, as discussed above, has engendered significant confusion. Provisions on teachers from current Sections 541.3, 541.301(g), and 541.314 have been consolidated into proposed new Section 541.303. The minor editorial changes are not intended to cause any substantive changes.

In addition, the proposed regulations utilize objective, plain language that can be easily understood by employees, small business owners and human resource professionals, and eliminate outdated and uninformative examples. The proposed regulations also would address a number of specific occupations that have been the subject of ambiguity and litigation. For example, we propose to update and clarify the circumstances under which employees working as newspaper journalists or as radio or

television commentators are exempt, because the case law regarding such employees has been evolving over the years, and the existing regulations discussing such employees are outdated.

Provisions of the current regulations in Sections 541.3 and 541.314 that provide an exception to the salary or fee requirements for physicians and lawyers have been consolidated and moved to proposed Section 541.304. Current Section 541.307 entitled "Essential part of and necessarily incident to" has been combined with current Section 541.108 ("Work directly and closely related"), 541.202 ("Categories of work"), and Section 541.208 ("Directly and closely related"), and moved to proposed new Section 541.702 ("Directly and closely related"), for a streamlined discussion of the principles for distinguishing exempt and nonexempt work. Although these sections have been consolidated and simplified, we do not intend any substantive changes.

Finally, we propose to move sections that pertain to salary issues (§§ 541.311, 541.312 and 541.313) to Subpart G, where all such issues will be consolidated. Other sections relevant to several or all of the exemption categories (such as the definition of primary duty, a section regarding application of the exemption to trainees, and a section discussing nonexempt work generally) would move to the proposed Subpart H (Definitions and Miscellaneous Provisions) to eliminate unnecessary repetition. Current Section 541.305 entitled "Discretion and judgment" and current Section 541.309 entitled "20-percent nonexempt work limitation" have been deleted from the proposed regulations for the same reasons similar changes are being proposed in the executive and administrative exemptions as discussed above.

Subpart E, Computer Employees Exemption, §§ 541.400 - .403

The exemption for employees in computer occupations has a unique legislative and regulatory history. Prior to 1991, the interpretative regulations acknowledged that employees in various computer-related occupations could have supervisory or managerial duties meeting the exemption for "executive" or "administrative" employees, provided that all the applicable regulatory tests were otherwise met. However, the regulations did not recognize computer employees as exempt "learned" professionals absent a showing that specialized, prolonged academic education and training was an essential prerequisite for entry into the computer field. At the time, colleges and universities did not consistently recognize computer sciences as a bona fide academic discipline under which standard licensing, certification, or registration procedures were being followed. Thus, before 1990, employees in computer occupations were rarely recognized as exempt "learned" professionals and many also did not perform duties meeting all the requirements for the executive or administrative exemptions. Of course, much has changed since then, and today "computer scientists" who possess advanced academic degrees in the computer field are routinely recognized as exempt professionals.

In November 1990, Congress enacted legislation directing the Department to issue regulations permitting computer systems analysts, computer programmers, software engineers, and other similarly-skilled professional workers to qualify for exemption under FLSA Section 13(a)(1). This enactment also extended the exemption to employees in such computer occupations if paid on an hourly basis at a rate at least 6 _ times the minimum wage. Final implementing regulations were issued in 1992 following public notice and comment procedures (see 29 CFR §§ 541.3(a)(4) and 541.303; 57 FR 46744, Oct. 9, 1992; 57 FR 47163, Oct. 14, 1992). However, when Congress increased the minimum wage in 1996, that law included some of the Department's regulatory language as a separate statutory exemption under a new FLSA Section 13(a)(17). The 1996 enactment also froze the hourly compensation test at $27.63 (which equaled 6 _ times the former $4.25 minimum wage). The original 1990 statute was not affected by the 1996 enactment.

Accordingly, under the current regulations, an exempt computer employee must have a primary duty of performing work requiring theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, or software engineering. In addition, an exempt computer employee must be engaged in performing these activities as a computer systems analyst, computer

programmer, software engineer, or other similarly-skilled worker in the computer software field. Finally, under the current regulations, an exempt computer employee must consistently exercise discretion and judgment, and be paid not less than $250 per week on a salary basis or not less than $27.63 an hour if paid an hourly rate.

The proposed regulations would consolidate and condense all of the regulatory guidance on the computer occupations exemption into a new regulatory Subpart E by combining provisions of the current regulations found at Sections 541.3(a)(4), 541.205(c)(7), and 541.303. This new subpart will collect in one place the substance of the original 1990 enactment, the 1992 final regulations, and the 1996 enactment. The key regulatory language that resulted from the 1990 enactment is now substantially codified in Section 13(a)(17) of the Act, and thus no substantive changes have been made to that language. However, consistent with changes in the professional exemption, the proposal deletes the additional requirement that an exempt computer employee must consistently exercise discretion and judgment. Further, the former regulatory text has been edited and streamlined to provide a more concise presentation, and the structure has been modified to conform to similar changes proposed in the professional exemption. Because of the tremendously rapid pace of significant changes occurring in the information technology industry, we have avoided citing specific job titles as examples of exempt workers, as they tend to quickly become outdated once included in the regulatory text. The Department recognizes that the computer employee exemption has been particularly confusing, and invites comments on any further clarifications possible under the statute.

Subpart F, Outside Sales Employees, §§ 541.500 - .504

Section 13(a)(1) of the FLSA contains a specific and separate exemption for any employee employed "in the capacity of outside salesman." Under the existing regulations, outside sales employees must be customarily and regularly engaged away from the employer's places of business making sales or obtaining orders or contracts for services or the use of facilities. ("Inside sales" employees are not within the scope of this statutory exemption for "outside sales" employees.) The regulatory interpretations examine whether any given employee's chief duty or primary function is to make sales or take orders while away from the employer's premises, by analyzing the character of the job as a whole, to distinguish exempt outside sales employees from other nonexempt occupations (e.g., route delivery personnel).

Under the current regulations, outside sales employees also may not exceed a 20 percent tolerance, per work week, performing duties unrelated to their own outside sales or solicitations. Activities that are incidental to, and in conjunction with, their own outside sales or solicitations, including incidental deliveries and collections, are not counted against the 20 percent nonexempt work limitation. The 20 percent limit is based not upon the employee's own hours of work performed, but upon the hours worked by other nonexempt employees of the employer who perform the kind of nonexempt work performed by the outside sales employee. If no one else performs such nonexempt work, the base applied is 40 hours, and the amount of nonexempt work allowed is eight hours per week. There is no salary or fee requirement for the outside sales employee exemption.

In keeping with similar proposed changes to the other exemptions in this part, and to simplify the outside sales exemption, the Department proposes to adopt a primary duty concept similar to the other exemptions, and to eliminate the particularly confusing 20 percent restriction on nonexempt work by outside sales employees. By eliminating this percentage limitation, the Department proposes to avoid any necessity that the employer track hours of outside sales employees. This will provide a consistent approach between this exemption and the exemptions for executive, administrative and professional employees. The essential elements required for exemption would continue, *i.e.*, the outside sales employee's primary duty must be to make sales or obtain orders or contracts for services or the use of facilities, and the employee must be customarily and regularly engaged away from the employer's place of business performing such duty. Outdated illustrations and redundant examples have also been deleted from the regulations, but no substantive changes are intended by these deletions. Finally,

although the FLSA refers to the "outside *salesman*," we propose replacing this gender-specific term and refer instead to the "outside sales employee." The discussion of nonexempt work generally in current Section 541.506 has been incorporated into proposed new Section 541.701, and the discussion of outside sales trainees in current Section 541.508 has been incorporated into proposed new Section 541.704. As noted above and in connection with similar proposed changes to the executive, administrative and professional exemptions, the 20-percent limitation on nonexempt work in current Section 541.507 is proposed to be deleted.

Subpart G, Compensation Requirements, §§ 541.600 - .606

Salary Levels

Salary level tests have been included as part of the exemption criteria since the original regulations of 1938. Under the current rules, most executive, administrative and professional employees must earn a minimum salary level to qualify for the exemption.[14] Employees paid below the minimum salary level are not exempt, irrespective of their job duties and responsibilities. Employees paid a salary above the minimum level in the regulations may be exempt if they also meet the salary basis and job duties tests.

To qualify for exemption under the existing regulations, an employee currently must earn a minimum salary of $155 per week for the executive and administrative exemptions, and $170 per week for the professional exemption. Employees paid above these minimum salary levels must meet a "long" duties test to qualify for the exemption. The current regulations also provide that employees paid above a higher (or "upset") salary rate of $250 per week are exempt if they meet a "short" duties test. As explained above, the short tests contain fewer requirements and are less burdensome to meet.[15]

The most recent updates to these minimum salary levels were in 1975. In January 1981, revisions to increase the salary rates by the outgoing Carter Administration were stayed indefinitely by the incoming Reagan Administration. Because the salary levels have not been increased since 1975, the existing salary levels are outdated and no longer useful in distinguishing between exempt and nonexempt employees.

Proposed Standard Test. Under the proposal, the minimum salary level to qualify for exemption from the FLSA minimum wage and overtime requirements as an executive, administrative, or professional employee would be increased from $155 per week to *$425 per week*. This salary level would be referred to as the "standard test," thus eliminating the "short test" and "long test" terminology. The separate, higher salary level test for professional employees also would be eliminated.

Most stakeholders agreed that the salary levels need to be increased. A full-time minimum wage worker earns $206 per week ($5.15/hour x 40 hours) – an amount above the current long test levels and closely approaching the current short test level. As a result, under the current regulations, no full-time salaried worker is automatically exempt by earning below the long test level, and most salaried employees are tested for exemption under the short tests. Salary level was once viewed as being the best indicator of exempt status. Today, the existing salary level tests are of no help in distinguishing exempt employees from non-exempt workers. Accordingly, the question is not whether the Department should raise the salary levels, but by how much.

One suggestion for increasing the current salary levels is to adjust the existing rates, adopted in 1975, to account for inflation. The 1999 General Accounting Office report adjusted the 1975 salary levels for inflation based on 1998 BLS Consumer Price Index (CPI) data, resulting in the following salary

[14] There is no salary level test for outside sales employees and some professional employees (teachers, doctors, lawyers). Such employees are exempt regardless of their salary.

[15] Also, in 1996, Congress amended the FLSA to exempt certain *hourly-paid* computer professionals paid at least $27.63 per hour ($57,470 per year, assuming 40 hours per week).

levels: $470/week for the executive and administrative long test; $515/week for the professional long tests; and $757/week for the short test.[16] In January 2001, the Department published a report that applied 1999 CPI data to inflation adjust the current salary levels to $480/week for the long test and $774/week for the short test.[17]

However, several considerations weigh against mechanically adjusting the 1975 salary levels for inflation. First, the Department is proposing a different, standard duties test. Consequently, equivalency to either the current long and short test salary levels is not appropriate. Second, although adjusting the existing rates for inflation might provide the simplest, mechanical approach, the Department is concerned about the impact such adjusted salary levels would have on certain segments of industry and geographic areas of the country, particularly in the retail industry and in rural areas in the South, which tend to pay lower salaries. Third, mechanically adjusting for inflation presumes that the salary levels set in 1975 are precisely the appropriate baseline; and that the nature of work and the relationship between job duties and compensation practices have not changed in the intervening years since 1975. Fourth, the regulatory history has looked to information on actual salaries and incomes, not inflation-adjusted amounts. The 1949 Weiss Report, for example, considered and rejected proposals to increase salary levels based upon the change in the cost of living from the 1940 levels.[18]

Because of these concerns, the Department believes it would be more appropriate to examine available data on actual salary levels currently being paid in the economy. We reviewed a preliminary report on actual salary levels based on the BLS year 2000 Current Population Survey (CPS) Outgoing Rotations data set. This data included full-time, salaried workers aged 16 and above, but excluded the self-employed, agricultural workers, volunteers and federal employees (who are all not subject to the salary level tests in the Part 541 regulations), broken out by industry and geographic area.

In considering this data and various salary levels in the development of this proposal, the Department was guided by the prescient analysis of a 1958 Department of Labor report recommending changes to the salary levels:

> The salary tests have thus been set for the country as a whole . . . with appropriate consideration given to the fact that the same salary cannot operate with equal effect as a test in high-wage and low-wage industries and regions, and in metropolitan and rural areas, in an economy as complex and diversified as that of the United States. Despite the variation in effect, however, it is clear that the objectives of the salary tests will be accomplished if the levels selected are set at points near the lower end of the current range of salaries for each of the categories. Such levels will assist in demarcating the "bona fide" executive, administrative and professional employees without disqualifying any substantial number of such employees.
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> It is my conclusion, from all the evidence, that the lower portion of the range of prevailing salaries will be most nearly approximated if the tests are set at about the levels at which no more than about 10 percent of those in the lowest-range region, or in the smallest size establishment group, or in the smallest-sized city group, or in the

[16] *Fair Labor Standards Act: White Collar Exemptions in the Modern Work Place,* GAO/HEHS-99-164, September 30, 1999.

[17] *The "New Economy" and Its Impact on Executive, Administrative and Professional Exemptions to the Fair Labor Standards Act (FLSA),* January 2001, pp. 71-73.

[18] "Actual data showing the increases in the prevailing minimum salary levels of bona fide executive, administrative and professional employees since October 1940 would be the best evidence of the appropriate salary increases for the revised regulations. * * * The change in the cost of living which was urged by several witnesses as a basis for determining the appropriate levels is, in my opinion, not a measure of the rise in prevailing minimum salary levels." Weiss Report, p. 12.

> lowest-wage industry of each of the categories would fail to meet the tests. Although this may result in loss of exemption for a few employees who might otherwise qualify for exemption, . . . in the light of the objectives discussed above, this is a reasonable exercise of the Administrator's authority to "delimit" as well as define.[19]

As in the 1958 analysis, the Department looked to "points near the lower end of the current range of salaries" to determine an appropriate salary level for the standard test – although we settled upon on the lowest 20 percent, rather than the lowest 10 percent, because of the proposed change from the "short" and "long" test structure in the proposed rule and because the data included some salaried employees who would not meet the duties tests for exemption. Applying this analysis, and also considering adjustments to the current salary levels for inflation, the Department proposes a standard salary level test of $425/week. Under this level, approximately the bottom 20 percent of salaried employees would fall below the minimum salary requirement and be automatically entitled to overtime pay.

Proposed special rule for highly compensated employees. The proposed regulations also include in Section 541.601 a special, streamlined rule for employees paid $65,000 or more annually. Under this proposed rule for highly compensated employees, employees paid $65,000 or more annually and performing non-manual work would be exempt if they have an identifiable executive, administrative or professional function as described in the standard duties tests. These highly compensated employees would not have to meet all the elements of the standard duties test to qualify for the exemption as a highly compensated employee. For example, an employee who supervises two workers but does not participate in any hiring or termination decisions in the company would still be exempt because the employee has a function that is identifiable as an executive function. In addition, the proposed special rule for highly compensated employees would permit counting base salary, commissions, non-discretionary bonuses and other non-discretionary compensation in determining whether an employee earns $65,000 or more annually. To qualify as a highly compensated employee under the proposed regulation, any commissions or non-discretionary bonuses would have to be settled and paid out to the employee as due on at least a monthly basis. An employee who works only a portion of a year, whether because the employee begins work during the year or leaves before the end of the year, must be guaranteed a pro rata portion of the $65,000 annual guarantee. The pro rata portion should be based upon the number of weeks the employee works in such a position. If an employee's total annual compensation does not total at least the guaranteed $65,000 by the end of the year, the proposed regulation would allow the employer to make a payment by the next pay period sufficient to bring the employee to the guaranteed level. The employer is not required to make this payment; however, if the employer elects not to make the one-time payment, the employee is not exempt as a highly compensated employee.[20]

To determine an appropriate salary level for highly compensated employees, the Department looked to points near the higher end of the current range of salaries and found that the top 20 percent of all salaried employees earned above $65,000 annually. This level is consistent with setting the proposed standard test salary level at the bottom 20 percent of salaried employees.

Puerto Rico, Virgin Islands and American Samoa. Prior to the Fair Labor Standards Amendments of 1989 (Pub. Law 101-157), Puerto Rico, the Virgin Islands, and American Samoa were subject to wage order proceedings under the Act, in lieu of the FLSA minimum wage, and consequently lower salary

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[19] *Report and Recommendations on Proposed Revision of Regulations, Part 541 under the Fair Labor Standards Act,* March 3, 1958, by Harry S. Kantor, Assistant Administrator, Presiding Officer.

[20] Of course, if all of the requirements in either the executive, administrative or professional employee tests established in §§ 541.100, 541.200 or 541.300 are satisfied, the employer still would be able to claim the appropriate exemption.

test levels traditionally were established for employees in these jurisdictions. The 1989 Amendments removed Puerto Rico and the Virgin Islands from the Act's wage order proceedings, and provided that the U.S. mainland minimum hourly wage rates under section 6(a)(1) of the Act would apply in Puerto Rico and the Virgin Islands. For this reason, the proposed regulations would apply the mainland salary test level of $425 per week in Puerto Rico and the Virgin Islands. Employees in American Samoa remain subject to wage order proceedings under the Act. Consequently, the proposed regulations would apply a special, lower salary test level of $360 per week for executive, administrative and professional employees in American Samoa. This special salary level maintains approximately the same ratio to the mainland test in the current regulations (84% for executive and administrative workers). Similarly, the proposal would apply a special test for highly compensated employees in American Samoa of $55,000 annually. Comments are invited on whether the 84 percent ratio is appropriate.

Comments on salary levels. The Department invites comments on these proposed salary levels and on any alternative salary level amounts or methodologies for determining the appropriate salary level. In addition, the Department invites comments on the alternative of removing the salary tests from the regulations entirely and on how the regulations could be structured without the need for any specific salary amounts (relying only on duties tests, for example). The Department also invites comments on the alternative of adopting a "salary only" test for highly compensated employees. Under such an alternative, for example, employees performing non-manual or office work and earning a total annual compensation over a certain amount would automatically be considered exempt, without any reference to the employee's duties.

Salary Basis Test

Under the current regulations, to qualify for the executive, administrative or professional exemption, an employee must be paid on a "salary basis" as defined in Section 541.118. The employee must regularly receive a predetermined amount of salary, on a weekly or less frequent basis, that "is not subject to reduction because of variations in the quality or quantity of the work performed." Thus, with a few exceptions described below, the employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked.

The salary basis test prohibits an employer from making deductions from the salary "for absences occasioned by the employer or by the operating requirements of the business." In other words, "if the employee is ready, willing, and able to work, deductions may not be made for time when work is not available." However, the employee does not have to be paid for any work week in which he or she performs no work.

The current salary basis test also prohibits deductions from pay for disciplinary problems, performance issues or for absences caused by jury duty, attendance as a witness, or temporary military leave (although employers may take offsets for jury or military pay) in any week in which an employee performs any work.

The current regulations contain several exceptions to these salary basis rules: An employer may make deductions from the guaranteed pay "when the employee absents himself from work for a day or more for personal reasons, other than sickness or accident." Deductions also are permitted for absences of a day or more due to sickness or disability, if taken in accordance with a bona fide plan, policy or law (workers compensation, for example) providing wage replacement benefits. Employers also may make deductions from an exempt employee's salary for any hours not worked in the initial and final weeks of employment or for hours taken as unpaid FMLA leave without affecting the exempt status of the employee. Finally, less than full week deductions from pay are permitted for violations of major safety rules.

Under the current rules, an employer can lose the exemption for an entire class of employees for making improper deductions from guaranteed pay, even for highly paid employees. Depending on the

facts, improper deductions can "indicate that there was no intention to pay the employee on a salary basis. In such a case, the exemption would not be applicable to him during the entire period when such deductions were being made." For inadvertent mistakes, however, the regulations provide employers with a "window of correction." If the facts demonstrate that the prohibited deduction from guaranteed pay was inadvertent, the exemption is not lost if the employer reimburses the employee for such deductions and promises to comply in the future.

In developing options for its proposed rule, the Department considered whether to eliminate the salary basis test. We carefully weighed the need for the salary basis test and concluded that the underlying concept of the test – guaranteed pay, not subject to reduction because of variations in the quality or quantity of the work performed – should be retained. The nearly universal practice of paying employees with the requisite status to be bona fide executive, administrative, or professional employees on a salary basis, as the 1949 hearings on the exemption revealed, reflected the understanding that such employees have discretion to manage their time and are not answerable for the number of hours worked or the number of tasks performed. Such employees are not paid by the hour or task, but for the general value of services performed. The salary basis test also describes the *quid pro quo* enjoyed by exempt employees, which distinguishes them from non-exempt workers. Exempt employees are not paid overtime for working over 40 hours in a week. In exchange, the employer must provide a guaranteed salary that cannot be reduced when an employee works less than 40 hours.

The Department also considered amending the salary basis test to permit deductions from pay for cases in which an exempt employee chooses to be absent for a part of a day. But allowing such "pay docking" for partial-day absences would breach the *quid pro quo* and blur the line between exempt and non-exempt employees. An exempt manager, for example, does not receive extra pay for working 16 hours on a Thursday to complete a project; thus, as a matter of fundamental fairness, an employer should not be allowed to dock the employee's salary for leaving work early on Friday. Of course, an employer can terminate an employee who abuses this salary arrangement.

Although the proposed rule retains the salary basis test and its concept of guaranteed pay in proposed Section 541.602, two significant updates are included in the proposal:

Disciplinary Deductions. The proposed regulations would allow an exception to the no pay-docking rule for deductions from pay for full-day *disciplinary* suspensions. For example, an employer would be permitted to suspend an exempt employee without pay for reasons such as sexual harassment or workplace violence. The current regulations permit such deductions only for penalties imposed for infractions of safety rules of major significance and for unpaid suspensions for one or more full work weeks (i.e., Monday to Friday). The proposed change would allow employers to suspend exempt employees without pay for discriminatory harassment for two days, four days or ten days, as appropriate to respond to the misconduct. The Department believes this is a common-sense change that will permit employers to uniformly hold exempt employees to the same standards of conduct as that required of nonexempt, hourly workers.

Safe Harbor Provision. Under the current regulations, an employer who makes improper deductions from pay can lose the exemption for an entire class of employees. However, as mentioned above, the current rules also include a "window of correction" provision at Section 541.118(a)(6) under which an employer who inadvertently makes impermissible deductions can, in some circumstances, retain the exemption by reimbursing employees for any improper deductions. Unfortunately, the "window of correction" has proved difficult for the Department to administer and has been the source of considerable litigation. The proposed rule, at Section 541.603, would clarify the circumstances and the extent to which an improper deduction causes an employee or groups of employees to become nonexempt. The proposed rule maintains the underlying purpose of the current rule that an employer does not lose the FLSA exemption because of isolated incidents of improper pay deductions. Under the proposal, the exemption would be lost only if there is a pattern and practice of improper deductions, and then only for employees in the same job classification and working for the same

manager who is responsible for the improper pay docking decision or policy. For example, if one manager at a single company facility routinely docks the pay of engineers for partial-day absences, then all engineers at that one facility whose pay could have been docked by that same manager are not exempt. Engineers at other facilities or working for other managers would remain exempt. Further, the proposed rule would create a new "safe harbor" provision: If an employer has a written policy prohibiting improper pay deductions, notifies employees of that policy and reimburses employees for any improper deductions, then that employer would not lose the exemption for any employees unless the employer's policy prohibiting improper deductions is repeatedly and willfully violated. The Department believes this approach would be much easier to apply uniformly and more consistent with the purposes of the FLSA.

Proposed Section 541.604 continues the guidance from current Section 541.118(b) on allowing payments of additional compensation besides the salary as not being inconsistent with the salary basis of payment, and on pay plans that compute an exempt employee's salary from daily or shift rates if accompanied by the minimum guarantee. The language has been clarified to add hourly compensation plans that include such guarantees, consistent with established enforcement practices, if a reasonable relationship exists between the guaranteed amount and an employee's usual earnings for a normal scheduled work week.

Proposed Section 541.605 contains updated guidance on the "fee basis" of payment permitted for administrative and professional employees, taken from current Sections 541.213 and 541.313. Proposed Section 541.606 provides guidance on payment of required salary amounts "exclusive of board, lodging or other facilities" or "free and clear," taken from Sections 541.117(c), 541.211(d), and 541.311(d) of the current regulations and expanded to cross-reference 29 CFR § 531.32 for more guidance on qualifying "other facilities" similar to board and lodging.

The former "upset salary" provisions that were part of the short tests for executive, administrative and professional employees have been deleted from this proposed rule (current §§ 541.119, 541.214, and 541.315).

Subpart H, Definitions and Miscellaneous Provisions, §§ 541.700 - .708

To eliminate unnecessary repetition, the proposed regulations would move definitions and other provisions applicable to several or all of the exemption categories to a new Subpart H, Definitions and Miscellaneous Provisions. The proposed Subpart H would define "primary duty" in proposed Section 541.700; "directly and closely related" in proposed Section 541.702; "exempt and nonexempt work" in proposed Section 541.701; and "office or non-manual work" in proposed Section 541.703. Subpart H would also contain provisions regarding trainees, emergencies and occasional tasks, combination exemptions, the motion picture producing industry, and employees of public agencies. Most of these provisions have been moved from the existing regulations without substantial change, although some changes have been made to simplify and update the current regulations. Current Section 541.602, containing guidance on the percentage limitations on performing nonexempt work for executive and administrative employees in multi-store retailing operations, is proposed to be deleted for the same reasons noted above for eliminating those former long duties test requirements from the executive and administrative exemptions.

IV. Executive Order 12866 and the Small Business Regulatory Enforcement Fairness Act

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that the proposed rule is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866. Based on a preliminary analysis of the data the rule could have an annual effect on the economy of $100 million or more. However, the proposed rule is not likely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

state, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

For similar reasons, the Department has concluded that this proposed rule also is a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.). Although it could result in an annual effect on the economy of $100 million or more, it is not likely to result in a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As a result, the Department has prepared a Preliminary Regulatory Impact Analysis (PRIA) in connection with this proposed rule as required under Section 6(a)(3) of the Order and the Office of Management and Budget has reviewed the rule. Copies of the complete PRIA may be obtained from the Department by contacting the Wage and Hour Division at the address and telephone number provided above. The results of the PRIA are summarized below.

Preliminary Regulatory Impact Analysis

Overview

The proposed changes in the rules for determining whether an employee is exempt as an executive, administrative, or professional (EAP) worker under the Fair Labor Standards Act (FLSA) will affect virtually all employers covered by the FLSA that employ workers within the scope of the exemptions in 29 CFR 541. Employers will be affected unless all of their employees are expressly excluded from FLSA coverage by the statute. Excluded from these regulations are the self-employed, agricultural workers, railroad workers, selected occupations in the transportation industries and in automobile dealerships, and most federal employees subject to separate rules administered by the U.S. Office of Personnel Management. However, 29 CFR 541 regulations apply to the following federal agencies: Library of Congress, U.S. Postal Service, Postal Rate Commission, and Tennessee Valley Authority (*see* 29 U.S.C. 204(f)).

Therefore, employers in all industrial sectors except agriculture, railroads, and private households are subject to the existing and proposed regulations. The regulations also apply to state and local governmental employees.

The PRIA indicates that there are 6.5 million establishments with 109.5 million employees, annual payrolls totaling $2.8 trillion, annual sales revenues of $17.9 trillion, and annual pre-tax profits of $769.5 billion in the industry sectors affected by the proposed rule. Corresponding data based on SBA's size standards for small business entities indicates that over 5.2 million of these establishments are considered to be small businesses. These small firms employ approximately 38.7 million workers with an annual payroll of $940.0 billion. Their total annual sales are estimated to be $5.7 trillion and their annual pre-tax profits are estimated to be $233.9 billion. Approximately 79.8 percent of the affected establishments are considered to be small businesses and they account for 38.8 percent of the employment, 33.7 percent of the payroll, 31.8 percent of the annual sales, and 30.4 percent of the annual pre-tax profits.

Over 87,400 state and local governmental entities will be affected by the proposed rule (3,043 county governments, 19,372 municipal governments, 16,629 township governments, 34,683 special district governments, and 13,726 school district governments). Nationwide, these entities receive more than $1.4 trillion in general revenues, including revenues from taxes, some categories of fees and charges, and intergovernmental transfers. Their direct expenditures exceed $1.6 trillion in the aggregate. State and local governments employ more than 4 million workers and their payrolls exceed $12.6 billion per month.

The following tables summarize the provisions of the current 29 CFR 541 and the proposed rule that were analyzed in the PRIA.

Table 1: Weekly Salary Levels in the Current and Proposed Rules

Current Rule		Proposed Rule	
Long Test	Executives: $155 Administrative: $155 Professionals: $170	Standard Test	$425
Short Test	$250	Highly Compensated	$1,250

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Table 2: The Current and Proposed Duties Tests for Executive Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	$155 per week	$250 per week	$425 per week
Duties	Primary duty of the management of the enterprise or a recognized department or subdivision. Customarily and regularly directs the work of two or more other employees. Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status of other employees is given particlar weight). Customarily and regularly exercises discretionary powers. Does not devote more than 20 percent (40 percent in retail or service establishments) of time to activities that are not directly and closely related to exempt work.	Primary duty of the management of the enterprise or a recognized department or subdivision. Customarily and regularly directs the work of two or more other employees.	Primary duty of the management of the enterprise or a recognized department or subdivision. Customarily and regularly directs the work of two or more other employees. Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status of other employees is given particlar weight).

Table 3: The Current and Proposed Duties Tests for Administrative Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	$155 per week	$250 per week	$425 per week
Duties	Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers. Customarily and regularly exercises discretion and independent judgment. Regularly and directly assists a proprietor, or exempt executive or administrative employee; o*r* performs specialized or technical work requiring special knowledge under only general supervision; *or* executes special assignments under only general supervision. Does not devote more than 20 percent (40 percent in retail or service establishments) of time to activities that are not directly and closely related to exempt work.	Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers. Customarily and regularly exercises discretion and independent judgment.	Primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers. Holds a "position of responsibility" with the employer, defined as either (1) performing work of substantial importance or (2) performing work requiring a high level of skill or training.

Table 4: The Current and Proposed Duties Tests for Learned Professional Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	$170 per week	$250 per week	$425 per week
Duties	Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. Consistently exercises discretion and judgment. Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time. Does not devote more than 20 percent of time to activities that are not an essential part of and necessarily incident to exempt work.	Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. Consistently exercises discretion and judgment.	Primary duty of performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience.

Table 5: The Current and Proposed Duties Tests for Creative Professional Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	$170 per week	$250 per week	$425 per week
Duties	Primary duty of performing work that is original and creative in character in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination, or talent of the employee. Consistently exercises discretion and judgment. Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time. Does not devote more than 20 percent of time to activities that are not directly and closely related to exempt work.	Performs work requiring invention, imagination, or talent in a recognized field of artistic endeavor.	Primary duty of performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Table 6: The Current and Proposed Duties Tests for Computer Employees

	Current Long Test	Current Short Test	Section 13(a)(17) Test	Proposed Standard Test
Salary	$170 per week	$250 per week	$27.63 an hour	$425 per week *or* $27.63 an hour
Duties	Primary duty of performing work requiring theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering. Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field. Consistently exercises discretion and judgment. Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time. Does not devote more than 20 percent of time to activities that are not directly and closely related to exempt work.	Primary duty of performing work requiring theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering. Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field. Consistently exercises discretion and judgment.	Primary duty of (A) application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional applications; *or* (B) design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; *or* (C) design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (D) a combination of duties described in (A), (B) and (C), the performance of which requires the same level of skills. Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.	Primary duty of (A) application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional applications; *or* (B) design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; *or* (C) design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (D) a combination of duties described in (A), (B) and (C), the performance of which requires the same level of skills. Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.

Table 7: The Current and Proposed Duties Tests for Outside Sales Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	None required.	None required.	None required.
Duties	Employed for the purpose of and customarily and regularly engaged away from the employer's place of business in making sales; *or* in obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer. Does not devote more than 20 percent of the hours worked by nonexempt employees of the employer to activities that are not incidental to and in conjunction with the employee's own outside sales or solicitations.	No separate "short" test.	Primary duty of making sales; *or* of obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer. Customarily and regularly engaged away from the employer's place or places of business.

Methodology for Estimating Costs

The principal database used in the PRIA is the 2001 Current Population Survey (CPS). A complete description of the methodology used for determining the employees who are potentially exempt and nonexempt from the overtime requirements of the current and proposed rule is contained in the PRIA available by contacting the Wage and Hour Division at the address and telephone number provided above.

The economic impact of the proposed rule includes two components: one-time implementation costs; and recurring incremental payroll costs incurred by employers for those employees presently treated as exempt from overtime under the current rule, who become nonexempt.

The implementation costs contain two parts. The first part includes the amount of time employers would take to: (1) read and understand the proposed rule; (2) update and formulate their overtime policies; (3) notify employees of any changes; and (4) all other time taken to implement the proposed rule. The second part of the implementation costs is the amount of time employers would take to review their job categories to determine (1) whether or not a particular job category is exempt or nonexempt under the proposed rule, and (2) how to adjust to the new salary levels and duties tests. To estimate the implementation costs of the proposed rule, the department contacted six human resource specialists from around the country to obtain information on the amount of time small and large businesses would take for each of these activities. High and low estimates of the implementation costs were estimated by varying the amount of time taken to review job categories and other time taken to implement the proposed rule.

The second component of the economic impact of the proposed rule is the recurring incremental payroll costs incurred by employers for those employees presently treated as exempt from overtime under the current rule, who become nonexempt as a result of raising the salary levels and revising the duties tests.

Affected employers would have four choices concerning potential payroll costs: (1) adhering to a 40 hour work week; (2) paying statutory overtime premiums for affected workers' hours worked beyond 40 per week; (3) raising employees' salaries to levels required for exempt status by the proposed rule; or (4) converting salaried employees' basis of pay to an hourly rate (no less than the federal minimum wage) that results in virtually no (or only a minimal) changes to the total compensation paid to those workers. Employers could also change the duties of currently exempt and nonexempt workers to comply with the proposed rule.

For the second choice above, paying overtime premium pay, employers typically have two options, with differing cost implications, for meeting their statutory overtime obligations. For example, assume an employer paid an employee a fixed salary of $400 per week with no overtime premium pay, for which the employee worked 45 hours per week, and the employer must now begin to pay this employee overtime pay. As one option, the employer could assume that the former weekly salary of $400 represents compensation for a standard 40-hour workweek, and pay this employee in the future time-and-one-half the $10 hourly rate for any overtime hours worked beyond 40 per week. For a 45-hour workweek, total compensation due, including overtime, would equal $475 ((40 hours x $10/hour) + (5 hours x $15/hour) = $475), compared to $400 formerly. As a second option, the employer could pay the fixed salary of $400 per week as total straight time pay for all hours worked in the week (provided it equals or exceeds the federal minimum wage), and pay additional "half-time" for each hour worked beyond 40 in the week. This method of payment is known as a "fixed salary for fluctuating hours" (see 29 CFR §778.114). For a 45-hour workweek, total compensation due under this method, including overtime, would equal $422.22 ($400 + (($400 ÷ 45) x _ x 5) = $422.22).

The third choice above is straightforward – an employer could simply raise the salary level for currently exempt salaried workers earning less than $22,100 to at least the new proposed salary level or more and have them remain exempt salaried workers.

Nothing in the FLSA would prohibit an employer affected by the proposed rule, or under the current rule, from implementing the fourth choice above that results in virtually no (or only a minimal) increase in labor costs. For example, to pay an hourly rate and time and one-half that rate for 5 hours of overtime in a 45-hour workweek and incur approximately the same total costs as the former $400 weekly salary, the regular hourly rate would compute to $8.421 ((40 hours x $8.421) + (5 hours x (1.5 x $8.421)) = $399.99).

Most employers affected by the proposed rule would be expected to choose the most cost-effective compensation adjustment method that maintains the stability of their work force, pay structure, and output levels. Given the range of options available to an employer confronted with paying overtime to employees previously treated as exempt, the actual payroll cost impact for individual employers could range from near zero to up to the maximum cost impacts estimated in the Department's PRIA. However, for the PRIA it is was assumed that, for any nonexempt employee who satisfies the pertinent duties test, the employer will choose to pay the smaller of either the additional weekly salary required to qualify the employee for exemption or the usual weekly overtime payment for the employee. Thus, the Department's assessment of costs of the proposed rule reflects a range of upper bound estimates. Actual payroll costs would be expected to be lower than the estimates summarized below and presented in the PRIA because of the payroll adjustment option employers have that could offset the impact of the proposed rule. Moreover, some of the cost is likely to be passed on to consumers in the form of higher prices, some of the cost is likely to be passed on to business owners and shareholders in the form of lower profits, and some of the cost is likely to be passed on to workers in the form of fewer overtime hours.

Finally, estimated costs are presented as ranges because data limitations prevent the Department from identifying exactly which workers are exempt and nonexempt based on the current and proposed duties tests. The estimates were determined using previous Department and U.S. General Accounting Office methodology and the latest data from the Bureau of Labor Statistics, the Census Bureau, and Dunn and Bradstreet. The ranges result from estimating a minimum and maximum number of workers that are likely to change from exempt to nonexempt employees. To estimate the recurring payroll costs of the proposed rule, it was necessary to apply some assumptions to the PRIA data to identify which employees are exempt and nonexempt under the current and proposed rules. Specifically, the Department assumed that for employees in occupations with a combination of exempt and nonexempt duties those with lower salaries would more likely be non-exempt. The Department also assumed that six years or more of work experience would be considered equivalent to a bachelor's degree for the learned professional exemption. For each occupational category with a combination of exempt and nonexempt duties a lower bound and an upper bound estimate of the number of employees who are exempt has been calculated. Finally, it was assumed that for each executive, administrative, or professional employee who becomes nonexempt, the likely incremental payroll cost is the smaller of the additional weekly salary required to qualify for exemption or the usual weekly overtime payment required to be paid to that worker.

Methodology for Estimating Benefits

The benefit estimates are lower bound estimates based on PRIA data and a Minimum Wage Study Commission report that estimated overtime violation rates by industry. The Department applied these rates to the overtime hours worked by salaried employees in the PRIA data, and then reduced these estimates by two-thirds to account for other types of overtime violations (off-the-clock-work, straight time for all hours) that occur in addition to violations of the "white collar" exemptions. The Department's high and low benefit estimates result from different assumptions on the lower costs associated with determining the exempt status of employees including conducting expensive time-and-motion studies and lower litigation costs, as well as the updated window of correction and safe harbor

provisions in the proposed rule. The benefit estimates summarized below are lower bound estimates because they exclude significant, but difficult to quantify, benefits such as avoidance of the following additional costs which could be incurred by an employer who has misclassified employees as exempt: (1) the second and third years of overtime back pay allowed under the FLSA; (2) an amount equal to the back pay as liquidated damages; and (3) litigation costs, including attorney's fees. The benefit estimates also exclude the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced Department of Labor investigations and private litigation.

Three assumptions were applied to the PRIA data to estimate the benefits of the proposed rule; the Department requests comments on these and all assumptions used for the impact analysis. First, the overtime violation rates published by the Minimum Wage Study Commission in 1980 were assumed to apply today. Second, the Commission's overtime violation rates were reduced to account for other types of overtime violations (off-the-clock-work, straight time for all hours) that occur in addition to violations of the "white collar" exemptions. Finally, the Department's range of benefit estimates result from different assumptions on the impact of the updated window-of-correction and safe harbor provisions n the proposed rule. The Department welcomes comments and estimates from the public on the amount of benefits associated with these provisions and other significant, but difficult to quantify, benefits such as the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced investigations and litigation.

Total Costs and Benefits

The upper bound total cost estimate for the proposed rule ranges from $870.3 million to $1,575.5 million. This includes one-time implementation costs ranging from $535.4 million to $680.0 million and recurring payroll costs ranging from $334.8 million to $895.5 million. The lower bound total benefit estimate for the proposed rule ranges from $1,109.8 million to $1,972.7 million.

Private Sector Costs and Benefits

The upper bound private sector cost estimate for the proposed rule ranges from $849.2 million to $1,531.9 million. This includes one-time implementation costs ranging from $521.4 million to $660.3 million and recurring payroll costs ranging from $327.8 million to $871.6 million. The total private sector costs as a percentage of total payroll range from 0.03 percent to 0.05 percent for all industries, and from 0.11 percent to 0.21 percent of total pre-tax profits for all industries.

The lower bound private sector benefit estimate for the proposed rule ranges from $1,061.3 million to $1,886.5 million. These estimates include the impact of updating the window of correction and safe harbor provisions in the proposed rule but do not include significant, but difficult to quantify, benefits such as the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced investigations and litigation.

The largest total costs are incurred by the Health Services industry ($85.3 million to $163.4 million), Construction ($71.2 million to $119.1 million), Business Services ($54.1 million to $86.4 million), Personal Services ($38.1 million to $83.8 million), and Real Estate ($32.2 million to $71.4 million). The ten industries with the highest costs account for over 50.4 percent of the total private sector costs.

Although the benefits of the proposed rule exceed the costs at the total level and for many of the major industry levels, there are some industries where the costs exceed the benefits (see Table 8). This result arises for three reasons. First, the costs are upper bound estimates and the benefits are lower bound estimates (see Methodology section above). The true net benefit for most industries could very well be positive. Second, a large increase in the salary levels raises the potential costs of the proposed rule. Finally, the industries most likely to bear the cost of the proposed rule are not necessarily the industries most likely to receive the benefits. Most of the benefits come from the reduction in the

potential legal liability from unintentionally misclassifying fairly high paid salaried workers working more than 40 hours per week in occupations with exempt and nonexempt duties, while most of the costs come from increasing the salary level tests for relatively low paid salaried workers. The PRIA data suggest that the number of workers in these two groups is often not equal at a detailed industry level. For example, because of the historical pattern of compensation levels in the Personal Services and Automotive Repair, Services, and Parking industries one would expect to find far more relatively low paid salaried workers affected by the proposed salary level tests than relatively high paid salaried workers unintentionally misclassified.

The largest total costs as a percentage of payroll are incurred by the Educational Services industry (0.37 percent to 0.98 percent), Agricultural Services (0.22 percent to 0.53 percent), Personal Services (0.21 percent to 0.46 percent), Automotive Repair, Services, and Parking (0.13 percent to 0.29 percent), and Transportation by Air (0.11 percent to 0.22 percent).

The largest recurring payroll costs as a percentage of pre-tax profits are incurred by the Educational Services industry (1.95 percent to 5.22 percent), Personal Services (1.38 percent to 3.03 percent), Automotive Repair, Services, and Parking (0.84 percent to 1.81 percent), Agricultural Services (0.54 percent to 1.26 percent), and Transportation by Air (0.54 percent to 1.07 percent).

Table 8: Summary of Costs and Benefits for Industry Sectors Affected by the Proposed Rule

SIC	Industry Description	Low Implementation Costs	High Implementation Costs	Low Payroll Costs	High Payroll Costs	Low Total Costs	High Total Costs	Low Benefits	High Benefits	Low Difference	High Difference
07	Agricultural Services (4)	$2,895	$4,020	$14,833	$37,529	$17,729	$41,549	$2,032	$3,612	-$15,697	-$37,937
08	Forestry (4)	$83	$113	$27	$58	$110	$171	$346	$614	$235	$444
09	Fishing, Hunting, & Trapping (4)	$63	$88	$121	$381	$184	$469	$195	$346	$11	-$123
	Agriculture Subtotal	$3,042	$4,221	$14,981	$37,968	$18,023	$42,188	$2,572	$4,573	-$15,451	-$37,616
10	Metal mining	$121	$146	$0	$0	$121	$146	$185	$328	$64	$182
12	Coal mining	$239	$293	$119	$346	$358	$639	$647	$1,150	$289	$511
13	Oil & gas extraction	$1,431	$1,820	$856	$1,882	$2,287	$3,701	$4,525	$8,044	$2,238	$4,342
14	Nonmetallic minerals, except fuels	$475	$602	$8	$13	$483	$615	$520	$924	$37	$309
	Mining Subtotal	$2,266	$2,860	$984	$2,242	$3,250	$5,102	$5,877	$10,447	$2,627	$5,345
15-17	Construction	$48,090	$64,024	$23,096	$55,046	$71,186	$119,070	$33,486	$59,524	-$37,700	-$59,545
20	Food & kindred products	$5,587	$6,577	$1,767	$3,793	$7,354	$10,370	$3,654	$6,495	-$3,700	-$3,875
21	Tobacco products	$87	$100	$83	$197	$169	$297	$110	$195	-$60	-$102
22	Textile mill products	$1,855	$2,176	$488	$1,192	$2,343	$3,368	$538	$956	-$1,806	-$2,412
23	Apparel & other textile products	$4,367	$5,212	$960	$1,896	$5,327	$7,108	$790	$1,405	-$4,537	-$5,703
24	Lumber & wood products	$5,746	$6,917	$804	$2,103	$6,550	$9,021	$922	$1,639	-$5,628	-$7,382
25	Furniture & fixtures	$2,454	$2,918	$371	$1,068	$2,824	$3,986	$727	$1,292	-$2,098	-$2,694
26	Paper & allied products	$2,034	$2,383	$826	$1,754	$2,860	$4,137	$1,484	$2,638	-$1,376	-$1,500
27	Printing & publishing	$10,260	$12,319	$3,607	$16,921	$13,867	$29,240	$3,554	$6,318	-$10,313	-$22,922
28	Chemicals & allied products	$3,118	$3,678	$2,969	$11,299	$6,087	$14,977	$5,892	$10,473	-$196	-$4,504
29	Petroleum & coal products	$481	$569	$910	$1,637	$1,390	$2,206	$776	$1,380	-$614	-$826
30	Rubber & miscellaneous plastics products	$4,040	$4,775	$819	$2,313	$4,860	$7,088	$1,586	$2,820	-$3,274	-$4,268
31	Leather & leather products	$373	$443	$179	$459	$552	$902	$261	$465	-$291	-$437
32	Stone, clay, & glass products	$2,915	$3,487	$642	$1,616	$3,558	$5,104	$998	$1,774	-$2,560	-$3,329
33	Primary metal industries	$2,125	$2,485	$1,078	$3,017	$3,203	$5,501	$1,596	$2,837	-$1,607	-$2,664
34	Fabricated metal products	$7,498	$8,927	$1,993	$4,837	$9,491	$13,764	$1,942	$3,452	-$7,549	-$10,311
35	Industrial machinery & equipment	$10,509	$12,543	$2,778	$6,887	$13,287	$19,430	$7,515	$13,359	-$5,772	-$6,071

SIC	Industry Description	Low Implementation Costs	High Implementation Costs	Low Payroll Costs	High Payroll Costs	Low Total Costs	High Total Costs	Low Benefits	High Benefits	Low Difference	High Difference
36	Electronic & other electric equipment	$5,180	$6,076	$3,768	$8,860	$8,948	$14,936	$6,759	$12,014	-$2,189	-$2,922
37	Transportation equipment	$4,689	$5,469	$5,207	$11,883	$9,896	$17,352	$5,352	$9,513	-$4,545	-$7,839
38	Instruments & related products	$3,032	$3,573	$1,911	$4,940	$4,943	$8,512	$3,057	$5,435	-$1,885	-$3,078
39	Misc. manufacturing industries	$2,886	$3,470	$1,281	$3,727	$4,167	$7,196	$1,220	$2,169	-$2,947	-$5,027
	Manufacturing Subtotal	$79,235	$94,095	$32,442	$90,399	$111,678	$184,494	$48,733	$86,628	-$62,944	-$97,866
40	Railroad Transportation (5)	nc	nc	$528	$1,890	$528	$1,890	$1,510	$2,684	$982	$793
41	Local & interurban passenger transportation	$1,500	$1,881	$1,216	$2,652	$2,716	$4,533	$861	$1,531	-$1,854	-$3,003
42	Motor freight transportation & warehousing	$8,873	$11,271	$3,415	$7,879	$12,288	$19,150	$7,722	$13,727	-$4,566	-$5,423
43	U.S. Postal Service (6)	$2,875	$3,610	$1,359	$5,147	$4,234	$8,757	$643	$1,143	-$3,591	-$7,614
44	Water transportation	$655	$827	$380	$1,255	$1,036	$2,082	$1,694	$3,010	$658	$928
45	Transportation by air (7)	$986	$1,225	$11,213	$22,633	$12,200	$23,858	$4,588	$8,155	-$7,612	-$15,703
46	Pipelines, except natural gas	$59	$74	$6	$14	$65	$89	$31	$54	-$35	-$34
47	Transportation services	$3,125	$4,014	$822	$2,407	$3,947	$6,421	$963	$1,712	-$2,984	-$4,710
48	Communications	$3,815	$4,740	$5,424	$13,690	$9,239	$18,430	$14,516	$25,804	$5,277	$7,374
49	Electric, gas, & sanitary services	$2,052	$2,537	$2,623	$7,136	$4,675	$9,673	$5,977	$10,625	$1,302	$952
	Trans., Comm., & Pub. Util. Subtotal	$23,940	$30,180	$26,460	$62,813	$50,400	$92,993	$36,994	$65,761	-$13,406	-$27,233
50	Wholesale trade - durable goods	$25,544	$32,579	$4,334	$10,296	$29,877	$42,875	$38,356	$68,182	$8,479	$25,307
51	Wholesale trade - nondurable goods	$14,764	$18,738	$4,538	$10,934	$19,302	$29,672	$31,512	$56,016	$12,210	$26,344
	Wholesale Subtotal	$40,308	$51,318	$8,871	$21,229	$49,179	$72,547	$69,868	$124,198	$20,689	$51,650
52	Building materials, hardware, garden supply, & mobile home dealers	$4,608	$5,874	$949	$2,380	$5,557	$8,254	$10,553	$18,758	$4,995	$10,504
53	General merchandise stores	$5,222	$6,352	$2,961	$7,041	$8,183	$13,393	$14,966	$26,604	$6,783	$13,210
54	Food stores	$13,060	$16,499	$6,487	$16,941	$19,547	$33,441	$19,519	$34,698	-$28	$1,257
55	Automotive dealers & gasoline service stations	$13,380	$17,101	$3,942	$10,470	$17,322	$27,571	$38,529	$68,490	$21,207	$40,919
56	Apparel & accessory stores	$7,926	$10,182	$959	$1,905	$8,885	$12,087	$5,547	$9,860	-$3,339	-$2,227
57	Home furniture, furnishings, & equipment stores	$7,015	$9,032	$1,627	$3,795	$8,641	$12,827	$20,518	$36,472	$11,876	$23,646

SIC	Industry Description	Low Implementation Costs	High Implementation Costs	Low Payroll Costs	High Payroll Costs	Low Total Costs	High Total Costs	Low Benefits	High Benefits	Low Difference	High Difference
58	Eating & drinking places	$33,346	$42,414	$9,310	$26,857	$42,656	$69,271	$38,054	$67,646	-$4,601	-$1,626
59	Miscellaneous retail	$22,326	$28,755	$6,152	$14,028	$28,478	$42,783	$31,195	$55,452	$2,717	$12,669
	Retail Subtotal	$106,884	$136,210	$32,387	$83,417	$139,271	$219,627	$178,881	$317,979	$39,611	$98,353
60	Depository institutions	$6,943	$8,924	$2,677	$8,836	$9,620	$17,760	$23,042	$40,960	$13,422	$23,200
61	Nondepository credit institutions	$2,727	$3,580	$1,795	$4,701	$4,522	$8,281	$13,449	$23,907	$8,927	$15,625
62-67	Holding & other investment offices, except trusts, & Security & commodity brokers, dealers, exchanges, & services	$4,055	$5,302	$8,260	$20,789	$12,315	$26,091	$30,936	$54,992	$18,620	$28,901
63-64	Insurance carriers, Insurance agents, brokers, & services	$9,454	$12,342	$6,016	$11,003	$15,470	$23,345	$26,681	$47,428	$11,211	$24,083
65	Real estate	$10,801	$14,565	$21,401	$56,982	$32,202	$71,546	$21,773	$38,703	-$10,429	-$32,843
	Fin., Insure., & Real Est. Subtotal	$33,980	$44,713	$40,150	$102,311	$74,130	$147,024	$115,881	$205,990	$41,751	$58,966
70	Hotels, rooming houses, camps, & other lodging places	$6,394	$7,899	$2,707	$7,492	$9,101	$15,391	$10,461	$18,595	$1,359	$3,204
72	Personal services	$12,705	$16,505	$25,351	$67,270	$38,055	$83,775	$8,112	$14,419	-$29,943	-$69,355
73	Business services	$37,518	$46,860	$16,606	$39,540	$54,124	$86,401	$109,491	$194,631	$55,367	$108,230
75	Automotive repair, services, & parking	$11,698	$15,230	$19,375	$51,798	$31,073	$67,028	$9,480	$16,851	-$21,593	-$50,177
76	Miscellaneous repair services	$4,164	$5,406	$1,373	$4,213	$5,537	$9,618	$1,586	$2,819	-$3,951	-$6,800
78	Motion pictures	$3,470	$4,419	$4,283	$19,485	$7,753	$23,904	$10,446	$18,570	$2,693	-$5,334
79	Amusement & recreation services	$7,987	$10,088	$5,622	$16,716	$13,609	$26,804	$10,573	$18,795	-$3,035	-$8,009
80	Health services	$48,132	$60,026	$37,155	$103,356	$85,287	$163,382	$114,546	$203,617	$29,259	$40,235
81	Legal services	$10,263	$13,361	$2,246	$8,969	$12,509	$22,329	$42,821	$76,119	$30,313	$53,790
82	Educational services	$1,878	$2,412	$14,052	$40,243	$15,930	$42,655	$155,178	$275,844	$139,248	$233,189
83	Social services	$12,637	$16,039	$9,438	$21,396	$22,075	$37,435	$12,498	$22,216	-$9,577	-$15,219
84	Museums, art galleries, & botanical & zoological gardens	$455	$574	$294	$858	$749	$1,432	$1,009	$1,794	$260	$362
86	Membership organizations	$4,425	$5,701	$1,396	$9,151	$5,821	$14,851	$8,252	$14,668	$2,430	-$183
87	Engineering, accounting, research, management, & related services	$20,847	$26,721	$7,828	$23,332	$28,675	$50,053	$71,813	$127,656	$43,138	$77,602
89	Services, not elsewhere classified (4)	$1,080	$1,405	$206	$488	$1,286	$1,892	$1,205	$2,143	-$81	$251

SIC	Industry Description	Low Implementation Costs	High Implementation Costs	Low Payroll Costs	High Payroll Costs	Low Total Costs	High Total Costs	Low Benefits	High Benefits	Low Difference	High Difference
	Services Subtotal	$183,651	$232,645	$147,933	$414,307	$331,584	$646,952	$567,471	$1,008,736	$235,887	$361,784
	Private Industry	$521,396	$660,266	$327,832	$871,621	$849,228	$1,531,887	$1,061,273	$1,886,519	$212,045	$354,632
	State & Local Government	$14,033	$19,695	$7,012	$23,911	$21,045	$43,606	$48,495	$86,205	$27,450	$42,599
	Total	$535,429	$679,961	$334,844	$895,532	$870,273	$1,575,493	$1,109,768	$1,972,724	$239,495	$397,231

Note: Unless otherwise noted, data are from USDOC (2001a)

Na Data not available.

Nc Not calculable.

(1) Number of employers are derived from the U.S. Department of Commerce, Bureau of Census, 1992 Enterprise Statistics.

(2) Employment is estimated when data suppression occurs.

(3) Sales data for industries 07, 08, 09, and 89 are from the D&B (2001a) database.

(4) Number of establishments, number of employees, and annual payroll are derived from the USDOC (1999) database. Sales data are derived from the D&B (2001a) database.

(5) Only includes Railroad Switching and Terminal Establishments (SIC 4013).

(6) All data for the U.S. Postal Service are from USPS (1997).

(7) Data do not include large certificated passenger carriers that report to the Office of Airline Statistics, U.S. Department of Transportation.

Sources: CONSAD Research Corporation and the U.S. Department of Labor

U.S. Department of Commerce, Bureau of the Census (USDOC, 2001a), 1997 Economic Census: Comparative Statistics, downloaded from http://www.census.gov/epcd/ec97sic/index.html#download;

U.S. Department of Commerce, Bureau of the Census (USDOC (1999), 1997 County Business Patterns; Dun & Bradstreet (D&B, 2001a) National Profile of Businesses Database for Fiscal Year 2000;

Dun & Bradstreet (D&B, 2001b), Industry Norms and Key Business Ratios for Fiscal Year 2000/2001; U.S. Department of the Treasury, Internal Revenue Service (IRS, 2000) Corporate Tax Returns for *Active Corporations for 1997; and U.S. Postal Service (USPS, 1997), 1997 Annual Report.*

Small Business Cost Estimates

The upper bound small business cost estimate for the proposed rule ranges from $502.4 million to $835.9 million. This includes one-time implementation costs ranging from $349.3 million to $451.7 million and recurring payroll costs ranging from $153.1 million to $384.2 million. The recurring payroll costs as a percentage of total payroll range from 0.02 percent to 0.04 percent, and from 0.07 percent to 0.16 percent of total pre-tax profits.

The lower bound small business benefit estimate for the proposed rule ranges from $629.8 million to $1,119.4 million. These estimates do not include significant, but difficult to quantify, benefits such as the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced investigations and litigation.

The largest recurring payroll costs are incurred by the Personal Services industry ($17.6 million to $46.6 million), Construction ($16.7 million to $39.4 million), Automotive Repair, Services, and Parking ($13.9 million to $37.1 million), Agricultural Services ($10.4 million to $26.4 million), and Real Estate ($9.9 million to $26.3 million). The ten industries with the highest costs account for 57.4 percent to 67.0 percent of the total small business costs.

The largest recurring payroll costs as a percentage of payroll are incurred by the Educational Services industry (0.4 percent to 1.0 percent), Agricultural Services (0.2 percent to 0.6 percent), Personal Services (0.2 percent to 0.4 percent), Transportation by Air (0.1 percent to 0.3 percent), and Automotive Repair, Services, and Parking (0.1 percent to 0.2 percent).

The largest recurring payroll costs as a percentage of pre-tax profits are incurred by the General Merchandise Stores (4.5 percent to 10.6 percent), Educational Services (2.0 percent to 5.3 percent), Agricultural Services (1.1 percent to 2.8 percent), Personal Services (0.9 percent to 2.4 percent), and Eating and Drinking Places (0.8 percent to 2.2 percent).

State and Local Government Cost and Benefit Estimates

The upper bound cost estimate for state and local governments for the proposed rule ranges from $21.0 million to $43.6 million. This includes one-time implementation costs ranging from $14.0 million to $19.7 million and recurring payroll costs ranging from $7.0 million to $23.9 million. The cost estimates represents less than 0.005 percent of the $1.4 trillion in general revenues received by all state and local governmental entities nationwide, and 0.01 percent to 0.03 percent of the $150 billion in total payrolls for those entities.

The lower bound benefit estimate for state and local governments for the proposed rule ranges from $48.5 million to $86.2 million. These estimates do not include significant, but difficult to quantify, benefits such as the reduced human resource and legal costs for classifying workers under the proposed rule, and improved management productivity from reduced investigations and litigation.

The largest costs are incurred by California ($2.6 million to $5.3 million), New York ($2.3 million to $4.7 million), Texas ($1.3 million to $2.8 million), Illinois ($1.2 million to $2.5 million), and Florida ($1.1 million to $2.2 million).

The largest recurring payroll costs as a percentage of payroll are incurred by Arizona (0.2 percent to 0.4 percent), Wyoming (0.2 percent to 0.4 percent), Alabama (0.1 percent to 0.3 percent), Illinois (0.1 percent to 0.3 percent), and West Virginia (0.1 percent to 0.3 percent). As a percentage of total state and local government revenues, the recurring payroll costs do not exceed 0.01 percent in any state.

Economic Impact of Updating the Duties Tests

The economic impact of updating the duties tests includes two components. First, determining whether an employee satisfies the requirements of the updated duties tests will be less difficult than determining whether that employee satisfies the requirements of the current duties tests. As a result, employers will likely incur much lower costs associated with determining the exempt status of employees, including conducting expensive time-and-motion studies, and responding to litigation

contesting their exemption decisions. The second component is the incremental payroll costs that employers would be required to pay to the employees who satisfy the updated duties test but do not satisfy the current duties test if the proposed salary level tests were adopted without simultaneously adopting the proposed duties tests.

The possible magnitude of the cost savings of the first component is indicated by the estimated numbers of employees with salaries between $425 per week and $1,250 per week who would have failed to satisfy the current duties tests but would pass the updated duties tests. Because very little evidence is available on the costs for this component, the only indicator that is available is the potential number of employees who might require time-and-motion studies or involve litigation. The PRIA indicates an additional 1.5 million to 2.7 million employees will be more readily identified as exempt from the overtime requirements of the FLSA because the updated duties tests will replace the current duties tests in determining their exemption. Although certification and adjudication costs would only have been incurred on behalf of some portion of those employees, the large number of employees who could bring litigation under the current regulations and their relatively high levels of compensation indicate that the impact of revising the duties tests is probably substantial.

The second component of the economic impact of the revised duties tests is the additional incremental payroll costs that employers would be required to pay if the revised salary level tests were adopted without updating duties tests. If the proposed rule had increased the standard salary level test and highly compensated salary levels to $425 per week and $1,250 per week, respectively, without replacing the current long duties tests with the updated duties test, employers would have incurred incremental payroll costs for all executive, administrative, and professional employees in that salary range who would satisfy the updated duties test but would not satisfy the current long duties tests. The PRIA estimates that the incremental payroll costs for those 1.5 million to 2.7 million employees will be between $1.839 billion and $3.370 billion, in addition to the $870.2 million to $1,575.5 million for the regulation as proposed.

Finally, revising the duties tests could result in some paid hourly workers becoming salaried employees. PRIA data indicate there are 644,000 paid hourly workers working overtime in occupations with exempt administrative and professional duties that could be converted to salaried employees. All of these workers have either an associate degree or 4 year college degree or more and their average income ranges from $50,100 to $54,700 per year. This is an upper bound estimate based on the number of professional and administrative workers in occupations with mixed exempt and nonexempt duties employing a high level of skill or training.

V. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 601 et seq., requires agencies to prepare regulatory flexibility analyses, and make them available for public comment, when proposing regulations that will have "a significant economic impact on a substantial number of small entities." Accordingly, the following analysis assesses the impact of these regulations on small entities as defined by the applicable SBA size standards.

In accordance with E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking," this proposed rule has been reviewed to assess its potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Regulatory Flexibility Act. The Chief Counsel for Advocacy of the Small Business Administration was notified of a draft of this rule upon submission of the rule to the Office of Management and Budget under E.O. 12866, Regulatory Planning and Review.

(1) Reasons Why Action by Agency is Being Considered

Section 13(a)(1) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 213(a)(1), directs the Secretary of Labor to define and delimit from time to time, by regulations subject to the Administrative Procedure Act, "any employee employed in a bona fide executive, administrative, or professional capacity … or in the capacity of outside salesman …." Employees meeting the criteria specified in these regulations are completely exempt from minimum wage and overtime pay under the FLSA. The existing regulations contain requirements for payment "on a salary basis," at not less than specified minimum amounts, and certain additional tests related to an employee's primary job duties and responsibilities. The duties tests were last modified in 1949 and have remained essentially unchanged since contributing to higher human resource and legal costs in the economy. The salary levels required for exemption were last updated in 1975 on an interim basis. In 1999, the U.S. General Accounting Office reviewed these regulations and recommended that the Secretary of Labor comprehensively review and update them, and make necessary changes to better meet the needs of both employers and employees in the modern work place. These regulations were also suggested as a candidate for reform in public comments submitted on OMB's 2001 and 2002 Reports to Congress on the Costs and Benefits of Regulations. The Department is proposing revisions to these regulations in response to the concerns that have been raised over the years, to update, clarify and simplify them for the 21st Century workplace.

(2) Objectives of and Legal Basis for Rule

This proposed rule is issued pursuant to the authority provided by Section 13(a)(1) of the FLSA. Its objective is to provide clear and concise regulatory guidance, in plain language, that will assist employers and employees in determining whether an employee is exempt from the FLSA as a bona fide executive, administrative, professional, or outside sales employee.

(3) Number of Small Entities Covered by the Rule

The estimated number of small entities covered by this rule is presented in the Department's Preliminary Regulatory Impact Analysis (PRIA). A copy of the Department's complete PRIA may be obtained by contacting the Wage and Hour Division at the address and telephone number provided above. Data based on SBA's size standards for small business entities indicates that 5.2 million establishments that will be affected by the proposed rule are considered to be small businesses. These small businesses employ approximately 38.7 million workers with an annual payroll of $940.0 billion. Their total annual sales are estimated to be $5.7 trillion and their annual pre-tax profits are estimated to be $233.9 billion. Approximately 79.8 percent of all affected establishments are considered to be small businesses and they account for 38.8 percent of the employment, 33.7 percent of the payroll, 31.8 percent of the annual sales, and 30.4 percent of the annual pre-tax profits.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

Although an employer claiming an exemption from the FLSA under 29 CFR Part 541 must be prepared to establish affirmatively that all required conditions for the exemption are met, this proposed rule contains no reporting or recordkeeping requirements as a condition for the exemption. However, the recordkeeping requirements for employers claiming exemptions from the FLSA under 29 CFR Part 541 for particular employees are contained in the general FLSA recordkeeping regulations, applicable to all employers covered by the FLSA (codified at 29 CFR Part 516; see 29 CFR §516.0 and 516.3) and have been approved by the Office of Management and Budget Control Number 1215-0017. There are no other compliance requirements under the proposed rule.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

No other Federal rules duplicate or conflict with the requirements contained in these rules. Federal employees subject to the jurisdiction of the U.S. Office of Personnel Management (OPM) are governed by separate regulations administered by OPM and not these regulations. Some state laws have exemption standards applied under state law that differ from the exemption standards provided by these Federal rules. The FLSA does not preempt any stricter exemption standards that may apply under state law. *See* 29 U.S.C. § 218.

(6) Differing Compliance and Reporting Requirements for Small Entities

The FLSA generally requires employers to pay covered non-exempt employees at least the federal minimum wage of $5.15 an hour, and time-and-one-half overtime premium pay for hours worked over 40 per week. Under the terms of the statute, Congress excluded some smaller businesses (those with annual revenues less than $500,000) from the definition of covered "enterprises" (although individual workers who are engaged in interstate commerce or who produce goods for such commerce may be individually covered by the FLSA). This proposed rule clarifies and updates the criteria for the statutory exemption from the FLSA for executive, administrative, professional, and outside sales employees for all employers covered by the FLSA. Moreover, given the purpose of the FLSA, Congressional intent, and the statutory provisions regarding the coverage for smaller businesses, adopting different compliance requirements for small entities under this rule was not considered feasible.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements for Small Entities

As previously noted, the purpose of this proposed rule is to clarify, consolidate, simplify, and update the existing criteria for compliance with the exemption from the FLSA for executive, administrative, professional, and outside sales employees, for all businesses including small businesses. The proposed rule contains no new reporting requirements.

(8) Use of Performance Rather Than Design Standards

The FLSA requires that employers comply with the minimum wage and overtime pay requirements and permits a number of ways in which employers can achieve these "performance standards."

The Department considered a number of alternatives to the proposed rule that would impact small entities. One alternative would be not to change the existing regulations. This alternative was rejected because the Department has determined that the existing salary tests, which have not been raised in over 27 years, no longer provide any help in distinguishing between bona fide executive, administrative, and professional employees and those who should not be considered for exemption, and that the duties tests, which were last modified in 1949, are too complicated, confusing, and outdated for the modern workplace.

Two other alternatives would be to raise the salary levels and not update the duties tests or conversely to update the duties tests without raising the salary levels. However, the Department has concluded that raising the salary levels is necessary to reestablish a clear relevant bright-line test between exempt and nonexempt workers for both employers and employees. Moreover, increasing the salary levels without updating the duties tests would increase the cost of the proposed rule by $1.839 billion to $3.370 billion per year – much of which would be incurred by small business. The duties tests were last revised in 1949 and have remained essentially unchanged since that time. The salary levels were last updated in 1975. The Department has determined that updating both the salary level and duties tests are necessary to better meet the needs of both employees and employers in the modern workplace and to anticipate future workplace trends.

Another alternative could be to adjust the salary levels for the proposed standard test for inflation. However, the Department has never relied solely on inflation adjustments to determine the appropriate salary levels, and has decided to continue its long-standing regulatory practice to reject such mechanical adjustments for inflation. In addition, the Department has determined that this alternative would be far too burdensome on small businesses. The PRIA indicates that adjusting the salary levels for inflation would more than double the recurring payroll costs of the proposed rule from a range of $335 million to $896 million per year to $747 million to $1,966 million per year.

Another alternative would be to adjust the salary levels for the proposed standard test and highly compensated test to levels consistent with the 1958 Department of Labor report – no more than 10 percent of those [workers] in the lowest-range – instead of the 20 percent range in the proposed rule. However, the Department has concluded that this would exclude overtime protections for a significant number of workers without having much of an impact on the cost of the proposed rule. The PRIA indicates that adjusting the salary levels consistent with the 1958 report could exempt 319,000 to 360,000 employees from overtime and reduce the cost of the proposed rule to $265 million to $719 million per year. The Department invites comments on the appropriate salary levels for the proposed standard test and highly compensated test.

(9) Exemption from Coverage of the Rule for Small Entities

As discussed above in section (6) of this analysis, under the terms of the statute, Congress excluded smaller businesses with annual revenues less than $500,000 from the definition of covered enterprises under the FLSA. Given the purpose of the FLSA, Congressional intent, and the statutory provisions regarding the coverage for smaller businesses, adopting different compliance requirements for small entities under this rule was not considered feasible.

VI. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. § 1501, requires agencies to prepare a written statement that identifies the: (1) authorizing legislation; (2) cost-benefit analysis; (3) macro-economic effects; (4) summary of state, local, and tribal government input; and (5) identification of reasonable alternatives and selection, or explanation of non-selection, of the least costly, most cost-effective or least burdensome alternative; for proposed rules that include any federal mandate that may result in increased expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

(1) Authorizing Legislation

This rule is issued pursuant to Section 13(a)(1) of the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1). The section exempts from the FLSA's minimum wage and overtime pay requirements "any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act …)." The requirements of the exemption provided by this section of the Act are contained in this rule, 29 CFR Part 541.

Section 3(e) of the Fair Labor Standards Act, 29 U.S.C. 203(e) defines employee to include most individuals employed by a state, political subdivision of a state, or interstate governmental agency. Section 3(x) of the Fair Labor Standards Act, 29 U.S.C. 203(x), also defines public agencies to include the government of a state or political subdivision thereof, or any interstate governmental agency.

(2) Cost-Benefit Analysis

Over 87,400 state and local governmental entities will be affected by the proposed rule (3,043 county governments, 19,372 municipal governments, 16,629 township governments, 34,683 special district governments, and 13,726 school district governments). Nationwide, these entities receive more than $1.4 trillion in general revenues, including revenues from taxes, some categories of fees and charges, and intergovernmental transfers. Their direct expenditures exceed $1.6 trillion in the aggregate. State and local governments employ more than 4 million workers and their payrolls exceed $12.6 billion per month.

The Department's Preliminary Regulatory Impact Analysis (PRIA) includes estimates of the implementation costs, incremental payroll costs, and benefits of the proposed rule for all state and local government sectors in the aggregate in each state. The results indicate that the total first year costs of the proposed rule on state and local government entities range from $21.0 to $43.6 million. This includes $14.0 to $19.7 million in first year (nonrecurring) implementation costs and $7.0 to $23.9 million in recurring incremental payroll costs. The first year costs represent less than three one-thousandths percent (0.003 percent) of the $1.434 trillion in general revenues received by all state and local government entities nationwide, and three one-hundredths percent (0.03 percent) of the $150.8 billion in total payrolls for those entities. The recurring incremental payroll costs are about one-half these very small amounts.

The Department's PRIA estimates that the benefits of the proposed rule for all state and local government sectors range from $48.5 to $86.2 million. These estimates exclude difficult to quantify benefits such as lower human resource costs and additional lower legal and settlement costs stemming from unintentionally misclassifying workers. The PRIA results indicate that the benefits of the proposed rule will exceed the costs for state and local governments in every year. However, state and local governments, as employers covered by the monetary requirements of the FLSA, will need to raise any such additional revenues required, however minimal, to meet their future compliance obligations if the proposed rule is adopted. The FLSA does not provide for Federal financial assistance or other Federal resources to meet the requirements of its intergovernmental mandates. The Federal mandate imposed by the rule is not expected to have measurable effects on health, safety, or the natural environment.

(3) Macro-Economic Effects

Agencies are expected to estimate the effect of a regulation on the national economy, such as the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services, if accurate estimates are reasonably feasible and the effect is relevant and material. 5 U.S.C. § 1532(a)(4). However, OMB guidance on this requirement notes that such macro-economic effects tend to be measurable in nationwide econometric models only if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product, or in the range of $1.5 billion to $3.0 billion. A regulation with smaller aggregate effect is not likely to have a measurable impact in macro-economic terms unless it is highly focused on a particular geographic region or economic sector, which is not the case with this proposed rule.

The Department's PRIA estimates that the total aggregate economic impact of this proposed rule ranges from $870.3 million to $1,575.5 million. However, as noted in the previous section summarizing the Department's PRIA, these are upper bound estimates and the actual costs and impacts expected to be incurred by employers, including state and local governments, if the proposed rule were adopted, are likely to be lower. Therefore, given OMB's guidance, the Department has determined that a full macro-economic analysis is not likely to show any measurable impact on the economy.

(4) Summary of State, Local, and Tribal Government Input

Congress amended the FLSA in 1985 to readjust how the Act would apply to the public sector. The 1985 amendments allowed compensatory time off in lieu of cash overtime pay, partial overtime exemptions for police and fire departments, the use of unpaid volunteers in certain circumstances, and a temporary phase-in period for meeting FLSA compliance obligations. However, Congress enacted no special provisions for public agencies related to the Section 13(a)(1) exemptions or the 541 regulations. Consequently, the same rules for distinguishing 541-exempt employees from nonexempt employees that apply in the private sector were initially applied to the public sector following the 1985 amendments.

Since 1985, state and local governments have confronted FLSA compliance issues and the 541 regulations have been among the foremost of their concerns, particularly in the administrative exemption category. Many state and local governments classified nearly all of their non-supervisory "white collar" workers as exempt administrative employees without regard to whether their primary duty relates directly to agency management policies or general business operations or meets the discretion and independent judgment test. In the late 1980s, several Governors and state and local government agencies urged the Department to exempt classifications such as social workers, detectives, probation officers, and others, to avoid disrupting the level of public services that would result from increasing costs or limiting the hours of service due to overtime requirements. In 1989, former Labor Secretary Elizabeth Dole, in a widely disseminated response to 13 Governors, confirmed the nature of the administrative exemption's duties test as applied to public sector employees but solicited specific input with accompanying rationale for what should be changed. Responses were limited but argued generally that government services are unique because of the impact on health, safety, welfare or liberty of citizens. This, they argued, should allow exemption of positions in law enforcement and criminal justice, human services, health care and rehabilitation services, and the unemployment compensation systems, regardless of whether any particular employee's job duties include important decision-making on how the agency is operated or managed internally. They also urged the Department to redefine the professional exemption to recognize a broader contemporary use of that term in government employment.

In the midst of a growing wave of private lawsuits filed by public employees against their employers challenging their exempt status, a series of court decisions were rendered that sharply limited public employers' ability to successfully assert exemption under the "salary basis" rule. This led the Department to alter the "salary basis" rules to provide specific relief to public employers in a final rule issued in August 1992 (57 FR 37666; Aug. 19, 1992). Under this special rule, the fact that a public sector pay and leave system includes partial-day deductions from pay for absences not covered by accrued paid leave becomes irrelevant to determining any public sector employee's eligibility for exemption.

Public sector employers have been less vocal over FLSA issues since the Department's 1992 rulemaking allowing partial-day (or hourly) deductions from pay for employee absences not covered by accrued leave and other special "salary basis" rules for budget-driven furloughs (29 CFR § 541.5d). The U.S. Supreme Court's 1997 decision in Auer v. Robbins, 519 U.S. 452 (1997), a public sector case involving the City of St. Louis Police Department and disciplinary deductions from pay, may also have relieved many concerns of public agencies over pay docking for discipline.

Although public agency organizations were invited to the Department's stakeholder meetings to address concerns over the 541 regulations, they mostly did not respond to the invitations. The International Personnel Management Association, accompanied by the National Public Employers Labor Relations Association and the U.S. Conference of Mayors, suggested that progressive discipline systems are common in the public sector (some collectively bargained) and the "salary basis" rule for exempt workers, which prohibits disciplinary deductions except for major safety rules, threatens such systems. Representatives of the Interstate Labor Standards Association (ILSA) submitted written

views suggesting that the salary threshold be indexed to the current minimum wage or some multiple thereof (e.g., 3 times the minimum wage for a 40-hour workweek or $618 per week). One additional idea was to relate the salary levels to those of the supervised employees.

The proposed rule would revise and simplify the exemptions' duties tests, but would continue to apply the same basic duties tests in both the public and private sectors. The public sector is governed by a different set of pay-docking rules and additional proposed revisions in this rule would broaden permissible disciplinary deductions to include sanctions for infractions such as sexual harassment and work place violence. However, a broader or separate duties test rule applicable solely to the public sector does not seem warranted at this time, as the case has not been made for such separate treatment. The Department is interested in receiving specific public comments on any issues of concern to public employees and public employers, and will carefully examine any such public comments submitted on this proposal during the rulemaking process.

(5) Least Burdensome Option or Explanation Required

The Department's consideration of various options is described in the preceding section in the preamble on the Regulatory Flexibility Act and Executive Order 13272. The Department believes that it has chosen the least burdensome option that updates, clarifies, and simplifies the rule. One alternative option would have set the exemptions' salary level at a rate lower than the proposed $425 per week, which might impose lower direct payroll costs on employers but may not necessarily be the most cost-effective or least burdensome alternative for employers. A lower salary level could result in a less effective "bright-line" test that separates exempt workers from those nonexempt workers whom Congress intended to cover by the Act. Greater ambiguity regarding who is exempt and nonexempt increases the potential legal liability from unintentionally misclassifying workers, and thus the ultimate cost of the regulation.

VII. Effects on Families

This rule has been assessed under section 654 of the Treasury and General Government Appropriations Act, 1999, for its effect on family well-being and the undersigned hereby certifies that the rule will not adversely affect the well-being of families.

VIII. Executive Order 13045, Protection of Children

In accordance with Executive Order 13045, the Department has evaluated this rule and determined that it has no environmental health risk or safety risk that may disproportionately affect children.

IX. Executive Order 13132, Federalism

This rule will not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under the terms of section 6 of E.O. 13132, it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

This rule is issued pursuant to Section 13(a)(1) of the Fair Labor Standards Act, 29 U.S.C. 213(a)(1). The section exempts from the FLSA's minimum wage and overtime pay requirements "any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act …)." The requirements of the exemption provided by this section of the Act are contained in this rule, 29 CFR Part 541.

Section 3(e) of the Fair Labor Standards Act, 29 U.S.C. 203(e), defines employee to include most individuals employed by a state, political subdivision of a state, or interstate governmental agency. Section 3(x) of the Fair Labor Standards Act, 29 U.S.C. 203(x), also defines public agencies to include the government of a state or political subdivision thereof, or any interstate governmental agency.

The Department's Preliminary Regulatory Impact Analysis (PRIA) estimates the implementation costs, incremental payroll costs, and benefits of the proposed rule for all state and local government sectors in the aggregate in each state. The results indicate that the total first year costs of the proposed rule on state and local government entities range from $24.1 to $43.6 million. This includes $14.0 to $19.7 million in first year (nonrecurring) implementation costs and $10.1 to $23.9 million in recurring incremental payroll costs. The first year costs represent less than three one-thousandths percent (0.003 percent) of the $1.434 trillion in general revenues received by all state and local government entities nationwide, and three one-hundredths percent (0.03 percent) of the $150.8 billion in total payrolls for those entities. The recurring incremental payroll costs are about one-half these very small amounts.

The Department's PRIA also estimates that the benefits of the proposed rule for all state and local government sectors range from $48.5 to $86.2 million. These estimates exclude difficult to quantify benefits such as lower human resource costs and additional lower legal and settlement costs stemming from unintentionally misclassifying workers. The PRIA results indicate that the benefits of the proposed rule will exceed the costs for state and local governments in every year. The Federal mandate imposed by the rule is not expected to have substantial direct effects on the states and will not affect the current relationship between the national government and the states or the distribution of power and responsibilities among the various levels of government.

X. Executive Order 13175, Indian Tribal Governments

This rule was reviewed under the terms of E.O. 13175 and determined not to have "tribal implications." The rule does not have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." As a result, no tribal summary impact statement has been prepared.

XI. Executive Order 12630, Constitutionally Protected Property Rights

This rule is not subject to E.O. 12630 because it does not involve implementation of a policy "that has takings implications" or that could impose limitations on private property use.

XII. Executive Order 12988, Civil Justice Reform Analysis

This rule was drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the federal court system. The rule was: (1) reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct, and to promote burden reduction.

XIII. Executive Order 13211, Energy Supply

This rule is not subject to E.O. 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

XIV. Environmental Impact Assessment

The Department has reviewed this rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department's NEPA procedures (29 CFR part 11). The rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

XV. List of Subjects in 29 CFR Part 541

Labor, Minimum wages, Overtime pay, Salaries, Teachers, Wages.

For the reasons set forth above, 29 CFR part 541 is proposed to be amended as set forth below.

Signed at Washington, DC, this _____ day of _____ , 2003.

_____

Tammy D. McCutchen
Administrator, Wage and Hour Division

PART 541

DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, COMPUTER AND OUTSIDE SALES EMPLOYEES

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AUTHORITY: 29 U.S.C. 213; Public Law 101-583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR 1945-53 Comp. p. 1004); Secretary's Order No. 4-2001 (66 FR 29656).

SUBPART A – GENERAL REGULATIONS

§ 541.000 Introductory statement.

(a) Section 13(a)(1) of the Fair Labor Standards Act, as amended, provides an exemption from the Act's minimum wage and overtime requirements for any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee, as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act. Section 13(a)(17) of the Act provides an exemption from the minimum wage and overtime requirements for computer systems analysts, computer programmers, software engineers, and other similarly skilled computer employees.

(b) The requirements for these exemptions are contained in this part as follows: executive employees, subpart B; administrative employees, subpart C; professional employees, subpart D; computer employees, subpart E; outside sales employees, subpart F. Subpart G contains regulations regarding salary requirements applicable to most of the exemptions, including salary levels and the salary basis test. Subpart G also contains a provision for exempting certain highly compensated employees. Subpart H contains definitions and other miscellaneous provisions applicable to all or several of the exemptions.

(c) Effective July 1, 1972, the Fair Labor Standards Act was amended to include within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as bona fide executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee under section 13(a)(1) of the act. The equal pay provisions in section 6(d) of the Fair Labor Standards Act are administered and enforced by the United States Equal Employment Opportunity Commission.

§ 541.001 Terms defined.

Act means the Fair Labor Standards Act of 1938, as amended.

Administrator means the Administrator of the Wage and Hour Division, United States Department of Labor. The Secretary of Labor has delegated to the Administrator the functions vested in the Secretary under sections 13(a)(1) and 13(a)(17) of the Fair Labor Standards Act.

§ 541.002 Job titles insufficient.

A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of these regulations.

SUBPART B – EXECUTIVE EMPLOYEES

§ 541.100 General rule for executive employees.

The term "employee employed in a bona fide executive capacity" in section 13(a)(1) of the Act shall mean any employee:

(a) Compensated on a salary basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;

(b) With a primary duty of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

(c) Who customarily and regularly directs the work of two or more other employees; and

(d) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees will be given particular weight.

The phrase "salary basis" is defined at § 541.602; "board, lodging or other facilities" is defined at § 541.606; "primary duty" is defined at § 541.700; and "customarily and regularly" is defined at § 541.701.

§ 541.101 Business owner.

The term "employee employed in a bona fide executive capacity" in section 13(a)(1) of the Act also includes any employee who owns at least a 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization.

The requirements of Subpart G (salary requirements) of these regulations do not apply to the business owners described in this section.

§ 541.102 Sole charge executive.

(a) The term "employee employed in a bona fide executive capacity" in section 13(a)(1) of the Act also includes any employee compensated on a salary basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities, who is in sole charge of an independent establishment or a physically separated branch establishment.

(b) The term "sole charge" means that the employee ordinarily must be in charge of the company activities at the location where the employee is employed. Thus, to qualify as a "sole charge" executive, the employee must have authority to make decisions regarding the day-to-day operations of the establishment and to direct the work of any other employees at the establishment or branch. Only one person in any establishment can qualify as a sole charge executive, and then only if that person is the top person in charge at that location. The "sole-charge" status of an employee will not be considered lost because of an occasional visit to the establishment or branch office of a superior.

(c) The phrase "independent establishment or a physically separated branch establishment" means an establishment that has a fixed location and is geographically separated from other company property. The management of operations within one of several buildings located on single or adjoining tracts of company property does not qualify for the exemption under this section. In the case of a branch, there must be a true and complete physical separation from the main office.

(d) A leased department may qualify as an independent establishment when the lessee operates under a separate trade name, with its own separate employees and records, and in other respects conducts the lessee's business independently of the lessor's. In such a case the leased department would enjoy the same status as a physically separated branch establishment. A leased department cannot be considered an independent establishment when the lessor has authority over such matters as hiring and firing of employees, other personnel policies, advertising, purchasing, pricing, credit operations, insurance and taxes.

§ 541.103 Management of the enterprise.

Generally, "management of the enterprise" includes activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; and providing for the safety of the employees or the property.

§ 541.104 Department or subdivision.

(a) The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. A customarily recognized department or subdivision must have a permanent status and a continuing function. For example, a large employer's human resources department might have subdivisions for labor relations, pensions and other benefits, equal employment opportunity, and personnel management, each of which has a permanent status and function.

(b) When an enterprise has more than one establishment, the employee in charge of each establishment may be considered in charge of a recognized subdivision of the enterprise. The

employee also may qualify for the sole charge exemption, if all of the requirements of § 541.102 are satisfied.

(c) A recognized department or subdivision need not be physically within the employer's establishment and may move from place to place. The mere fact that the employee works in more than one location does not invalidate the exemption if other factors show that the employee is actually in charge of a recognized unit with a continuing function in the organization.

(d) Continuity of the same subordinate personnel is not essential to the existence of a recognized unit with a continuing function. An otherwise exempt employee will not lose the exemption merely because the employee draws and supervises workers from a pool or supervises a team of workers drawn from other recognized units, if other factors are present that indicate that the employee is in charge of a recognized unit with a continuing function.

§ 541.105 Two or more other employees.

(a) To qualify as an exempt executive under § 541.100, the employee must customarily and regularly direct the work of two or more other employees. The phrase "two or more other employees" means two full-time employees or their equivalent. One full-time and two half-time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent.

(b) The supervision can be distributed among two, three or more employees, but each such employee must customarily and regularly direct the work of two or more other full-time employees or the equivalent. Thus, for example, a department with five full-time non-exempt workers may have up to two exempt supervisors if each such supervisor customarily and regularly directs the work of two of those workers.

(c) An employee who merely assists the manager of a particular department and supervises two or more employees only in the actual manager's absence does not meet this requirement.

(d) Hours worked by an employee cannot be credited more than once for different executives. Thus, a shared responsibility for the supervision of the same two employees in the same department does not satisfy this requirement. However, a full-time employee who works four hours for one supervisor and four hours for a different supervisor, for example, can be credited as a half-time employee for both supervisors.

§ 541.106 Working supervisors.

Employees, sometimes called "working foremen" or "working supervisors," who have some supervisory functions, such as directing the work of other employees, but also perform work unrelated or only remotely related to the supervisory activities are not exempt executives if, instead of having management as their primary duty as required in § 541.100, their primary duty consists of either the same kind of work as that performed by their subordinates; work that, although not performed by their own subordinates, consists of ordinary production or sales work; or routine, recurrent or repetitive tasks.

§ 541.107 Supervisors in retail establishments.

Supervisors in retail establishments often perform work such as serving customers, cooking food, stocking shelves, cleaning the establishment or other non-exempt work. Performance of such non-exempt work by a supervisor in a retail establishment does not disqualify the employee from the exemption if the requirements of § 541.100 are otherwise met. Thus, an assistant manager whose primary duty includes such activities as scheduling employees, assigning work, overseeing product quality, ordering merchandise, managing inventory, handling customer complaints, authorizing payment of bills or performing other management functions may be an exempt executive even though the assistant manager spends the majority of the time on non-exempt work.

SUBPART C – ADMINISTRATIVE EMPLOYEES

§ 541.200 General rule for administrative employees.

The term "employee employed in a bona fide administrative capacity" in section 13(a)(1) of the Act shall mean any employee:

(a) Compensated on a salary or fee basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;

(b) With a primary duty of the performance of office or non-manual work related to the management or general business operations of the employer or the employer's customers; and

(c) Who holds a position of responsibility with the employer.

The term "salary basis" is defined at § 541.602; "fee basis" is defined at § 541.605; "board, lodging or other facilities" is defined at § 541.606; and "primary duty" is defined at § 541.700.

§ 541.201 Related to management or general business operations.

(a) To qualify for the administrative exemption, an employee must perform work related to the management or general business operations of the employer or the employer's customers. The phrase "related to management or general business operations" refers to the type of work performed by the employee. To meet this requirement, an employee must perform work related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product.

(b) Work related to management or general business operations includes, for example, work in areas such as tax, finance, accounting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations and similar activities. Some of these activities may be performed by employees who also would qualify for another exemption. For example, a tax attorney and an accountant likely are performing work that qualifies for the professional exemption.

(c) An employee may qualify for the administrative exemption if the employee performs work related to the management or general business operations of the employer's customers. Thus, for example, employees acting as advisers and consultants to their employer's clients or customers (as tax experts or financial consultants, for example) may be exempt.

§ 541.202 Position of responsibility.

To qualify for the administrative exemption, an employee must hold a position of responsibility with the employer. The phrase "position of responsibility" refers to the importance to the employer of the work performed or the high level of competence required by the work performed. To meet this requirement, an employee must either customarily and regularly perform work of substantial importance or perform work requiring a high level of skill or training. The phrase "customarily and regularly" is defined at § 541.710.

§ 541.203 Work of substantial importance.

(a) The phrase "work of substantial importance" means work that, by its nature or consequence, affects the employer's general business operations or finances to a significant degree.

(b) Work of substantial importance includes activities such as formulating, interpreting or implementing management policies; providing consultation or expert advice to management; making or recommending decisions that have a significant impact on general business operations or finances; analyzing and recommending changes to operating practices; planning long or short-term business

objectives; analyzing data, drawing conclusions and recommending changes; handling complaints, arbitrating disputes or resolving grievances; representing the company during important contract negotiations; and work of similar impact on general business operations or finances. Work of substantial importance thus is not limited to employees who participate in the formulation of management policies or in the operation of the business as a whole. It includes the work of employees who carry out major assignments in conducting the operations of the business, or whose work affects general business operations to a significant degree, even though their assignments are tasks related to the operation of a particular segment of the business.

(1) For example, an employee who is a buyer of a particular type of equipment in an industrial plant or who is an assistant buyer for a retail or service establishment may have a significant impact on the business, even though the work may be limited to purchasing for a particular department. Similarly, although comparison shopping by an employee who merely reports findings on a competitor's prices is not work of substantial importance, the buyer who evaluates such reports to set the employer's prices does perform work of substantial importance.

(2) Insurance claims adjusters also generally perform work of substantial importance, whether they work for an insurance company or other type of company, if their duties include activities such as interviewing insureds, witnesses and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation.

(3) An employee who leads a team of other employees assigned to complete a major project for the employer (such as purchasing, selling or closing all or part of the business, negotiating a real estate transaction or a collective bargaining agreement, or designing and implementing productivity improvements) performs work of substantial importance, even if the employee does not have direct supervisory responsibility over the other employees on the team.

(4) Other employees that perform work of substantial importance, even if their decisions or recommendations are reviewed for possible modification or rejection at a higher level, include: a human resources manager who formulates employment policies; a management consultant who studies the operations of a business and proposes change in organization; a purchasing agent who is required to consult with top management officials when making a purchase commitment for raw materials in excess of the contemplated plant needs; or an executive or administrative assistant to a proprietor or chief executive of a business if such employee, without specific instructions or prescribed procedures, has been delegated authority to arrange meetings, handle callers and answer correspondence.

(c) Work of substantial importance does not include clerical or secretarial tasks, recording or tabulating data, or performing other mechanical, repetitive, recurrent or routine work. For example, an employee who simply tabulates data is not exempt, even if labeled as a "statistician." An example of an employee who does not perform work of substantial importance is a personnel clerk engaged in "screening" of applicants (collecting data and rejecting applicants who do not meet basic qualifications), but who is not involved in making the decision to hire.

(d) An employer's volume of business may make it necessary to employ a number of employees to perform the same or similar work. The fact that many employees perform identical work or work of the same relative importance does not mean that the work of each such employee is not work of substantial importance.

(e) The work of an employee does not meet this requirement merely because the employer will experience financial losses if the employee fails to perform the job properly. For example, a messenger who is entrusted with carrying large sums of money does not perform work of substantial importance even though serious consequences may flow from the employee's neglect. An employee who operates very expensive equipment is not performing work of substantial importance merely

because improper performance of the employee's duties may cause serious financial loss to the employer.

§ 541.204 High level of skill or training.

(a) The phrase "work requiring a high level of skill or training" means administrative work requiring specialized knowledge or abilities, or advanced training. The specialized knowledge or abilities need not be acquired through any particular course of academic training or study. Also, the high level of training required may involve advanced academic instruction or advanced on-the-job training, or a combination of both. Administrative work that satisfies the "high level of skill or training" standard includes advisory work performed for the management of the company (or for the management of the company's customers), as is typically performed by financial advisors, tax advisors, insurance experts, credit managers, employee benefits experts, human resource consultants, labor relations consultants, marketing consultants, safety directors, account executives of advertising agencies and stock brokers. Employees with a high level of skill or training also may perform special assignments, including assignments performed away from their employer's place of business if the employee serves as a field representative for the employer.

(b) Work requiring a high level of skill or training may include work by employees who use a reference manual. The use of such a manual can require a high level of skill and training if the manual contains highly technical, scientific, legal, financial or other similarly complex information that can be interpreted properly only by those with advanced training or specialized knowledge or skills. Such manuals are used to provide guidance in addressing very difficult or novel circumstances. Thus, if an employee performs administrative work that satisfies the "high level of skill or training" standard, using this type of reference manual would not affect the employee's exempt status.

(c) Work requiring a high level of skill or training does not include work requiring the employee simply to look up information (from a handbook, for example) to determine the correct response to an inquiry or set of circumstances. Nor does it include clerical or secretarial work, recording or tabulating data, or other mechanical, repetitive, recurrent or routine work. Employees such as inspectors, examiners and graders who use established techniques, procedures or standards to accept or reject a product do not perform work requiring a high level of skill or training, even though such employees may have some leeway in the performance of their work.

§ 541.205 Educational establishments.

(a) The term "employee employed in a bona fide administrative capacity" in section 13(a)(1) of the Act also includes employees:

(1) Compensated for services on a salary or fee basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government) exclusive of board, lodging or other facilities, or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed; and

(2) With a primary duty of performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof.

(b) The term "educational establishment" means an elementary or secondary school system, an institution of higher education or other educational institution. Sections 3(v) and 3(w) of the Act define elementary and secondary schools as those day or residential schools that provide elementary or secondary education, as determined under State law. Under the laws of most States, such education includes the curriculums in grades 1 through 12; under many it includes also the introductory programs in kindergarten. Such education in some States may also include nursery school programs in elementary education and junior college curriculums in secondary education. The term "educational establishment" includes special schools for mentally or physically disabled or gifted children, regardless of any classification of such schools as elementary, secondary or higher. Also, for purposes

of the exemption, no distinction is drawn between public and private schools, or between those operated for profit and those that are not for profit.

(c) The phrase "performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

(1) Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; the principal and any vice-principals responsible for the operation of an elementary or secondary school; department heads in institutions of higher education responsible for the administration of the mathematics department, the English department, the foreign language department, etc.; and other employees with similar responsibilities.

(2) Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunch room managers or dietitians do not perform academic administrative functions. Although such work is not considered academic administration, such employees may qualify for exemption under § 541.200 or under other sections of these regulations provided the requirements for such exemptions are met.

SUBPART D – PROFESSIONAL EMPLOYEES

§ 541.300 General rule for professional employees.

The term "employee employed in a bona fide professional capacity" in section 13(a)(1) of the Act shall mean any employee:

(a) Compensated on a salary or fee basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging, or other facilities; and

(b) With a primary duty of performing office or non-manual work:

(1) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience; or

(2) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

The term "salary basis" is defined at § 541.602; "fee basis" is defined at § 541.605; "board, lodging or other facilities" is defined at § 541.606; and "primary duty" is defined at § 541.700.

§ 541.301 Learned professionals.

(a) Learned professionals must have a primary duty of performing office or non-manual work requiring advanced knowledge in a field of science or learning. The term "advanced knowledge" means knowledge that is customarily acquired through a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience. The learned professions include the professions of law, medicine, theology, teaching, accounting, actuarial computation, engineering, architecture, various types of physical, chemical and biological sciences, pharmacy, and other similar occupations that have a recognized professional status based on the acquirement of advanced knowledge and performance of work that is predominantly intellectual in character as opposed to routine, mental, manual, mechanical or physical work.

(b) The phrase "knowledge of an advanced type" means knowledge that cannot be attained at the high school level.

(c) The phrase "field of science or learning" distinguishes the learned professions from the mechanical arts where in some instances the knowledge is of a fairly advanced type, but not in a field of science or learning.

(d) The phrase "customarily acquired by a prolonged course of specialized intellectual instruction" generally restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. However, the word "customarily" means that the exemption is also available to employees in such professions who have substantially the same knowledge level as the degreed employees, but who attained such knowledge through a combination of work experience, training in the armed forces, attending a technical school, attending a community college or other intellectual instruction.

(e) The following professions have been found by the Administrator generally to meet the primary duty requirement for learned professionals in § 541.300(b)(1):

(1) Registered or certified medical technologists. Registered or certified medical technologists who have successfully completed three academic years of pre-professional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association.

(2) Registered nurses. Nurses who are registered by the appropriate State examining board.

(3) Dental hygienists. Dental hygienists who have successfully completed four academic years of pre-professional and professional study in an accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association.

(4) Physician assistants. Physician assistants who have successfully completed three years of pre-professional study (or 2,000 hours of patient care experience in a military or civilian occupation such as laboratory technology, nursing, psychology, biology, or related activity) plus not less than one year of professional course work in a medical school or hospital.

(5) Accountants. Certified public accountants, except in unusual cases, meet the primary duty requirement for the learned professional exemption. In addition, many other accountants who are not certified public accountants but perform similar job duties may qualify as exempt learned professionals. However, accounting clerks and other employees who normally perform a great deal of routine work generally will not qualify as exempt professionals.

(6) Chefs. Chefs, such as executive chefs and sous chefs, who have attained a college degree in a culinary arts program, meet the primary duty requirement for the learned professional exemption.

(f) Professional occupations do not include those whose duties may be performed with the general knowledge acquired by an academic degree in any field or with knowledge acquired through an apprenticeship or from training in routine mental, manual or physical processes. Thus, for example, the professional exemption does not apply to occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, teamsters and other employees who perform manual work that does not require an advanced academic degree.

(g) The areas in which professional exemptions may be available are expanding. As knowledge is developed, academic training is broadened and specialized degrees are offered in new and diverse fields, thus creating new specialists in particular fields of science or learning. When a specialized degree has become a standard requirement for a particular occupation, that occupation may have acquired the characteristics of a learned profession.

§ 541.302 Creative professionals.

(a) Creative professionals must have a primary duty of performing office or non-manual work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical or physical work. The exemption does not apply to work which can be produced by a person with general manual ability and training.

(b) To qualify for exemption as a creative professional, the work performed must be "in a recognized field of artistic or creative endeavor." This includes such fields as music, writing, acting and the graphic arts.

(c) The requirement of "invention, imagination, originality or talent" distinguishes the creative professions from work that primarily depends on intelligence, diligence and accuracy. This requirement generally is met by actors, musicians, composers, conductors, and soloists; painters who at most are given the subject matter of their painting; cartoonists who are merely told the title or underlying concept of a cartoon and must rely on their own creative ability to express the concept; essayists, novelists, short-story writers and screen play writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of such persons are, of course, not employees but self-employed); and persons holding the more responsible writing positions in advertising agencies. This requirement generally is not met by a person who is employed as a copyist, as an "animator" of motion-picture cartoons, or as a retoucher of photographs, since such work is not properly described as creative in character.

(d) Journalists may qualify as creative professionals if their work generally requires invention, imagination, originality or talent. Writers for newspapers, news magazines, television news programs, the Internet and other media, for example, generally perform work involving originality and talent. Radio announcers and television announcers also perform work that requires artistic or creative talent. Exempt work includes conducting interviews, reporting or analyzing public events, and acting as a narrator, announcer or commentator. Positions that primarily require the employee to collect and record routine facts or data without analysis, interpretation, synthesis, or creative or original writing would not qualify for the creative professional exemption.

§ 541.303 Teachers.

(a) The term "employee employed in a bona fide professional capacity" in section 13(a)(1) of the Act also means any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed. The term "educational establishment" is defined in § 541.205(b).

(b) Exempt teachers include, but are not limited to: regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semiskilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate or journalism are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.

(c) The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the State to refer to different kinds of certificates. However, private schools and public schools are not uniform in requiring a certificate for employment as an elementary or secondary school teacher, and a teacher's certificate is not generally necessary for employment in institutions of higher

education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.

(d) The requirements of § 541.300 and Subpart G (salary requirements) of these regulations do not apply to the teaching professionals described in this section.

§ 541.304 Practice of law or medicine.

(a) The term "employee employed in a bona fide professional capacity" in section 13(a)(1) of the Act also shall mean:

(1) Any employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof; and

(2) Any employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession.

(b) In the case of medicine, the exemption applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term "physicians" includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).

(c) Employees engaged in internship or resident programs, whether or not licensed to practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession.

(d) The requirements of § 541.300 and Subpart G (salary requirements) of these regulations do not apply to the licensed lawyers and medical professionals described in this section.

SUBPART E – COMPUTER EMPLOYEES

§ 541.400 General rule for computer employees.

Computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field are eligible for exemption as professionals under section 13(a)(1) of the Act and under section 13(a)(17) of the Act. Employees who qualify for this exemption are highly skilled in computer systems analysis, programming, software engineering or similar computer functions. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption. To qualify for the computer occupations exemption, the employee must:

(a) Be compensated on a salary or fee basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities, or on an hourly basis at a rate not less than $27.63 an hour; and

(b) Have a primary duty consisting of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

The term "salary basis" is defined at § 541.602; "fee basis" is defined at § 541.605; "board, lodging or other facilities" is defined at § 541.606; and "primary duty" is defined at § 541.700.

§ 541.401 High level of skill and expertise.

The exemption for computer employees applies only to highly-skilled employees who have achieved a level of proficiency in the theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming and software engineering. This exemption does not include trainees or employees in entry level positions learning to become proficient in such areas or to employees in computer occupations who have not attained a level of skill and expertise which allows them to work generally without close supervision. The level of expertise and skill required to qualify for this exemption is generally attained through combinations of education, specialized training and experience in the field. No particular academic degree is required for this exemption, nor are there any requirements for licensure or certification.

§ 541.402 Computer operation, manufacture and repair.

The exemption for employees in computer occupations does not include employees engaged in the operation of computers or in the manufacture, repair or maintenance of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not in computer systems analysis and programming occupations, are also not exempt computer professionals.

§ 541.403 Executive and administrative computer employees.

Computer employees within the scope of this exemption, as well as those employees not within its scope, may also have executive and administrative duties which qualify the employees for exemption under Subpart B or Subpart C of these regulations. For example, systems analysts and computer programmers whose primary duties are to plan, schedule, and coordinate activities required to develop systems to solve complex business, scientific or engineering problems of the employer or the employer's customers are performing work of substantial importance related to management or general business operations and may qualify as exempt administrative employees under § 541.200. Similarly, a senior or lead computer programmer whose primary duty is to manage and direct the work of other programmers in a customarily recognized department or subdivision may qualify as an exempt executive employee under § 541.100.

SUBPART F – OUTSIDE SALES EMPLOYEES

§ 541.500 General rule for outside sales employees.

The term "employee employed in the capacity of outside salesman" in section 13(a)(1) of the Act shall mean any employee:

(a) With a primary duty of:

(1) Making sales within the meaning of section 3(k) of the Act, or

(2) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(b) Who is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty.

The term "primary duty" is defined at § 541.700. In determining the primary duty of an outside sales employee, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall be regarded as exempt outside sales work. Other work that furthers the employee's sales efforts also shall be regarded as exempt work

including, for example, writing sales reports, updating or revising the employee's sales or display catalog, planning itineraries and attending sales conferences. The requirements of Subpart G (salary requirements) of these regulations do not apply to the outside sales employees described in this section.

§ 541.501 Making sales or obtaining orders.

(a) Section 541.500 requires that the employee be engaged in: (1) Making sales within the meaning of section 3(k) of the Act, or (2) obtaining orders or contracts for services or for the use of facilities.

(b) Sales within the meaning of section 3(k) of the Act include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Section 3(k) of the Act states that "sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(c) Exempt outside sales work includes not only the sales of commodities, but also "obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer." Obtaining orders for "the use of facilities" includes the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies.

(d) The word "services" extends the outside sales exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

§ 541.502 Away from employer's place of business.

(a) An outside sales employee must be customarily and regularly engaged "away from the employer's place or places of business." This requirement is based on the obvious connotation of the word "outside" in the statutory term "outside salesman." The Administrator does not have authority to define this exemption for "outside" sales under Section 13(a)(1) of the Act as including inside sales work. Section 13(a)(1) does not exempt inside sales and other inside work (except work performed incidental to and in conjunction with outside sales and solicitations). However, Section 7(i) of the Act exempts commissioned inside sales employees of qualifying retail or service establishments if those employees meet the compensation requirements of Section 7(i).

(b) The outside sales employee is an employee who makes sales at the customer's place of business or, if selling door-to-door, at the customer's home. Outside sales does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls. Thus, any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. However, an outside sales employee does not lose the exemption by displaying samples in hotel sample rooms during trips from city to city; these sample rooms should not be considered as the employer's places of business.

§ 541.503 Promotion work.

(a) Promotion work is one type of activity often performed by persons who make sales, which may or may not be exempt outside sales work, depending upon the circumstances under which it is performed. Promotional work that is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is exempt work. On the other hand, promotional work that is incidental to sales made, or to be made, by someone else is not exempt outside sales work.

(b) A manufacturer's representative, for example, may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise. Such an employee can be considered an exempt outside sales employee if the employee's primary duty is making sales or contracts. Promotion

activities directed toward consummation of the employee's own sales are exempt. Promotional activities designed to stimulate sales that will be made by someone else are not exempt.

(c) Another example is a company representative who visits chain stores, arranges the merchandise on shelves, replenishes stock by replacing old with new merchandise, consults with the store manager as to the requirements of the store, fills out a requisition for the quantity wanted, but leaves the requisition with the store manager to be transmitted to the central warehouse of the chain store company which later ships the quantity requested. The arrangement of merchandise on the shelves or the replenishing of stock is not exempt work unless it is incidental to and in conjunction with the employee's own outside sales. Because the employee in this instance does not consummate the sale nor direct efforts toward the consummation of a sale, the work in this example is not exempt.

§ 541.504 Drivers who sell.

(a) Drivers who deliver products and also sell such products may qualify as exempt outside sales employees only if the employee has a primary duty of making sales. If the employee has a primary duty of making sales, all work performed incidental to and in conjunction with the employee's own sales efforts, including loading, driving or delivering products, is exempt work.

(b) Several factors should be considered in determining if a driver has a primary duty of making sales, including: a comparison of the driver's duties with those of other employees engaged as truck drivers and as salespersons; possession of a selling or solicitor's license when such license is required by law or ordinances; presence or absence of customary or contractual arrangements concerning amounts of products to be delivered; description of the employee's occupation in collective bargaining agreements; the employer's specifications as to qualifications for hiring; sales training; attendance at sales conferences; method of payment; and proportion of earnings directly attributable to sales.

(c) Drivers who may qualify as exempt outside sales employees include:

(1) A driver who provides the only sales contact between the employer and the customers visited, who calls on customers and takes orders for products, who delivers products from stock in the employee's vehicle or procures and delivers the product to the customer on a later trip, and who receives compensation commensurate with the volume of products sold.

(2) A driver who obtains or solicits orders for the employer's products from persons who have authority to commit the customer for purchases.

(3) A driver who calls on new prospects for customers along the employee's route and attempts to convince them of the desirability of accepting regular delivery of goods,

(4) A driver who calls on established customers along the route and carrying an assortment of the employer's products who persuades regular customers to accept delivery of increased amounts of goods or of new products, even though the initial sale or agreement for delivery was made by someone else.

(d) Drivers who generally would not qualify as exempt outside sales employees include:

(1) A route driver whose primary duty is to transport products sold by the employer through vending machines and to keep such machines stocked, in good operating condition, and in good locations does not have a primary duty of making sales.

(2) A driver who often calls on established customers day after day or week after week, delivering a quantity of the employer's products at each call when the sale was not significantly affected by solicitations of the customer by the delivering driver or the amount of the sale is determined by the volume of the customer's sales since the previous delivery.

(3) A driver primarily engaged in making deliveries to customers and performing activities intended to promote sales by customers (including placing point-of-sale and other advertising materials, price stamping commodities, arranging merchandise on shelves, in coolers or in cabinets, rotating stock according to date, and cleaning and otherwise servicing display cases), unless such work is in furtherance of the driver's own sales efforts.

SUBPART G – COMPENSATION REQUIREMENTS

§ 541.600 Amount of salary required.

(a) To qualify as an exempt executive, administrative or professional employee under section 13(a)(1) of the Act, an employee must be compensated on a salary basis at a rate of not less than $425 per week (or $360 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities. Administrative and professional employees may also be paid on a fee basis, as defined in § 541.605.

(b) The $425 a week may be translated into equivalent amounts for periods longer than one week. The requirement will be met if the employee is compensated biweekly on a salary basis of $850, semimonthly on a salary basis of $920.84, or monthly on a salary basis of $1,841.67. However, the shortest period of payment that will meet this compensation requirement is one week.

(c) In the case of academic administrative employees, the compensation requirement also may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as provided in § 541.206(a)(1).

(d) In the case of computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than $27.63 an hour, as provided in § 541.400(a).

(e) In the case of professional employees, the compensation requirements in this section shall not apply to employees engaged as teachers (§ 541.303); employees who hold a valid license or certificate permitting the practice of law or medicine or any of their branches and are actually engaged in the practice thereof (see § 541.304); or to employees who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession (see § 541.304). In the case of medical occupations, the exception from the salary or fee requirement does not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

§ 541.601 Highly compensated employees.

(a) An employee who performs office or non-manual work and is guaranteed a total annual compensation of at least $65,000 ($55,000 if employed in American Samoa by employers other than the Federal Government) is deemed exempt under section 13(a)(1) of the Act if the employee performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in Subparts B, C or D of these regulations.

(b) The phrase "total annual compensation" excludes board, lodging or other facilities as defined in § 541.606, but includes base salary, commissions, non-discretionary bonuses and other non-discretionary compensation.

(1) The base salary, commissions and non-discretionary compensation must be settled and paid out to the employee as due on at least a monthly basis. Thus, for example, employees told they will receive a commission of 1% of all monthly sales orders that exceed $1 million must receive any commission due each month. Of course, if sales do not exceed $1 million in a particular month, no commission is due for that month. Similarly, employees who are told they will receive a $300 production bonus for each ton of product manufactured in excess of a weekly quota must receive any bonus earned at least monthly. Again, there may be months in which no bonus is due because production did not exceed the quota in any week of the month.

(2) If an employee's base salary and non-discretionary compensation do not total at least the minimum guarantee established in § 541.601(a) by end of the year, the employer may, by the next pay period after the end of the year, make a final payment sufficient to achieve the guaranteed level. For example, an employee may earn $36,000 in guaranteed base salary, and the employer may anticipate

based upon past sales that the employee also will earn $36,000 in commissions. However, due to poor sales in the final quarter of the year, the employee actually only earns $26,000 in commissions. In this situation, the employer may by the next pay period after the end of the year make a payment of $3,000 to the employee. If the employer fails to make such a payment, the employee does not qualify as a highly compensated employee, but may still qualify as exempt under Subparts B, C or D of these regulations.

(3) An employee who does not work a full year for the employer, either because the employee is newly hired after the beginning of the year or ends the employment before the end of the year, may qualify for exemption under this section if the employee receives a pro rata portion of the minimum guarantee established in § 541.601(a), based upon the number of weeks that the employee will be or has been employed. The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply.

(c) A high level of compensation is a strong indicator of an employee's exempt status, thus eliminating the need for a detailed analysis of the employee's job duties. Thus, a highly compensated employee may qualify for exemption if the employee performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in Subparts B, C or D of these regulations. Thus, an employee may qualify as a highly compensated executive employee, for example, if the employee directs the work of two or more other employees, even though the employee does not have authority to hire and fire.

(d) This section applies only to employees performing office or non-manual work. carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, teamsters and other employees who perform manual work are not exempt under this section no matter how highly paid they might be.

§ 541.602 Salary basis.

(a) General rule. An employee will be considered to be paid on a "salary basis" within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided in subsection (b) below, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work. An employee is not paid on a salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(b) Exceptions. The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions:

(1) Deductions from pay may be made when an exempt employee is absent from work for a full day for personal reasons, other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence.

(2) Deductions from pay may be made for absences of a full day or more occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for full day absences for which the employee receives compensation under the plan, policy or practice. Deductions

for such full day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder. Thus, for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence, the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan; for the twelve weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for absences of a full day or more if salary replacement benefits are provided under a State disability insurance law or under a State workers' compensation law.

(3) While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(4) Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines.

(5) Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of a full day or more imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applied uniformly to all workers. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a uniformly applied written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a uniformly applied written policy prohibiting workplace violence.

(6) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed.

(7) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works forty hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10% of the employee's normal salary that week.

(c) When calculating the amount of a deduction from pay allowed under subsection (b), the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee. A deduction from pay as a penalty for violations of major safety rules under subsection (b) (4) of this section may be made in any amount.

§ 541.603 Effect of improper deductions from salary.

(a) An employer who makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer has a pattern and practice of not paying employees on a salary basis. A pattern and practice of making improper deductions demonstrates that the employer did not intend to pay employees in the job classification on a salary basis. Improper deductions that are isolated or inadvertent, however, will not result in loss of the exemption. The factors to consider when determining whether an employer has a pattern and practice of not paying employees on a salary basis

include, but are not limited to: the number of improper deductions; the time period during which the employer made improper deductions; the number and geographic location of employees whose salary was improperly reduced; the number and geographic location of managers responsible for taking the improper deductions; the size of the employer; whether the employer has a written policy prohibiting improper deductions; and whether the employer corrected the improper pay deductions.

(b) If the facts demonstrate that the employer has a policy of not paying on a salary basis, the exemption is lost during the time period in which improper deductions were made for employees in the same job classification working for the same managers responsible for the improper deductions. Employees in different job classifications who work for different managers do not lose their status as exempt employees. Thus, for example, if a manager at a company facility routinely docks the pay of engineers at that facility for partial-day personal absences, then all engineers at that facility whose pay could have been improperly docked by the manager would lose the exemption; engineers at other facilities or working for other managers, however, would remain exempt.

(c) If an employer has a written policy prohibiting improper pay deductions as provided in § 541.602, notifies employees of that policy and reimburses employees for any improper deductions, such employer will not lose the exemption for any employees unless the employer repeatedly and willfully violates the policy or continues to make improper deductions after receiving employee complaints. Examples of notification include publishing the policy to employees at the time of hire, in an employee handbook or on the employer's Intranet.

(d) This section shall not be construed in an unduly technical manner so as to defeat the exemption.

§ 541.604 Minimum guarantees plus extras.

(a) An exempt employee may receive additional compensation, consistent with the exemption and the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least $425 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least $425 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least $425 each week paid on a salary basis also receives additional compensation based on hours worked. Such additional compensation may be paid on any basis (e.g. flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis).

(b) An exempt employee's salary may be computed on an hourly, a daily or a shift basis, consistent with the exemption and the salary basis requirement, if (1) the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked; and (2) a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek. Thus, for example, an exempt employee guaranteed compensation of at least $500 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid $150 per shift consistent with the salary basis requirement.

§ 541.605 Fee basis.

(a) Administrative and professional employees may be paid on a fee basis, rather than on a salary basis. An employee will be considered to be paid on a "fee basis" within the meaning of these regulations if the employee is paid an agreed sum for a single job regardless of the time required for its completion. These payments in a sense resemble piecework payments with the important distinction that generally a "fee" is paid for the kind of job that is unique rather than for a series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis.

(b) To determine whether the fee payment meets the minimum amount of salary required for exemption under these regulations, the amount paid to the employee will be tested by determining the time worked on the job and whether the fee payment is at a rate that would amount to at least $425 per week if the employee worked 40 hours. Thus, an artist paid $250 for a picture that took 20 hours to complete meets the minimum salary requirement for exemption since earnings at this rate would yield the artist $500 if 40 hours were worked.

§ 541.606 Board, lodging or other facilities.

(a) To qualify for exemption under section 13(a)(1) of the Act, an employee must earn the minimum salary amount set forth in § 541.600, "exclusive of board, lodging or other facilities." The phrase "exclusive of board, lodging or other facilities" means "free and clear" or independent of any claimed credit for non-cash items of value that an employer may provide to an employee. Thus, the costs incurred by an employer to provide an employee with board, lodging or other facilities may not count towards the minimum salary amount required for exemption under this Part 541. Such separate transactions are not prohibited between employers and their exempt employees, but the costs to employers associated with such transactions may not be considered when determining if an employee has received the full required minimum salary payment.

(b) Regulations defining what constitutes "board, lodging, or other facilities" are contained in 29 CFR Part 531. As described in 29 CFR § 531.32, the term "other facilities" refers to items similar to board and lodging, such as meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees; merchandise furnished at company stores or commissaries, including articles of food, clothing, and household effects; housing furnished for dwelling purposes; and transportation furnished to employees for ordinary commuting between their homes and work.

SUBPART H – DEFINITIONS AND MISC. PROVISIONS

§ 541.700 Primary duty.

To qualify for exemption under these regulations, an employee must have a "primary duty" of performing exempt work. The term "primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case. Factors to consider when determining the primary duty of an employee include, but are not limited to the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the same kind of nonexempt work. The term "primary duty" does not require that employees spend over fifty percent of their time performing exempt work. Thus, for example, an assistant manager in a retail establishment who performs exempt work such as supervising and directing the work of other employees, ordering merchandise, handling customer complaints and authorizing payment of bills may have management as the primary duty, even if the assistant manager

spends more than fifty percent of the time performing non-exempt work such as running the cash register. However, the amount of time spent performing exempt work can be a useful guide, and employees who spend over fifty percent of the time performing exempt work will be considered to have a primary duty of performing exempt work. The fact that an employer has well-defined operating policies or procedures should not by itself defeat an employee's exempt status.

§ 541.701 Customarily and regularly.

The phrase "customarily and regularly" means a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed "customarily and regularly" includes work normally and recurrently performed every work week; it does not included isolated or one-time tasks.

§ 541.702 Exempt and nonexempt work.

The term "exempt work" means all work described in §§ 541.100, 541.101, 541.102, 541.200, 541.206, 541.300, 541.301, 541.302, 541.303, 541.304, 541.400 and 541.500, and the activities directly and closely related to such work. All other work is considered "nonexempt."

§ 541.703 Directly and closely related.

(a) Work that is "directly and closely related" to the performance of exempt work is also considered exempt work. The phrase "directly and closely related" means tasks that are related to exempt duties and that contribute to or facilitate performance of exempt work. Thus, "directly and closely related" work may include physical tasks and menial tasks that arise out of exempt duties, and the routine work without which the exempt employee's more important work cannot be performed properly. Work "directly and closely related" to the performance of exempt duties may also include recordkeeping; monitoring and adjusting machinery; taking notes; using the computer to create documents or presentations; opening the mail for the purpose of reading it and making decisions; and using a photocopier or fax machine. Work is not "directly and closely related" if the work is remotely related or completely unrelated to exempt duties.

(b) The following examples further illustrate the type of work that is and is not normally considered as directly and closely related to exempt work:

(1) Keeping time, production or sales records for subordinates is work directly and closely related to an exempt executive's function of managing a department and supervising employees.

(2) The distribution of materials, merchandise or supplies to maintain control of the flow of and expenditures for such items is directly and closely related to the performance of exempt duties.

(3) A supervisor who spot checks and examines the work of subordinates to determine whether they are performing their duties properly, and whether the product is satisfactory, is performing work which is directly and closely related to managerial and supervisory functions, so long as the checking is distinguishable from the work ordinarily performed by a nonexempt inspector.

(4) A supervisor who sets up a machine may be engaged in exempt work, depending upon the nature of the industry and the operation. In some cases the setup work, or adjustment of the machine for a particular job, is typically performed by the same employees who operate the machine. Such setup work is part of the production operation and is not exempt. In other cases, the setting up of the work is a highly skilled operation which the ordinary production worker or machine tender typically does not perform. In large plants, non-supervisors may perform such work. However, particularly in small plants, such work is a regular duty of the executive and is directly and closely related to the executive's responsibility for the work performance of subordinates and for the adequacy of the final product. Under such circumstances, it is exempt work.

(5) A department manager in a retail or service establishment who walks about the sales floor observing the work of sales personnel under the employee's supervision to determine the effectiveness

of their sales techniques, checks on the quality of customer service being given, or observes customer preferences is performing work which is directly and closely related to managerial and supervisory functions.

(6) A business consultant may take extensive notes recording the flow of work and materials through the office or plant of the client; after returning to the office of the employer, the consultant may personally use the computer to type a report and create a proposed table of organization. Standing alone, or separated from the primary duty, such note taking and typing would be routine in nature. However, because this work is necessary for analyzing the data and making recommendations, the work is directly and closely related to exempt work. While it is possible to assign note taking and typing to nonexempt employees, and in fact it is frequently the practice to do so, delegating such routine tasks is not required as a condition of exemption.

(7) A credit manager who makes and administers the credit policy of the employer, establishes credit limits for customers, authorizes the shipment of orders on credit, and makes decisions on whether to exceed credit limits would be performing work exempt under § 541.200. Work that is directly and closely related to these exempt duties may include checking the status of accounts to determine whether the credit limit would be exceeded by the shipment of a new order, removing credit reports from the files for analysis, and writing letters giving credit data and experience to other employers or credit agencies.

(8) A traffic manager in charge of planning a company's transportation, including the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common-carrier and other transportation facilities, negotiating with carriers for adjustments for damages to merchandise, and making the necessary rearrangements resulting from delays, damages or irregularities in transit is performing exempt work. If the employee also spends part of the day taking telephone orders for local deliveries, such order-taking is a routine function and is not directly and closely related to the exempt work.

(9) An example of work directly and closely related to exempt professional duties is a chemist performing menial tasks such as cleaning a test tube in the middle of an original experiment, even though such menial tasks can be assigned to laboratory assistants.

(10) A teacher performs work directly and closely related to exempt duties when, while taking students on a field trip, the teacher drives a school van or monitors the students' behavior in a restaurant.

§ 541.704 Trainees.

The executive, administrative, professional, outside sales and computer employee exemptions do not apply to employees training for employment in an executive, administrative, professional, outside sales or computer employee capacity who are not actually performing the duties of an executive, administrative, professional, outside sales or computer employee.

§ 541.705 Emergencies.

(a) An exempt employee will not lose the exemption by performing work of a normally nonexempt nature because of the existence of an emergency. Thus, when emergencies arise that threaten the safety of employees, a cessation of operations or serious damage to the employer's property, any work performed in an effort to prevent such results is considered exempt work.

(b) An "emergency" does not include occurrences that are not beyond control or for which the employer can reasonably provide in the normal course of business. Emergencies generally occur only rarely, and are events that the employer cannot reasonably anticipate.

(c) The following examples illustrate the distinction between emergency work considered exempt work and routine work that is not exempt work:

(1) A mine superintendent who pitches in after an explosion and digs out workers who are trapped in the mine is still a bona fide executive.
(2) Assisting nonexempt employees with their work during periods of heavy workload or to handle rush orders is not exempt work.
(3) Replacing a nonexempt employee during the first day or partial day of an illness may be considered exempt emergency work depending on factors such as the size of the establishment and of the executive's department, the nature of the industry, the consequences that would flow from the failure to replace the ailing employee immediately, and the feasibility of filling the employee's place promptly.
(4) Regular repair and cleaning of equipment is not emergency work, even when necessary to prevent fire or explosion; however, repairing equipment may be emergency work if the breakdown of or damage to the equipment was caused by accident or carelessness that the employer could not reasonably anticipate.

§ 541.706 Occasional tasks.
Occasional, infrequently recurring tasks that cannot practicably be performed by nonexempt employees, but are the means for an exempt employee to properly carry out exempt functions and responsibilities, are considered exempt work. The following factors should be considered in determining whether such work is exempt work: whether the same work is performed by any of the executive's subordinates; practicability of delegating the work to a nonexempt employee; whether the executive performs the task frequently or occasionally; and existence of an industry practice for the executive to perform the task.

§ 541.707 Combination exemptions.
Employees who perform a combination of exempt duties as set forth in these regulations for executive, administrative, professional, outside sales and computer employees may qualify for exemption. Thus, for example, an employee who works forty percent of the time performing exempt administrative duties and another forty percent of the time performing exempt executive duties may qualify for exemption. In other words, work that is exempt under one section of the regulations will not defeat the exemption under any other section.

§ 541.708 Motion picture producing industry.
The requirement that the employee be paid "on a salary basis" does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $650 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under Subparts B, C and D of these regulations, and who is employed at a base rate of at least $650 a week is exempt if paid a proportionate amount (based on a week of not more than 6 days) for any week in which the employee does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if the employee is employed at a daily rate under the following circumstances: (a) The employee is in a job category for which a weekly base rate is not provided and the daily base rate would yield at least $650 if 6 days were worked; or (b) the employee is in a job category having a weekly base rate of at least $650 and the daily base rate is at least one-sixth of such weekly base rate.

§ 541.709 Employees of public agencies.
(a) An employee of a public agency who otherwise meets the salary basis requirements of § 541.602 shall not be disqualified from exemption under §§ 541.100, 541.200, 541.300 or 541.400 on the basis that such employee is paid according to a pay system established by statute, ordinance or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the

employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because:

(1) Permission for its use has not been sought or has been sought and denied;

(2) Accrued leave has been exhausted; or

(3) The employee chooses to use leave without pay.

(b) Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

Town of Pembroke Park
3150 SW 52nd Avenue
Pembroke Park, FL 33023

Agenda Request

Meeting Date:	April, 2020
Subject:	Proclamation
Initiated by:	☑ City Council ☐ City Attorney ☐ City Manager/Staff
Prepared by:	Name & Title: Ashira Mohammed Mayor
Reviewed by:	Name & Title:
Approved by Town Manager:	Signature:
Approved by Town Attorney:	Signature:
Attachments:	Miramar minutes form April 6, 2016; Durham
Fiscal Impact:	
Policy Question(s) for Council Considerations:	Whether all proclamations need to be brought before the commission for approval vs allowing approval of uncontroversal proclamations and allowing for an appeal process to the commission if denied
Summary:	The town receives numerous request for proclamations which sometimes are time sensitive or misses the deadline etc.
Background:	
Discussion/Analysis:	
Options:	Vote to change the process for procamations or create an acknowledgment so that we can streamline the process. Keep it the same and do nothing.
Advantages:	Speed up the process.
Disadvantages:	
Possible action:	Vote to change the process for procamations or create an acknowledgment so that we can streamline the process. Keep it the same and do nothing.
Advantages:	Speed up the process. Keep clutter off the agenda.
Disadvantages:	
Staff Recommendations:	
Additional Action Needed:	

MINUTES OF THE CITY OF MIRAMAR
REGULAR COMMISSION MEETING

APRIL 6, 2016	7:00 P.M.

The regular meeting of the Miramar City Commission was called to order by Mayor Messam at 7:04 p.m. in the Commission Chambers, Miramar City Hall, 2300 Civic Center Place, Miramar, Florida.

Upon call of the roll, the following members of the City Commission were present:

Mayor Wayne M. Messam
Vice Mayor Darline B. Riggs
Commissioner Winston F. Barnes
Commissioner Maxwell B. Chambers
Commissioner Yvette Colbourne

The following members of staff were present:

City Manager Kathleen Woods-Richardson
City Attorney Jamie Cole
City Attorney Alison Smith
City Clerk Denise A. Gibbs

PLEDGE OF ALLEGIANCE

PRESENTATIONS

Proclamation: National Crime Victims' Rights Week *(Mayor Wayne M. Messam)*

Proclamation: Safe Digging Month *(Mayor Wayne M. Messam)*

Proclamation: HHC, 1ST Battalion, 124th Infantry Regiment Day *(Mayor Wayne M. Messam)*

Proclamation: National Child Abuse Prevention Month *(Mayor Wayne M. Messam)*

CONSENT AGENDA

Mayor Messam pulled item two.

Commissioner Barnes pulled item three.

Vice Mayor Riggs pulled item five.

Commissioner Chambers pulled item six.

On a motion by Commissioner Colbourne, seconded by Vice Mayor Riggs, to approve Consent Agenda Items 1, 4 and 7, the Commission voted:

Commissioner Barnes	Yes
Commissioner Chambers	Yes
Commissioner Colbourne	Yes
Vice Mayor Riggs	Yes
Mayor Messam	Yes

1. Minutes from the Regular Commission Meeting of March 23, 2016.

Approved

2. Temp. Reso. #R6006 amending Resolution No. 15-185 to provide for local financial support in the form of cash to be paid to **Project Potential/Strive** in an amount not-to-exceed $42,600. *(Community and Economic Development Department Director Eric Silva)*

Community and Economic Development Department Director Eric Silva gave a brief presentation on the proposed item, further detailed in the backup. The City Manager recommended approval.

MAYOR MESSAM: Thank you, Mr. Silva. Before I get to my questions, are there any members from the public that have any comments regarding this item? All right, seeing none, back to the Commission. The first question I have, and I think you kind of answered the question, the 142 jobs, is that in addition to the 50 already approved, or it's an additional 92?

MR. SILVA: It's an additional 92.

MAYOR MESSAM: The other item, obviously, we're always excited when we have opportunities to bring companies into our City, especially those that qualify under the QTI program. I just want to share with the public that I am in communication with the

MAYOR MESSAM: Well, resolutions and ordinances. Outside of resolutions and ordinances, could there be other items that could be brought to the attorney that would be placed on the agenda without a majority of the Commission approving the item coming on the agenda?

CITY ATTORNEY COLE: This only applies to legislation; legislation is resolutions and ordinances. The proclamations, for example, you wouldn't have to show to me to put on the agenda, you'll just put those on. If you just want to have a discussion item, you can just put that on, you don't have to come. But if something is going to actually be a resolution or an ordinance, these two sentences.

MAYOR MESSAM: So for that item, it's for ordinances and resolutions, legislation?

CITY ATTORNEY COLE: That's correct.

MAYOR MESSAM: It's in reference to the legality?

CITY ATTORNEY COLE: That's correct.

MAYOR MESSAM: The next sentence says: The City Attorney shall review these items without City Commission approval, in his or her opinion - as you just state - with a minimum amount of time. I just want to be clear, if it doesn't require a lot of time, we won't be sent the bill for the extra research and everything that has to be done?

CITY ATTORNEY COLE: That's right. That's the idea. If you give me something, and we can just look at it and it takes an hour, maybe an hour and a half, something like that. But if it's going to take four or five or six hours, it's going to take a substantial amount of time, that's the type of thing I want to make sure there's at least three of you that would want us to do it, rather than spending the time doing it.

MAYOR MESSAM: I'm wrapping up. Under D, under Proclamations, we did discuss this in the workshop, and I think we came with a reasonable position on this, where it says: The Mayor and any Commissioner may request that the Mayor issue a proclamation or request for proclamations shall be made to the Mayor one week in advance, if possible. And it states: Controversial items shall be brought for Commission consideration and approval. I would like to propose that we clarify this to include like a trigger action. So, for example, if we were to state something on the lines of that after all requests for proclamations shall be made to the Mayor one week in advance if possible, Mayor may deny controversial proclamation requests at the Mayor's discretion. Denials may be appealed to the Commission for consideration for approval. It seems like it's missing a trigger.

CITY ATTORNEY COLE: Yes, that is definitely what was intended. The intent of this was, if someone brings a proclamation idea to you, and you don't want to do it, then

that's considered controversial, and that the Commission can then kind of bring it to the Commission for a majority vote, yes. So we will add that language.

MAYOR MESSAM: So for clarity, and those who know, I pretty much approve all proclamations. But in the rarest form, if there was a denial, I want to provide a process, so I may not personally agree, but there is a process to be brought to the Commission for approval to the Commission.

CITY ATTORNEY COLE: We don't have to call them controversial either. I mean it's pretty much if you decide that you don't want to issue a proclamation, that Commissioner can bring it up to the Commission. We'll correct that language.

COMMISSIONER COLBOURNE: A question on that one.

MAYOR MESSAM: Yes, Commissioner Colbourne, you're recognized.

COMMISSIONER COLBOURNE: Thank you. I think what the intent, what you're asking for, I'd already read that into it. I assumed that was the intent of it. But with the change in language, does that then prevent a Commissioner from saying; just bring it directly to the Commission to request a proclamation. Because now it sounds like we're saying only after it's been denied that you can bring it to the Commission. So when the language is in the final language, I want it to be clear that we could still bring it directly to the Commission, because that would go back to us being able to bring any other item to the Commission.

MAYOR MESSAM: From a procedural standpoint, the process would be that the request would come to the Mayor's Officer first. For example, for protocol, to request to the Mayor for a proclamation, and then the proclamation is granted or issued, because it comes from the Mayor's Office. In the rare instance, if the Mayor denies the request, for whatever reason, there's a process, just bring it to the Commission. If the Commission agrees, majority vote, it gets issued. That's the process. Now if it's a situation, the language is written to just come to the Commission and just request a proclamation by vote without making the request to the Mayor's Office, I just think that's out of protocol. I just want to be clear, is that what you're stating?

COMMISSIONER COLBOURNE: It would be out of protocol if that's what we're writing into it. We're writing something into it that's not a problem. I've always requested proclamations, and I've never had one denied. It's never been a problem. All I'm saying is that if we put in that procedure, we're pretty much saying that any Commissioner can bring any items, we can bring an item, place an item on the agenda that's a resolution, that's an ordinance, of any magnitude, except for a proclamation, because that has to go through a different process. And all I'm saying is that when you write it, there should be an appeal process if it's been denied, then it comes to the Commission; I can see that. But it shouldn't be written in a way that it would preclude us sitting here at a meeting and say, "Yeah, we should perhaps do a proclamation," and

discussing it here on the dais, requesting it here on the dais. It shouldn't prevent us from doing that. That's all I'm saying.

MAYOR MESSAM: The first step is the Mayor's Office. It's not preempted by a request by the Commission. So even if we're having a discussion and we decide that we're going to do a proclamation, the consensus on the Commission is to have the Mayor issue a proclamation. My edit or my revision recommendation is not even on that line. How I'm reading, and how it's currently written, there's no trigger. I just want it to be clear. It could be years after we are gone. We assume and we know how things are or feel that they should go, but it's always best to have it in writing, in terms of the process. This paragraph states clearly that if you want a proclamation, the Mayor or any Commissioner may request that the Mayor issue a proclamation. So it states that the proclamation comes to the Mayor's Office: All requests for proclamations shall be made to the Mayor one week in advance, if possible. And those of you know that I've had requests the day before, and we've issued. We don't like to do that, because we have to stop everything to do it, so we just ask, out of courtesy, to give it a week. Next, it says: controversial items shall be brought for a Commission consideration an approval. But what does that process mean? So all I'm suggesting is that when the next step in the request to the Mayor, the Mayor issues a proclamation. Well, if you're following a flow chart, if the decision tree says approved, then you get the permission. But if it says denial, then what do you do? If it's denied, you have, as the requestor, the option to come to the Commission to seek Commission approval. It's nothing more, nothing less. It's just a matter of clarifying what the process would be, in the event that the Mayor's Office denies a proclamation request. Nothing more, nothing less. I don't want to make it more complicated, I'm trying to be as simple as possible. Commission Chambers, you're recognized.

COMMISSIONER CHAMBERS: I'm going to suggest that we take it back upstairs. This is not something that we need to be trying to work out here. These people, they miss their dinner, they miss their supper. I think this item needs to go back upstairs and we work it out upstairs.

MAYOR MESSAM: I don't agree. We workshopped this. This is a final document. We've already talked about this. We're going to go up to talk about something we've already talked about? Commissioner Barnes.

COMMISSIONER BARNES: Please, City Attorney, have me understand what I might not, up to this point, understand. Are we not giving our Commissioners the opportunity to override a veto, essentially?

CITY ATTORNEY COLE: Yes, effectively, that's what this would do.

COMMISSIONER BARNES: Thank you.

CITY ATTORNEY COLE: Basically, it would say if you want a proclamation, then you would bring the request to the Mayor's Office. If the Mayor issues it, great. If the Mayor chooses not to issue it, the requesting Commissioner could bring it back to the Commission, and then. If by majority vote, you can overrule the Mayor, and then it would be issued.

MAYOR MESSAM: As written, is that what is communicated, as written?

CITY ATTORNEY COLE: No, that's the change that you're suggesting. The way it's drafted now, that was the same intent, but it didn't spell it out like the flow chart; I think that's a much clearer way to do it.

MAYOR MESSAM: Does that answer your question, Commissioner Barnes?

COMMISSIONER BARNES: I'm fine, and before that, and before that addition.

MAYOR MESSAM: Vice Mayor Riggs.

VICE MAYR RIGGS: No, I'm good with that aspect as well. If we can finish that, I wanted to go back to Preparation of Legislation.

MAYOR MESSAM: So do we have consensus on that?

There was a Commission consensus to make the above language change as stated by City Attorney Cole.

MAYOR MESSAM: Vice Mayor Riggs.

VICE MAYOR RIGGS: Yes. Go back to C, page six: A Commissioner who would like to request preparation of legislation by the City Attorney or administration. Let me get this correctly. So let's say I need an ordinance, so do I need to put it under "Other Business" first, or can I call the City Attorney and get some opinions before doing that?

CITY ATTORNEY COLE: Generally, if you want an issue done, normally what you do is you go to the City Manager first, and if the City Manager agrees and thinks it's a good thing, she'll direct staff and the Attorneys to work on it, and eventually we'll get it on the agenda, etc. But if, say, the City Manager is not sure if she wants to do it, or if you want it to be something sponsored by you, as opposed to sponsored by the City, you put it under "Other Business", unless you already have something drafted, in which case you can give it to me, and if I can do it in a very short period of time, we can just put it on without the consensus.

VICE MAYOR RIGGS: My question is can I have a conversation with you first before putting it under "Other Business"?

ORDINANCES, RESOLUTIONS, PROCLAMATIONS & LETTERS

ORDINANCES

An "Ordinance" is an action taken by the Board of County Commissioners that creates a law that governs the behavior of everyone. It is a municipal law which may be amended or repealed by adoption of another ordinance. Except in cases of emergency or a suspension of the rules, ordinances are adopted by during Regular Session meetings of the Board.

RESOLUTIONS

A "Resolution" is an administrative act taken by the Board of County Commissioners to agree to County business and transactions. A resolution may be issued to express the Board's policy; direct administrative or legal action; or to make a public statement from the Board. A "motion" is used by the Board to indicate approval or denial of a procedural action. Except in cases of emergency or a suspension of the rules, resolutions are adopted during Regular Session meetings of the Board.

- Mail requests to:
  Monica W. Toomer, Clerk to the Board
  200 East Main Street, 2nd Floor
  Durham, NC 27701
- E-mail requests to:
  clerk@dconc.gov
- Fax requests to:
  (919) 560-0013

Resolution Policy and Request Form

Resolution Template

Resolution Sample

PROCLAMATIONS

A "Proclamation" is a ceremonial document issued by the Board that may be used to formally

recognize certain events, causes, groups or people. The goal of a proclamation is to recognize and celebrate the extraordinary achievements of Durham County residents and non-profit organizations, to honor occasions of importance and significance to Durham County residents, and to increase public awareness of issues with the hope of improving the well-being of citizens of Durham County. The documents are not legally binding and should not be interpreted as a policy endorsement. Proclamations are issued during Regular Session meetings of the Board.

Requests for a proclamation signing should be made four to six weeks prior to the requested date. Requests can be mailed, e-mailed, faxed or hand-delivered. Because of the large volume of requests, we cannot honor telephone requests. Please submit your proclamation with the request form, adhering to the required guidelines.

- Mail requests to:
  Monica W. Toomer, Clerk to the Board
  200 East Main Street, 2nd Floor
  Durham, NC 27701
- E-mail requests to:
  clerk@dconc.gov
- Fax requests to:
  (919) 560-0013

Proclamation Policy and Request Form

Proclamation Template

Proclamation Sample

CEREMONIAL LETTERS

A "Ceremonial Letter" is issued for programs, brochures, and other publications for medium to large-size events taking place in Durham County. The decision to write a ceremonial letter is done completely at the discretion of the Chair of the Board, and they and County staff reserve the right to deny requests for ceremonial letters at any time. Ceremonial letters are issued on a "rolling" basis.

Ceremonial letters are prepared by the Public Information Office and include the signature of the Chair of

the Board. Requests for ceremonial letters should be made two to four weeks prior to the requested date. Requests may be made to:

- Durham County Public Information Office
  Deborah Craig-Ray, General Manager; or
  Dawn Dudley, Senior Public Information Specialist
  200 East Main Street, 2nd Floor
  Durham, NC 27701
  (919) 560-0000
  publicinformationoffice@dconc.gov

Town of Pembroke Park
3150 SW 52nd Avenue
Pembroke Park, FL 33023

Agenda Request

Meeting Date:	April, 2020
Subject:	EXTENDING EMERGENY POWERS
Initiated by:	☑ City Council ☐ City Attorney ☐ City Manager/Staff
Prepared by:	Name & Title: Ashira Mohammed Mayor
Reviewed by:	Name & Title:
Approved by Town Manager:	Signature:
Approved by Town Attorney:	Signature:
Attachments:	
Fiscal Impact:	
Policy Question(s) for Council Considerations:	UPDATING AND EXTENDING EMERGENCY POWERS
Summary:	
Background:	
Discussion/Analysis:	
Options:	
Advantages:	
Disadvantages:	
Possible action:	
Advantages:	
Disadvantages:	
Staff Recommendations:	
Additional Action Needed:	

From: ashira mohammed [mailto:ashira.ann@gmail.com]
Sent: Monday, April 6, 2020 1:52 AM
To: Town Clerk <townclerk@townofpembrokepark.com>
Subject: cut and paste but i need to put in draft format so just lettig you know im going to sleep but im working on it

https://library.municode.com/fl/pembroke_park/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIVEMMA_S2-103DUMADUEM

- ## ARTICLE IV. - EMERGENCY MANAGEMENT[6]

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTIONCOMPARE VERSIONS

- ### Sec. 2-101. - Circumstances for declaring emergency, ordering curfew.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTIONCOMPARE VERSIONS

The Mayor may declare that an emergency exists due to an imminent or possible civil disorder, disobedience or disturbance, and order the establishment of a curfew.

(Ord. No. 68-7-1, § 1, 7-10-68)

Cross reference— Town commission, § 2-16.

- **Sec. 2-102. - Order of authority.**

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTIONCOMPARE VERSIONS

In the absence of the Mayor, the Vice-Mayor may perform any of the functions of authority granted to the Mayor under this article. In the absence of the Mayor and the Vice-Mayor, the Clerk-Commissioner may perform any of the functions of authority granted to the Mayor under this article. In absence of the Mayor, the Vice-Mayor, and the Clerk-Commissioner, the remaining Commissioner may perform any of the functions of authority granted to the Mayor under this article.

(Ord. No. 68-7-1, § 2, 7-10-68)

- **Sec. 2-103. - Duties of Mayor during emergency.**

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTIONCOMPARE VERSIONS

Upon the declaration of an emergency, the Mayor will:

(1)

Specify the emergency and the basis for the establishment of the curfew;

(2)

Designate the boundaries for the affected area;

(3)

Specify the hours of the curfew;

(4)

Specify the period of time the curfew and/or emergency will remain in effect;

(5)

Specify how emergencies and exceptions will be handled.

(Ord. No. 68-7-1, § 3, 7-10-68)

- **Sec. 2-104. - Duties of Clerk during emergency, curfew.**

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTIONCOMPARE VERSIONS

Upon the declaration of an emergency and curfew, the Clerk shall provide for the following:

(1)

The publication and announcement or broadcast by public address system or bullhorn at regular intervals throughout the affected area or areas and the area adjacent thereto;

(2)

The reduction to writing of the declaration of emergency and establishment of curfew;

(3)

The furnishing of copies of the declaration of emergency and establishment of curfew to County Sheriff, the chiefs of police of neighboring municipalities, and to local news media.

(Ord. No. 68-7-1, § 4, 7-10-68)

- **Sec. 2-105. - Public areas to remain clear during emergency; exceptions.**

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During the term of an emergency, it shall be unlawful for any person to be upon a public street, highway, sidewalk or other public place in the designated areas during the hours of the curfew and/or emergency; provided, however, the foregoing shall not apply to law enforcement officers, firemen, emergency ambulance crews, emergency utility crews, authorized personnel of recognized news media carrying credentials so identifying them or those persons who, by reason of their profession or personal emergency, must travel in the area. However, those persons so excepted must promptly obey any order of any law enforcement officer and their presence in the emergency area shall be deemed unlawful if they fail to do so.

(Ord. No. 68-7-1, § 5, 7-10-68)

- **Sec. 2-106. - Shortening or extension of emergency period.**

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The Mayor may shorten or extend the emergency period, according to the necessity of the situation; provided, however, if the term of the emergency is extended, the declaration of such extension must be handled as an original declaration with respect to public announcement, reduction to writing and other requirements, as set forth in this article.

(Ord. No. 68-7-1, § 6, 7-10-68)

- **Secs. 2-107—2-120. - Reserved.**

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- **Sec. 2-427. - Emergency powers to be exercised with specificity.**

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(a)

Exercise of powers authorized by this section. The Mayor may exercise an emergency power authorized by this section only pursuant to an order providing reasonable notice of the specific conduct that will be required or prohibited pursuant to the exercise of that power.

(b)

Exceptions. In invoking any emergency power authorized by this section, the Mayor may provide exceptions for certain activities, which may include any or all of the following: (i) compliance or assistance with an evacuation order; (ii) travel to a designated emergency shelter; (iii) provision of designated, essential services, such as fire, police, or utility repair; (iv) provision of medical services, including the transportation of patients to a health care facility and emergency calls by physicians; and (v) travel for the purpose of obtaining goods or services necessary to sustain the well-being of a person or that person's family or household.

(c)

Sale, dispensing, or transportation of items. The Mayor may prohibit or regulate the sale, dispensing, or transportation of any or all of the following items: alcoholic beverages, explosives, or combustibles.

(d)

Curfews. The Mayor may establish a curfew prohibiting pedestrians and vehicles from using any public roadway or other public property in the City. Such prohibition may be limited to certain areas or times of day, but regardless of the scope and duration, such curfew applies to any movement, standing, or parking during the time it is in effect.

(e)

Areas off limits. The Mayor may declare certain areas off limits.

(f)

Use of fresh water. The Mayor may limit the use of fresh water supplied by the City to specific times or for specific purposes, including cooking, drinking, or bathing.

(g)

Price gouging. The Mayor may prohibit any person form charging more than the average retail price for any merchandise, goods, or services sold in the City during the state of emergency. For purposes of this subsection, "average retail price" means the higher of the following: (i) the average price at which similar merchandise, goods, or services were sold during the 90 days preceding the state of emergency or (ii) the average wholesale cost plus the mark-up percentage that was charged for similar merchandise, goods, or services during the 90 days preceding the state of emergency.

(Ord. No. 329-H, § 2(b), 6-14-2018)

Editor's note— Ord. No. 329-H, § 2(b), adopted June 14, 2018, amended § 2-427 in its entirety. Former § 2-427 pertained to waiver of procedures and formalities during emergency and derived from the Code of 1992; Ord. No. 197-G, adopted May 11, 1995; Ord. No. 944-G, adopted September 3, 2009.

- **Sec. 2-428. - Removal of disaster-generated debris; authority, priorities and limitations.**

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(a)

The Mayor and the POD shall have authority, subject to the limitations of this section, to remove disaster-generated debris from publicly-owned and private property and public and private roads within the City, after a state of emergency or disaster has been declared. Removal of such debris may be authorized when removal is reasonably necessary to:

(1)

Eliminate immediate threats to life, public health, and safety;

(2)

Eliminate immediate threats of significant damage to improved public or private property; or

(3)

Ensure post-disaster economic recovery of the City.

(b)

An immediate threat to life, public health, and safety shall be deemed to exist if any one of the following standards is met:

(1)

There is a significant likelihood that rescue vehicles will be significantly hindered from rendering emergency services to residential or commercial property if debris is allowed to remain in place.

(2)

The debris is significantly likely to produce mold or may otherwise cause disease, illness, or sickness which could injure or adversely affect the health, safety, or general welfare of the public.

(3)

The debris is determined by the Building Official to be dangerous or hazardous.

(4)

The debris contains contaminants which have a reasonable likelihood of leeching into the soil.

(5)

The debris presents a reasonable danger of being transported by wind or water to neighboring properties, thereby increasing the cost of recovery and removal.

(6)

The debris has a substantial negative impact upon public health and safety by preventing or adversely affecting emergency repairs to buildings or property.

(7)

The clearing of debris is necessary to effectuate orderly and expeditious restoration of utility services including, but not limited to, water, sewer, garbage collection, gas, electric power, and telephone; provided, that the City shall not be deemed to assume the duty to provide or restore service by any utility service provider not owned by the City and shall not be responsible or liable for any claim arising from any alleged failure to clear debris in a timely manner.

(8)

The presence of the debris significantly adversely impacts the City's recovery efforts.

(9)

The debris significantly interferes with drainage or water runoff, so as to be a significant hazard in the event of significant rainfall.

(10)

The sheer volume of the debris is such that it is impractical and unreasonable to remove the debris in an orderly and efficient manner absent action by the City.

(11)

The type, extent and nature of the debris is such that it would cause much greater damage if the debris is not removed immediately.

(c)

In removing disaster-generated debris from publicly-owned property and public roads, the highest priority shall initially be given to responding to immediate threats to life, public health, and safety; eliminating immediate threats of significant damage to improved property; and pushing or removing debris from the public streets to permit safe passage. Removing debris from property other than public roads which is owned or maintained by a governmental agency other than the City may be initiated only after a request for the removal of debris has been delivered to the Mayor by the agency owning or having maintenance responsibility for the property.

(d)

In removing disaster-generated debris from private property and private roads, the following limitations shall apply:

(1)

The highest priority shall initially be given to responding to immediate threats to life, public health, and safety; and eliminating immediate threats of significant damage to improved private property.

(2)

In the absence of an immediate threat to life, public health, or safety, or an immediate threat of significant damage to improved private property:

a.

If a private road is not legally accessible by police, fire, and emergency medical personnel and their vehicles to provide emergency services to the residents of the community, removal or pushing of debris from the road by City work forces shall not be authorized.

b.

If a private road is legally accessible by police, fire, and emergency medical personnel and their vehicles to provide emergency services to the residents of the community, City work forces may push disaster-generated debris to clear a route of safe passage for motor vehicles along such roads, but shall not be authorized to remove disaster-generated debris from the private road.

c.

City work forces shall not enter upon private property or private roads without first having obtained authority, in writing, to enter the property and remove or reduce threats to life, public health and safety by debris removal, which authorization shall have been executed by a person having legal authority to grant such authority to the City on behalf of the owner of the property.

Any such written authorization shall include but not be limited to a statement that the City, State and federal agencies and their officers, employees, agents and contractors shall be indemnified and held harmless from claims for damages for bodily injury or property damage, or both, that may arise from the debris removal and related activities of the personnel engaged in such work. The written authorization shall also disclose any insurance policies providing coverage or other sources of funding to pay for the debris removal work.

(3)

When responding to a threat of significant damage to improved private property:

a.

The Mayor shall initially determine whether the removal of disaster-generated debris is cost effective. For this purpose, the term "cost effective" means that the cost to remove the debris will be less than the cost of potential damage to the improved property. If removal of the debris is determined not to be cost-effective, the Mayor shall not authorize removal of the debris.

b.

The highest priority shall be given to the removal of debris from single-family and two-family residential property, but debris may be removed from commercial property when such removal is found to be in the public interest. For the limited purpose of this subsection, the term "commercial property" includes, but is not limited to, apartments, condominiums, mobile homes in commercial trailer parks, golf courses, and industrial parks.

(4)

Disaster-damaged trees and limbs may be removed from improved private property and private roads if they meet any of the following criteria:

a.

Disaster-damaged limbs and leaning trees are in danger of falling on improved property, primary ingress or egress routes, or public rights-of-way;

b.

A tree is greater than six inches in diameter (measured at diameter breast height) and meets any of the following criteria: More than 50 percent of the crown is damaged or destroyed; the trunk is split, exposing the heartwood; broken branches expose the heartwood; or the tree is leaning at an angle greater than 30 degrees and shows evidence of ground disturbance;

c.

A limb is greater than two inches in diameter measured at the point of break.

(Ord. No. 944-G, § 2, 9-3-2009)

- **Sec. 2-429. - Authority of the City Council.**

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Unless explicitly stated, this article is not intended to limit the authority of the City Council to take any action authorized by law when sitting in regular or special session.

(Code 1992, § 2-329; Ord. No. 197-G, § 3, 5-11-1995; Ord. No. 944-G, § 3(2-330), 9-3-2009; Ord. No. 329-H, § 2(c), 6-14-2018)

- **Secs. 2-430—2-456. - Reserved.**

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- **DIVISION 3. - AFFRAYS; RIOTS; UNLAWFUL ASSEMBLIES**

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- **Sec. 2-457. - Designation of official who may issue a declaration of emergency.**

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The Mayor is hereby designated pursuant to F.S. § 870.042 as the person who has the power to issuer a declaration of emergency as such is defined within F.S. ch. 870. In the Mayors absence the Chief of Police shall be the person designated to issue the declaration of emergency.

- **Sec. 2-458. - Declaration of emergency.**

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Whenever it is determined a situation exits that meets the criteria for a declaration of emergency, the person designated in this division, may declare a state of emergency as provided for in F.S. § 870.0430 and shall be authorized to exercise those powers conferred in F.S. §§ 870.041—870.047.

- **Sec. 2-459. - Powers and protections.**

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Whenever a state of emergency is declared pursuant to this division, the City, its employees and officials shall be entitled to all protections and powers afforded by F.S. ch. 870.

- **Secs. 2-460—2-486. - Reserved.**

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Sec. 8-1. - Local emergencies.

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(a)

Territory embraced. This section applies to all territory within the legal boundaries of the county, including all incorporated and unincorporated areas.

(b)

Declaration of local emergency. In the event of any natural or manmade disaster, flooding, fire, wind, tornado, hurricane, train, plane or other accident of major proportions, which may constitute a state of local emergency, the board of county commissioners, in emergency special session, shall have authority to make a declaration that there exists a state of local emergency and to proscribe reasonable rules and regulations concerning such emergency, including, but not limited to, evacuating affected areas, prohibiting vehicular traffic on affected streets and highways, or boat traffic on the lakes, rivers, and streams, and such other rules and regulations as may be deemed in the best interests of the citizens and residents of the county. With regard to flooding on the Withlacoochee River or any other body of water in the county, the sheriff shall be automatically authorized to declare all or any portion of such river or body of water as an evacuation zone once the Southwest Florida Water Management District has declared a state of flooding exists as to that body of water. The board of county commissioners shall have the authority to override any such declaration by the sheriff at any regular or special meeting of the board of county commissioners.

- ## Sec. 8B-6. - Powers of the Mayor.

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Pursuant to the Code and Florida State law, and to execute the policies and purposes of this Chapter, the Mayor, the Chairperson of the Board of County Commissioners in the absence of the Mayor or the Manager in the absence of the Mayor and the Chairperson of the Board of County Commissioners is authorized to:

(1)

Declare a Local State of Emergency: The Mayor or the Chairperson of the Board of County Commissioners in the absence of the Mayor may declare a Local State of Emergency for a period of up to thirty (30) days for any or all areas of Miami-Dade County in response to the imminent threat of, or an occurring emergency or disaster. The Mayor or the Chairperson of the Board of County Commissioners in the absence of the Mayor or the Manager in the absence of the Mayor and the Chairperson of the Board of County Commissioners must present to the Board and file with the Office of the County Manager an affidavit stating the reasons for the Declaration:

(a)

If the Declaration is to exceed thirty (30) days the Mayor, or the the Chairperson of the Board of County Commissioners in the absence of the Mayor or the Manager in the absence of the Mayor and the Chairperson of the Board of County Commissioners, shall present to the Board an additional affidavit stating the reasons for the extension.

(b)

A Local State of Emergency may be terminated by executive order once conditions that prompted the declaration are no longer a threat.

(2)

Ensure the coordination Local, State, or Federal agencies, and private entities to facilitate disaster or emergency operations.

(3)

The Mayor shall be the official representative of Miami-Dade County and speak on behalf of its actions in response to disasters or emergencies.

(Ord. No. 99-51, § 3, 5-25-99; Ord. No. 03-178, § 1, 7-22-03)

- ## Sec. 8B-7. - Duties of the County Manager.

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The Manager shall be responsible for the overall emergency management function in Miami-Dade County, and keep the Mayor and the Board advised of any actions.

(1)

The Manager may mobilize any or all functional parts of Miami-Dade County government, take special actions and put in place all appropriate regulations that will protect the lives and property of the citizens of Miami-Dade County.

(2)

Once a Local State of Emergency has been declared, the Manager is authorized by the Mayor and the Board to order any or all of the following actions:

(a)

Employee Recall Order: An order recalling Miami-Dade County employees from vacation, canceling days off, and mobilizing all personnel required for disaster response;

(b)

Authorize the Department of Procurement to suspend normal leasing and bid procedures to procure space, structures or other items under their normal authority for disaster response determined necessary;

(c)

Authorize procurement of supplies, equipment, and services without formal bidding procedures;

(d)

Evacuation Order: A mandatory order(s) directing the evacuation of appropriate area(s) of Miami-Dade County deemed to be in imminent danger from disaster;

(e)

Curfew: In the period before, or during and immediately after an event, an order imposing a general curfew applicable to Miami-Dade County as a whole, or to geographical area(s) of Miami-Dade County and during hours the Manager deems necessary, and from time to time, to modify the hours the curfew will be in effect and what area(s) it applies to;

(f)

An order requiring any or all commercial establishments located in area(s) of imminent or actual danger to close and remain closed until further order;

(g)

An order requiring the closure of any or all bars, taverns, liquor stores, and other business establishments where alcoholic beverages are predominantly sold or otherwise dispensed; provided that with respect to those business establishments which are not primarily devoted to the sales of alcoholic beverages, and in which such alcoholic beverages may be removed or made secure from seizure by the public, the portions thereof utilized for the sale of items other than alcoholic beverages may, at the discretion of the Manager, be allowed to remain open;

(h)

An order requiring the discontinuance of the sale, distribution or giving away of alcoholic beverages in any or all parts of Miami-Dade County;

(i)

An order requiring the closure of any or all establishments where firearms and/or ammunition are sold or otherwise dispensed; provided that with respect to those business establishments which are not primarily devoted to the sale of firearms and/or ammunition, and in which such firearms or ammunition may be removed or made secure from possible seizure by the public, the portions thereof utilized for the sale of items other than firearms and ammunition may, at the discretion of the Manager, be allowed to remain open;

Note— Florida Statutes § 790.33, as amended, preempts and declares null and void all local ordinances, administrative regulations and rules in the field of firearms and ammunition, with limited exceptions set forth in § 790.33, as amended.

(j)

An order requiring the discontinuance of the sale, distribution or giving away of gasoline or other flammable liquid or combustible products in any container other than a gasoline tank properly attached to a gas powered vehicle;

(k)

An order closing to the public any or all public places including streets, alleys, public ways, schools, parks, beaches, amusement areas and public buildings;

(l)

In addition to the provisions of Section 8A-5 of the Code of Miami-Dade County, orders to prevent price gouging for any essential commodity, dwelling unit, or storage facility;

(m)

Orders requesting the conservation of water supplies;

(n)

The Manager shall cause any proclamation ordered by the Mayor or the Board pursuant to the authority of this chapter to be delivered to all news media within Miami-Dade County, and shall utilize whatever available means to give public notice of such proclamation.

(o)

Such other orders as are immediately necessary for the protection of life and property; provided, however that any such orders shall, at the earliest practicable time, be presented to the Board for ratification or confirmation in accordance with this chapter.

(3)

Appoint a Director of the Office of Emergency Management.

(4)

The Manager will require all Miami-Dade County department and agency directors to develop emergency operations plans, establish staff members who will carry out these plans, represent their agencies during a disaster or emergency, and will make available to the Office of Emergency Management twenty-four (24) hour contact information and a system of notification of key employees.

(a)

The directors of all Miami-Dade County departments and agencies that are required to report to and function in the EOC as outlined in the Plan, will appoint no less than six (6) staff members who will form the pool of that

department's or agency's representatives that will be assigned to report to the EOC upon activation to represent their department or agency or serve as lead agency for a specific function.

(b)

The directors of all Miami-Dade County departments and agencies will designate each staff member as essential or non-essential as defined in § 8B-2 (14-15). The function and responsibilities of "essential" staff will be outlined in the department's or agency's preparedness plan pursuant to § 8B-9 (1). The directors shall submit a list of all "non-essential" staff members to the Office of Emergency Management each May. These "non-essential" staff members will serve in the Disaster Assistance Employee program.

(5)

The Manager or designee shall present an annual emergency preparedness report to the Board and the Mayor. This report, to be presented in writing, shall ensure that the Board and the Mayor are informed on the status of the ability of Miami-Dade County to prepare for, respond to, and manage disasters and emergencies. This report is pursuant to the Citizens' Bill of Rights, Section 10 of the Miami-Dade County Home Rule Charter and F.S. 252.

(6)

During training or exercises requiring the participation of any or all Miami-Dade County departments or agencies, it shall be the responsibility of the Manager to ensure appropriate participation by said departments in support of the Plan.

(Ord. No. 99-51, § 3, 5-25-99; Ord. No. 03-178, § 1, 7-22-03)

- ## Sec. 8B-8. - Duties of the Director of the Office of Emergency Management.

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The Director shall be responsible for the organization, administration and operation of the Office of Emergency Management, subject to the direction and control by the Manager. The Director shall coordinate the activities, services and programs for emergency management and disaster response within Miami-Dade County and shall maintain liaison with other emergency management organizations.

(1)

The Director or designee shall prepare a Comprehensive Emergency Management Plan and program for the emergency management of Miami-Dade County pursuant to F.S. 252, including, but not limited to elements addressing mitigation activities, preparedness, responses to disasters and emergencies, and recovery operations and submit the Plan and program to the Director of the Division of Emergency Management. State of Florida for review and certification for consistency with the State Comprehensive Emergency Management Plan and compliance with Federal emergency management mandates.

(2)

The Director or designee shall monitor and advise the Mayor and Manager of any and all threats, emergencies or disasters that pose a risk to the lives and safety of the residents of Miami-Dade County, proposing solutions for their decision on how best to protect people and property from imminent danger, or from further damage.

(3)

The Director or designee shall procure supplies and equipment, institute training programs, public preparedness information and education programs, manage and coordinate disaster drills and exercises in accordance with the Plan.

(4)

Provision of Shelter.

(a)

Public Shelter Manager: In cases of national emergency, or local disaster or emergency as defined herein, the Director or designee, may appoint Shelter Managers, who shall open public shelters; take charge of all stocks of

food, water and other supplies stored in said shelter; admit the public according to Miami-Dade County's sheltering plan; and take whatever control measures are necessary for the protection and safety of the occupants.

(b)

In the event any of the aforementioned public shelters are not available or no longer suitable for use as a shelter for whatever reason, the Director or designee may cause to be opened any publicly owned building within Miami-Dade County for such use as deemed necessary by the Director or designee.

(c)

Shelter Managers are authorized to use reasonable restraint against those who refuse to cooperate with the routine of shelter living under emergency conditions. Refusal to carry out the orders of the Shelter Manager and appointed staff shall be deemed an offense punishable by a fine of not more than five-hundred dollars ($500.00) or imprisonment in Miami-Dade County jail of not more than sixty (60) days or by both such fine and imprisonment.

(5)

The Director or designee shall, in consultation with all municipalities, concerned agencies, public utilities and state offices, develop an evacuation plan for Miami-Dade County. This plan should be usable for any or all types of emergencies or disasters. It should coordinate the efforts of all local entities allowing for rapid execution in the face of a sudden disaster.

(6)

The Director is authorized by the Board to enter into mutual aid agreements in collaboration with other public and private agencies within the State for reciprocal disaster aid and assistance in the event of a disaster or emergency too great to be dealt with unassisted.

(Ord. No. 99-51, §§ 1, 3, 5-25-99; Ord. No. 03-178, § 1, 7-22-03)

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- **Sec. 20-22. - Emergency management and response powers.**

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(a)

Declaration of local emergency.

(1)

Grant of authority. In the event of an actual or threatened occurrence of a disaster or emergency, which may result in the large-scale loss of life, injury, property damage or destruction or in the major disruption of routine community affairs, business or governmental operations in the city and which is of sufficient severity and magnitude to warrant extraordinary assistance by federal, state and local departments and agencies to supplement the efforts of available public and private resources, the mayor may declare a local emergency. The form of the declaration shall be similar to that provided in subsection (b) of this section.

(2)

Request for state assistance. Consistent with a declaration of local emergency, the mayor may request the governor to provide assistance; provided that the disaster or emergency is beyond the capacity of the city to meet adequately and that state assistance is necessary to supplement local efforts to save lives and protect property, public health and safety, or to avert or lessen the threat of a disaster.

(3)

Continuance. The declaration of local emergency shall continue until the mayor finds that emergency conditions no longer exist, at which time the mayor shall execute and file with the city clerk a document marking the end of

the state of emergency. No state of local emergency shall continue for longer than 30 days, unless renewed by the mayor. The city council may, by resolution, end a state of local emergency at any time.

(4)

Effect of declaration.

a.

Activation of emergency operations plan. A declaration of emergency by the governor or a declaration of local emergency by the mayor shall automatically activate the local emergency operations plan and shall be authority for the deployment of personnel and use of any forces to which the plan applies and for use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled or arranged to be made available pursuant to the Georgia Emergency Management Act or any other laws applicable to emergencies or disasters.

1.

The emergency management director and his designees shall have the legal authority to exercise the powers and discharge the duties conferred by law, including the implementation of the applicable local emergency operations plan, coordination of the emergency responses of public and private agencies and organizations, coordination of recovery efforts with county, state and federal officials, and inspection of emergency or disaster sites.

2.

In responding to the emergency and conducting necessary and appropriate survey of the damages caused by the emergency, the emergency management director or his designee is authorized to enter at a reasonable time upon any property, public or private, for the purpose of evaluating sites involved with emergency management functions to protect the health, safety, and welfare of the public.

3.

The emergency management director is authorized to execute a right of entry and/or agreement to use property for these purposes on behalf of the city; however, any such document shall be later presented for ratification by the city council.

4.

No person shall refuse entry or access to any authorized representative or agent of the city who requests entry for purposes of evaluating sites involved with emergency management functions to protect the health, safety, or welfare of the public and who presents appropriate credentials. Nor shall any person obstruct, hamper or interfere with any such representative while that individual is in the process of carrying out his official duties.

b.

Emergency powers. Following a declaration of emergency and during the continuance of such state of emergency, the mayor is authorized to implement local emergency measures to protect life and property or to bring the emergency situation under control. In exercising this authority, the mayor may cause to become effective any of the following sections of this article as appropriate: section 20-25 regarding registration of building and repair services; section 20-26 regarding closed or restricted areas and curfews during emergencies; and section 20-27 regarding prohibiting overcharging. If any of these sections are included in a declaration of local emergency, the same shall be filed in the office of the city clerk and shall be in effect until the declaration of local emergency has terminated.

c.

Authority to waive procedures and fees. Pursuant to a declaration of emergency, the city council is authorized to cause to be effective any of the subsections of section 20-24, as appropriate. The implementation of such subsections shall be filed in the office of the city clerk.

d.

Additional emergency powers. The emergency management director shall have and may exercise, for such period as the declared emergency exists or continues, the following additional emergency powers:

1.

To direct and compel the evacuation of all or part of the population from any stricken or threatened area, for the preservation of life or other disaster mitigation, response or recovery;

2.

To prescribe routes, modes of transportation and destinations in connection with evacuation;

3.

To make provisions for the availability and use of temporary emergency housing, emergency shelters and/or emergency medical shelters;

4.

To transfer the direction, personnel or functions of any city departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

5.

To utilize all available resources of the city and subordinate agencies over which the city has budgetary control as reasonably necessary to cope with the emergency or disaster;

6.

To utilize public property when necessary to cope with the emergency or disaster, or when there is compelling necessity for the protection of lives, health and welfare and/or the property of citizens;

7.

To suspend any law, code provision or regulation prescribing the procedures for conduct of city business, or the orders, rules or regulations of any city agency, if strict compliance with any ordinance, resolution, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with the emergency or disaster; provided that such suspension shall provide for the minimum deviation from the requirements under the circumstances, and, further provided that, when practicable, specialists shall be assigned to avoid adverse effects resulting from such suspension;

8.

To provide benefits to citizens upon execution of an intergovernmental agreement for grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by an emergency or disaster in cases where the individuals or families are unable to meet the expenses or needs from other means; provided that such grants are authorized only when matching state or federal funds are available for such purposes;

9.

To perform and exercise such other functions, powers and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population, including individuals with household pets and service animals prior to, during, and following a major disaster or emergency.

(b)

Form of declaration. Upon the declaration of local emergency, an official "Declaration of Local Emergency," in substantially the same form set forth in this subsection, shall be signed and filed in the office of the city clerk and shall be communicated to the citizens of the affected area using the most effective and efficient means available. The declaration shall state the nature of the emergency or disaster, the conditions that require the declaration and any sections of this article which shall be in effect.

DECLARATION OF LOCAL EMERGENCY

WHEREAS, the city of _____, Georgia has experienced an event of critical significance as a result of *[DESCRIPTION OF EVENT]* on *[DATE];* and

WHEREAS, in the judgment of the mayor, there exist emergency circumstances located in *[DESCRIBE GEOGRAPHIC LOCATION]* requiring extraordinary and immediate corrective actions for the protection of the health, safety and welfare of the citizens of the city, including individuals with household pets and service animals; and

WHEREAS, to prevent or minimize injury to people and damage to property resulting from this event;

NOW, THEREFORE, pursuant to the authority vested in me by local and state law;

IT IS HEREBY DECLARED that a local state of emergency exists and shall continue until the conditions requiring this declaration are abated.

WHEREFORE, IT IS ORDERED:

(1)

That the applicable local emergency operations plan is hereby activated;

(2)

That the following sections of the City Code of Ordinances be implemented : section 20-25, *Registration of building and repair services;* section 20-26, *Closed or restricted areas and curfews during emergency;* section 20-27; *Overcharging prohibited;* and

(3)

That the following measures also be implemented: section 20-22*(a)(4)c, d.*

SO ORDERED, this _____ day of _____, 20___ at [TIME].

	Mayor

(c)

Contracts with local governments. In addition to the normal agreements embodied in the applicable local emergency operations plan for mutual emergency assistance, the city may contract with any municipality or county for the administration of a local emergency response program.

(Ord. of 11-5-2012, exh. A(34))

State Law reference— Local emergency management rules and orders, O.C.G.A. § 38-3-28; mutual aid agreements, O.C.G.A. § 38-3-29.

- ## Sec. 20-23. - Enforcement and remedies.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

(a)

Law enforcement. In accordance with O.C.G.A. § 38-3-4, the city police department shall be authorized to enforce the orders, rules and regulations contained in this article and/or implemented by the emergency management director or local governing authority during a declared emergency.

(b)

Penalties. Failure to comply with any of the requirements or provisions of the regulations contained in this article, or with any Code section, order, rule or regulation made effective by the emergency management director or local governing authority upon or after the declaration of an emergency shall constitute a violation of the provisions of this article. Any person who violates any provision in this article shall, upon conviction thereof, be punished by a fine not exceeding $1,000.00, imprisonment for a term not exceeding 180 days, or both such fine and imprisonment, for each violation. Each person assisting in the commission of a violation, shall be guilty of separate offenses. Each day during which a violation or failure to comply continues shall constitute a separate violation.

(c)

Injunctive relief. In accordance with O.C.G.A. § 38-3-5, in addition to the remedies prescribed in this section, the emergency management director is authorized to obtain an injunction to restrain violation of laws, code sections, orders, rules and regulations which are contained in the Georgia Emergency Management Act and/or this Code, and/or which are implemented by the local governing authority during a declared emergency.

(d)

Enforcement. Except as otherwise provided in this article, this article may be enforced by the city police department.

(Ord. of 11-5-2012, exh. A(35))

- **Sec. 20-24. - Authority to waive procedures and fee structures.**

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

(a)

City business. Upon the declaration of an emergency or disaster by the governor or mayor, the affairs and business of the city may be conducted at places other than the regular or usual location, within or outside of the city, when it is not prudent, expedient or possible to conduct business at the regular location. When such meetings occur outside of the city, all actions taken by the city council shall be as valid and binding as if performed within the city. Such meetings may be called by the presiding officer or any two members of city council without regard to or compliance with time-consuming procedures and formalities otherwise required by law.

(b)

Public works contracts. Upon the declaration of an emergency or disaster by the governor or mayor, the city may contract for public works without letting such contract out to the lowest, responsible bidder and without advertising and posting notification of such contract for four weeks; provided, however, that the emergency must be of such nature that immediate action is required and that the action is necessary for the protection of the public health, safety and welfare. Any public works contract entered into pursuant to this subsection shall be entered on the minutes of the city as soon as practical and the nature of the emergency described therein in accordance with O.C.G.A. § 36-91-22(e). Any E-Verify affidavit or other state required affidavit shall be obtained from any contractor if otherwise required by law.

(c)

Purchasing. Upon the declaration of an emergency or disaster by the governor or mayor, the purchasing ordinances, regulations or policies may be suspended. City officials shall continue to seek to obtain the best prices during the state of local emergency.

(d)

Code enforcement. Upon the declaration of a state of emergency or disaster by the governor or the mayor, the city council may temporarily suspend the enforcement of the ordinances of the city, or any portion thereof; where the emergency is of such nature that immediate action outside the Code is required, such suspension is consistent with the protection of the public health, safety and welfare, and such suspension is not inconsistent with any federal or state statutes or regulations.

(e)

Fees. Upon the declaration of a state of emergency or disaster by the governor or the mayor, the city may temporarily reduce or suspend any permit fees, application fees or other rate structures as necessary to encourage the rebuilding of the areas impacted by the disaster or emergency. The term "fees" includes fees or rates charged by the city for building permits, land disturbance permits, zoning applications, special land use permits, temporary land use permits and other fees relating to the reconstruction, repair and cleanup of areas impacted by the disaster or emergency. The term "fees" does not include fees collected by the city on behalf of the state or federal government or fees charged by the city pursuant to a state or federal statute or regulation.

(f)

Temporary dwellings. Upon the declaration of a state of emergency or disaster by the governor or mayor, the city or its designees may issue temporary mobile home, trailer, recreational vehicle or other temporary dwelling structures or parks in any zoning district, even though not otherwise permitted by the development code, while the primary dwelling is being repaired. The temporary permit shall not exceed six months in duration. Upon expiration of the temporary permit and/or extension, the temporary dwelling must be removed.

(Ord. of 11-5-2012, exh. A(36))

- **Sec. 20-25. - Registration of building and repair services.**

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

(a)

In accordance with O.C.G.A. § 38-3-56, before building, constructing, repairing, renovating or making improvements to any real property, including dwellings, homes, buildings, structures or fixtures within an area in the city designated in a declared emergency or disaster, any person, firm, partnership, corporation or other entity must register with the city clerk and secure a building permit that is posted at the work site. Each day any such entity does business in the city without complying with this article constitutes a separate offense.

(b)

The cost of registration fees in a declared emergency or disaster is fixed at $50.00 per annum. Registration is nontransferable. The cost of the emergency building permit shall be equal to the cost for a building permit under existing regulations. The permit shall only be authorized for repairs.

(c)

When registering, any person, partnership, corporation or other entity making application must, under oath, complete an application providing the following information:

(1)

The name of the applicant;

(2)

The permanent address and telephone number of the applicant;

(3)

The applicant's social security number or federal employer identification number;

(4)

If the applicant is a corporation, the state and date of incorporation;

(5)

The tag registration information for each vehicle to be used in the business;

(6)

The list of cities and/or counties where the applicant has conducted business within the past 12 months;

(7)

State sales tax number or authorization;

(8)

State business license number, if required;

(9)

A copy of the license from the Secretary of State of Georgia, if required;

(10)

A signed and sworn affidavit verifying the applicant's legal presence in the United States, as required by O.C.G.A. § 50-36-1;

(11)

At least one secure and verifiable document as defined in O.C.G.A. § 50-36-2.

(d)

Effective date. This section shall become effective only upon the signing of a declaration of emergency, stating this section is in effect. Unless otherwise specified in the declaration of emergency or otherwise extended by the city council, the provisions of this section shall remain in effect during the state of emergency and for a subsequent recovery period of three months.

(Ord. of 11-5-2012, exh. A(37))

- **Sec. 20-26. - Closed or restricted areas and curfews during emergency.**

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

(a)

To preserve, protect or sustain the life, health, welfare or safety of persons or their property within a designated area under a declaration of emergency, it shall be unlawful for any person to travel, loiter, wander or stroll in or upon the public streets, highways, roads, lanes, parks or other public grounds, public places, public buildings, places of amusement, eating places, vacant lots or any other place during a declared emergency between hours specified by the mayor, until the curfew is lifted.

(b)

To promote order, protect lives, minimize the potential for looting and other crimes, and facilitate recovery operations during an emergency, the mayor shall have the discretion to impose reentry restrictions on certain areas. The mayor shall exercise such discretion in accordance with the applicable local emergency operations plan, which shall be followed during emergencies.

(c)

The provisions of this section shall not apply to persons acting in the following capacities:

(1)

Authorized and essential law enforcement personnel;

(2)

Authorized and essential health care providers;

(3)

Authorized and essential personnel of the city;

(4)

Authorized National Guard or federal military personnel;

(5)

Authorized and essential firefighters;

(6)

Authorized and essential emergency response personnel;

(7)

Authorized and essential personnel or volunteers working with or through an emergency management agency (EMA);

(8)

Authorized and essential utility repair crews;

(9)

Citizens seeking to restore order to their homes or businesses while on their own property or place of business;

(10)

Other authorized and essential persons as designated on a list compiled by the emergency management director.

(d)

Enforceability. This section shall be enforced by officers of the law enforcement personnel approved to provide aid and assistance during the emergency. Nothing contained in this section shall prohibit a law enforcement officer from bringing other charges under state law.

(e)

Effective date. This section shall become effective only upon the signing of a declaration of emergency, stating that this section is in effect.

(Ord. of 11-5-2012, exh. A(38))

- **Sec. 20-27. - Overcharging prohibited.**

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

(a)

Act declared unlawful. To preserve, protect or sustain the life, health or safety of persons or property within a designated area upon the declaration of an emergency or disaster, it shall be unlawful, during the duration of the emergency or subsequent recovery period, for any person, firm or corporation located or doing business in the city to overcharge for any goods, materials, foods, equipment, supplies, services, labor, motel rooms, temporary lodging or houses sold or rented within the county.

(b)

Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Overcharging means charging prices for goods, materials, foods, equipment, supplies, services, labor, motel rooms, temporary lodging or houses, which exceed the customary charges by at least 25 percent or, in applicable cases, which exceed by at least 25 percent the suppliers' or providers' costs for such goods, materials, foods, equipment, supplies, services, labor, motel rooms, temporary lodging or houses. The existence of overcharging shall be presumed from a 25 percent or greater increase in the price at which the merchandise or rate, fee or cost/rental of housing was offered in the usual course of business immediately prior to the onset of the emergency or disaster, but shall not include increases in cost to the supplier directly attributable to the higher cost of material, supplies and labor costs resulting from the emergency.

Subsequent recovery period means that period during which the emergency or disaster continues to cause disruptions in the area designated in the declaration of emergency, but shall not exceed three months after the declaration has been terminated, unless extended by action of the city council.

(c)

Effective date. This section shall become effective only upon the signing of a declaration of emergency as set out in this article, stating that this section is in effect. Unless otherwise specified in the declaration of emergency or otherwise extended by the city council, the provisions of this section shall remain in effect during the state of emergency and for a subsequent recovery period of three months.

(Ord. of 11-5-2012, exh. A(39))

- **Sec. 20-28. - Volunteers.**

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

All persons, other than officers and employees of the city, performing emergency functions pursuant to this article shall serve with or without compensation. While engaged in such emergency functions, volunteers shall have the same immunities as city officers and employees.

(Ord. of 11-5-2012, exh. A(40))

https://library.municode.com/ga/powder_springs/codes/code_of_ordinances?nodeId=COOR_CH19CIEM

- # Chapter 19 - CIVIL EMERGENCIES[1]

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

Footnotes:

--- (1) ---

Cross reference— *Emergency services, ch. 7.5.*

State Law reference— *Georgia Emergency Management Act of 1981, O.C.G.A. § 38-3-1 et seq.; emergency medical services, O.C.G.A. § 31-11-1 et seq.*

- ## Sec. 19-1. - Regulations continued in effect.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

All ordinances, resolutions, motions and orders pertaining to civil defense, emergency management and disaster relief, which are not in conflict with this chapter, are continued in full force and effect. Such ordinances, etc., are on file in the office of the city clerk.

(Ord. No. 2009-17, 3-16-09)

- ## Sec. 19-2. - Emergency management and response powers.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

(a)

Declaration of emergency.

(1)

Grant of authority. In the event of an actual or threatened occurrence of a disaster or emergency, which may result in the large-scale loss of life, injury, property damage or destruction or in the major disruption of routine community affairs, business or governmental operations in the city and which is of sufficient severity and magnitude to warrant extraordinary assistance by federal, state and local departments and agencies to

supplement the efforts of available public and private resources, the Mayor may declare an emergency for the unincorporated area of the city upon execution of an intergovernmental agreement(s).

(2)

Request for state assistance. Consistent with a declaration of emergency, the Mayor may request the governor to provide assistance, provided that the disaster or emergency is beyond the capacity of the city to meet adequately and state assistance is necessary to supplement local efforts to save lives and protect property, public health and safety, or to avert or lessen the threat of a disaster.

(3)

Continuance. The declaration of emergency shall continue until the mayor finds that emergency conditions no longer exist, at which time, the Mayor shall execute and file with the city clerk a document marking the end of the state of emergency. No state of emergency shall continue for longer than thirty (30) days, unless renewed by the mayor. The mayor and city council may, by resolution, end a state of emergency at any time.

(4)

Effect of declaration of emergency.

a.

Activation of emergency operations plan. A declaration of emergency shall automatically activate the city emergency operations plan and shall be authority for the deployment of personnel and use of any forces to which the plan applies and for use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled or arranged to be made available pursuant to the Georgia Emergency Management Act or any other laws applicable to emergencies or disasters.

1.

The chief of police, or his/her designee, shall have the legal authority to exercise the powers and discharge the duties conferred upon the emergency management agency, including the implementation of the emergency operations plan, coordination of the emergency responses of public and private agencies and organizations, coordination of recovery efforts with state and federal officials, and inspection of emergency or disaster sites.

2.

In responding and conducting necessary and appropriate investigations, the chief of police, or his/her designee, is authorized to enter at a reasonable time upon any property, public or private, for the purpose of investigating and inspecting sites involved with emergency management functions.

3.

No person shall refuse entry or access to any authorized representative or agent of the city who requests entry for purposes of inspection, and who presents appropriate credentials. Nor shall any person obstruct, hamper or interfere with any such representative while that individual is in the process of carrying out his or her official duties.

b.

Emergency powers. Following a declaration of emergency and during the continuance of such state of emergency, the mayor is authorized to implement local emergency measures to protect life and property or to bring the emergency situation under control. In exercising this authority, the mayor may cause to become effective any of the following sections of this chapter as appropriate: Sections 19-5, 19-6, and 19-7. If any of these sections is included in a declaration of emergency, the same shall be filed in the office of the city clerk and shall be in effect until the declaration of emergency has terminated.

c.

Authority to waive procedures and fees. Pursuant to a declaration of emergency, the city council is authorized to cause to be effective any of the subsections of section 19-4 of this chapter as appropriate. The implementation of such subsections shall be filed in the office of the city clerk.

d.

Additional emergency powers. The mayor shall have and may exercise for such period as the declared emergency exists or continues, the following additional emergency powers:

1.

To direct and compel the evacuation of all or part of the population from any stricken or threatened area, for the preservation of life or other disaster mitigation, response or recovery;

2.

To prescribe routes, modes of transportation and destinations in connection with evacuation;

3.

To suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives and flammable liquids and substances;

4.

To make provision for the availability and use of temporary emergency housing, emergency shelters and/or emergency medical shelters.

5.

To transfer the direction, personnel or functions of any city departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

6.

To utilize all available resources of the City and subordinate agencies over which the City has budgetary control as reasonably necessary to cope with the emergency or disaster;

7.

To commandeer or utilize public or private property when necessary to cope with the emergency or disaster or when there is compelling necessity for the protection of lives, health and welfare; and/or the property of citizens;

8.

To suspend any law, code provision or regulation prescribing the procedures for conduct of City business, or the orders, rules or regulations of any city agency, if strict compliance with any ordinance, resolution, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with the emergency or disaster, provided that such suspension shall provide for the minimum deviation from the requirements under the circumstances and further provided that, when practicable, specialists shall be assigned to avoid adverse effects resulting from such suspension;

9.

To provide welfare benefits to citizens upon execution of an intergovernmental agreement for grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by an emergency or disaster in cases where the individuals or families are unable to meet the expenses or needs from other means, provided that such grants are authorized only when matching state or federal funds are available for such purposes;

10.

To perform and exercise such other functions, powers and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population, including individuals with household pets and service animals prior to, during, and following a major disaster or emergency.

(b)

Form of declaration. Upon the declaration of emergency, an official "Declaration of Emergency," in substantially the same form set forth below, shall be signed and filed in the office of the city clerk and shall be communicated to the citizens of the affected area using the most effective and efficient means available. The declaration shall state the nature of the emergency or disaster, the conditions that require the declaration and any sections of this chapter which shall be in effect.

DECLARATION OF EMERGENCY

WHEREAS, the City of Powder Springs, Cobb County, Georgia has experienced an event of critical significance as a result of [DESCRIPTION OF EVENT] on [DATE]; and

WHEREAS, in the judgment of the Mayor, with advice from the City Council and Chief of Police, there exist emergency circumstances located in [DESCRIBE GEOGRAPHIC LOCATION] requiring extraordinary and immediate corrective actions for the protection of the health, safety and welfare of the citizens of the City of Powder Springs, Cobb County, Georgia including individuals with household pets and service animals; and

WHEREAS, to prevent or minimize injury to people and damage to property resulting from this event;

NOW, THEREFORE, pursuant to the authority vested in me by local and state law;

IT IS HEREBY DECLARED that a local state of emergency exists and shall continue until the conditions requiring this declaration are abated.

WHEREFORE, IT IS ORDERED:

(1)

That the Chief of Police, or his/her designee, activate the Emergency Operations Plan;

(2)

That the following sections of the Official Code of Ordinances of the City of Powder Springs, Cobb County, Georgia be implemented: [If deemed appropriate, choose from the following: Section 19-5, Overcharging; Section 19-6, Registration of Building and Repair Services; Section 19-7, Closed or Restricted Areas and Curfews]; and

(3)

That the following measures also be implemented: [If deemed appropriate, select items from Section 19-2(a)(4)c, d or such other measures as appropriate.]

ENTERED at [TIME] on [DATE].

[Signed]

Mayor, City of Powder Springs, Cobb County, Georgia

(Ord. No. 2009-17, 3-16-09)

- ## Sec. 19-3. - Enforcement and remedies.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

(a)

Law enforcement responsibilities. The law enforcement authorities of the City shall enforce the orders, rules and regulations contained in this chapter and/or implemented by the Mayor or local governing authority during a declared emergency.

(b)

Penalties. Failure to comply with any of the requirements or provisions of the regulations contained in this chapter, or with any code section, order, rule or regulation made effective by the Mayor or local governing authority upon or after the declaration of an emergency shall constitute a violation of the provisions of this chapter. Any person who violates any provision in this chapter shall, upon conviction thereof, be guilty of a misdemeanor punishable by a fine not exceeding $1,000.00, imprisonment for a term not exceeding 60 days, or both such fine and imprisonment, for each violation. The owner of land upon which a violation occurs, and each person assisting in the commission of a violation, shall be guilty of separate offenses. Each day during which a violation or failure to comply continues shall constitute a separate violation.

(c)

Injunctive relief. In addition to the remedies prescribed in this section, the chief of police, or his/her designee, is authorized to obtain an injunction to restrain violation of laws, code sections, orders, rules and regulations which

are contained in the Georgia Emergency Management Act and/or this code, and/or which are implemented by the local governing authority during a declared emergency.

(Ord. No. 2009-17, 3-16-09)

- ## Sec. 19-4. - Authority to waive procedures and fee structures.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

(a)

City business. Upon declaration of an emergency or disaster by the governor or mayor, the affairs and business of the city may be conducted at places other than the regular or usual location, within or outside of the city, when it is not prudent, expedient or possible to conduct business at the regular location. When such meetings occur outside of the city, all actions taken by the local governing body shall be as valid and binding as if performed within the city. Such meetings may be called by the presiding officer or any two (2) members of the governing body without regard to or compliance with time-consuming procedures and formalities otherwise required by law.

(b)

Purchasing and public works contracts. Upon declaration of an emergency or disaster by the governor or mayor, the city council may contract for public works without letting such contract out to the lowest, responsible bidder and without advertising and posting notification of such contract for four weeks; provided, however, that the emergency must be of such nature that immediate action is required and that the action is necessary for the protection of the public health, safety and welfare. Any public works contract entered into pursuant to this subsection shall be entered on the minutes of the city as soon as practical and the nature of the emergency described therein.

(c)

Code enforcement. Upon declaration of a state of emergency or disaster by the governor or the mayor, the city council may temporarily suspend the enforcement of the ordinances of the city, or any portion thereof, where the emergency is of such nature that immediate action outside the code is required, such suspension is consistent with the protection of the public health, safety and welfare, and such suspension is not inconsistent with any federal or state statutes or regulations.

(d)

Fees. Upon declaration of a state of emergency or disaster by the governor or the mayor, the city council may temporarily reduce or suspend any permit fees, application fees or other rate structures as necessary to encourage the rebuilding of the areas impacted by the disaster or emergency. The term "fees" include fees or rates charged by the city for building permits, land disturbance permits, zoning applications, special land use permits, temporary land use permits and other fees relating to the reconstruction, repair and clean up of areas impacted by the disaster or emergency. The term "fees" does not include fees collected by the city on behalf of the state or federal government or fees charged by the city pursuant to a state or federal statute or regulation.

(e)

Temporary dwellings. Upon the declaration of a state of emergency or disaster by the governor or the mayor, the city council or its designees may issue temporary mobile home, trailer, recreational vehicle or other temporary dwelling structures or parks in any zoning district, even though not otherwise permitted by zoning regulations, while the primary dwelling is being repaired, provided that such temporary dwellings or parks are designed by an engineer and the plans are approved by the city health department and building and inspections division. The temporary permit shall not exceed six months in duration. In the case of a continuing hardship, and in the discretion of the city council or its designee, the permit may be extended for a period of up to an additional six months. Upon expiration of the temporary permit and/or extension, the temporary dwelling must be removed.

(Ord. No. 2009-17, 3-16-09)

- ## Sec. 19-5. - Overcharging prohibited.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

To preserve, protect or sustain the life, health or safety of persons or property within a designated area upon the declaration of emergency or disaster, it shall be unlawful, during the duration of the emergency or subsequent recovery period, for any person, firm or corporation located or doing business in the unincorporated portions of the city to overcharge for any goods, materials, foods, equipment, supplies, services, labor, motel rooms, temporary lodging or houses sold or rented within the city.

(a)

Definitions. The following words, terms and phrases, when used in this section shall have the meanings ascribed, except where the context clearly indicates a different meaning:

Overcharging means charging prices for goods, materials, foods, equipment, supplies, services, labor, motel rooms, temporary lodging or houses, which exceed the customary charges by at least twenty-five (25) percent or, in applicable cases, which exceed by at least twenty-five (25) percent the suppliers' or providers' costs for such goods, materials, foods, equipment, supplies, services, labor, motel rooms, temporary lodging or houses. The existence of overcharging shall be presumed from a twenty-five (25) percent or greater increase in the price at which the merchandise or rate, fee or cost/rental of housing was offered in the usual course of business immediately prior to the onset of the emergency or disaster, but shall not include increases in cost to the supplier directly attributable to the higher cost of material, supplies and labor costs resulting from the emergency.

Subsequent recovery period means that period during which the emergency or disaster continues to cause disruptions in the area designated in the declaration of emergency, but shall not exceed six months after the declaration has been terminated, unless extended by action of the city council.

(b)

Effective date. This section shall become effective only upon the signing of a declaration of emergency, stating this section is in effect.

(Ord. No. 2009-009, 3-16-09)

- ## Sec. 19-6. - Registration of building and repair services.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

(a)

Before building, constructing, repairing, renovating or making improvements to any real property, including dwellings, homes, buildings, structures or fixtures within an area in the unincorporated area of the city designated in a declared emergency or disaster, any person, firm, partnership, corporation or other entity must register with the city and secure a building permit that is posted at the work site. Each day any such entity does business in the unincorporated areas of the city without complying with this ordinance constitutes a separate offense.

(b)

The cost of registration fees in a declared emergency or disaster is fixed at fifty dollars ($50.00) per annum. Registration is nontransferable. The cost of the emergency building permit shall be equal to the cost for a building permit under existing regulations. The permit shall only be authorized for repairs.

(c)

When registering, any person, partnership, corporation or other entity making application must, under oath, complete an application, providing the following information:

(1)

Name of applicant;

(2)

Permanent address and phone number of applicant;

(3)

Applicant's Social Security number or federal employer identification number;

(4)

If applicant is a corporation, the state and date of incorporation;

(5)

Tag registration information for each vehicle to be used in the business;

(6)

List of cities where the applicant has conducted business within the past twelve (12) months;

(7)

Georgia sales tax number or authorization;

(8)

Georgia business license number, if required.

(d)

Effective date. This section shall become effective only upon the signing of a declaration of emergency, stating this section is in effect.

(Ord. No. 2009-009, 3-16-09)

- ## Sec. 19-7. - Closed or restricted areas and curfews during emergency.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

(a)

To preserve, protect or sustain the life, health, welfare or safety of persons, or their property, within a designated area under a declaration of emergency, it shall be unlawful for any person to travel, loiter, wander or stroll in or upon the public streets, highways, roads, lanes, parks or other public grounds, public places, public buildings, places of amusement, eating places, vacant lots or any other place during a declared emergency between hours specified by the mayor until the curfew is lifted.

(b)

To promote order, protect lives, minimize the potential for looting and other crimes, and facilitate recovery operations during an emergency, the mayor shall have discretion to impose reentry restrictions on certain areas. The mayor shall exercise such discretion in accordance with the city emergency operations plan, which shall be followed during emergencies.

(c)

The provisions of this section shall not apply to persons acting in the following capacities:

(1)

Authorized and essential law enforcement personnel;

(2)

Authorized and essential health care providers;

(3)

Authorized and essential personnel of the city;

(4)

Authorized National Guard or federal military personnel;

(5)

Authorized and essential firefighters;

(6)

Authorized and essential emergency response personnel;

(7)

Authorized and essential personnel or volunteers working with or through the chief of police, or his/her designee;

(8)

Authorized and essential utility repair crews;

(9)

Citizens seeking to restore order to their homes or businesses while on their own property or place of business;

(10)

Other authorized and essential persons as designated on a list compiled by Mayor and Chief of Police, or his/her designee.

(d)

Enforceability. This section shall be enforced by officers of the law enforcement personnel approved to provide aid and assistance during the emergency. Nothing contained in this section shall prohibit a law enforcement officer from bringing other charges under state law.

(e)

Effective date. This section shall become effective only upon the signing of a declaration of emergency, stating this section is in effect.

(Ord. No. 2009-17, 3-16-09)

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- **2.86.050 - Powers of the mayor.**

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTIONCOMPARE VERSIONS

A.

In a state of emergency, declared by either the mayor or the governor, the mayor is empowered to make all necessary efforts to respond to, prevent, or ameliorate the effects of an emergency or disaster, including, but not limited to, using all county resources, issuing evacuation orders, establishing evacuation routes, suspending the sale of alcoholic beverages, controlling entry to and exit from any disaster area, clearing or removing debris or wreckage, invoking the provisions of any mutual aid agreement with another governmental entity, and such other powers and authority which are reasonably necessary for the preservation of life and property and as may be set out state statute.

1.

The mayor shall have full power to secure the availability of supplies, clothing, vehicles, fuel, equipment, food and water as may be reasonably necessary to respond to the emergency. Emergency procurement may be accomplished by utilizing the procedures set forth in section 3.20.040 of the Salt Lake County Code of Ordinances, 2001.

2.

The mayor's authority does not extend to an emergency wholly located within a municipality unless the governing body of the municipality requests relief and assistance from the county or to the extent assistance is provided pursuant to an interlocal or mutual aid agreement.

B.

In a state of emergency, the mayor may exercise emergency powers and functions in response to the exigencies of the disaster, including waiving compliance with any time-consuming procedures and formalities, including notices, as may otherwise be required.

C.

In a state of emergency, the mayor may issue any and all such other orders or undertake such other functions and activities as the mayor reasonably believes is required to protect the health, safety, or welfare of persons or property within the county or to otherwise preserve the public peace or to abate, clean up, or mitigate the effects of any emergency or disaster. Rules and regulations adopted by the mayor in response to the state of emergency have the force and effect of law, upon filing with the county clerk. All rules and regulations adopted in response to a state of emergency shall expire once the state of emergency is no longer in effect.

D.

In a state of emergency, the mayor is responsible to appoint county employees or agencies to perform the following activities during the emergency:

1.

Coordinate the activities and management of private volunteers, including maintaining records of volunteer work in accordance with Federal Emergency Management Agency (FEMA) needs;

2.

Ensure that all records and receipts for funds expended in emergency response are maintained in accordance with FEMA needs;

3.

Coordinate and ensure prompt communication with the media about the emergency, providing to the extent possible, one consistent voice regarding county activities;

4.

Maintain ongoing communication with the county council, county elected officials and other government entities.

E.

In the event of a public health emergency, the mayor may declare a state of emergency at the request of the director of the health department or the board of health. To prevent or contain the outbreak and spread of a communicable or infectious disease, the mayor, together with the director of the health department, may issue orders to:

1.

Close theaters, schools and other public places and prohibit gatherings of people when necessary to protect the public health.

2.

Exercise physical control over property and over individuals as the health department finds necessary for the protection of public health.

3.

Exclude from school attendance any person, including teachers, who is suffering from any communicable or infectious disease, if the person is likely to convey the disease to those in attendance.

4.

The authority of the director of the health department extends to a public health emergency wholly located within a municipality.

F.

1.

The sheriff's office and such other law enforcement and peace officers as may be authorized by the mayor are further authorized and directed to enforce the orders, rules and regulations made or issued pursuant to this chapter.

2.

During the period of a declared emergency or disaster, a person shall not:

a.

Enter or remain upon the premises of any establishment not open for business to the general public, unless such person is the owner or authorized agent of the establishment;

b.

Violate any orders duly issued by the mayor or authorized personnel; or

c.

Willfully obstruct, hinder, or delay any duly authorized county officers, employees or volunteers in the enforcement or exercise of the provisions of this chapter, or in the undertaking of any activity pursuant to this chapter.

(Ord. No. 1818, § VIII, 9-12-2017; Ord. 1615 § 1 (part), 2007)

- ## 2.86.060 - Powers of the county council.

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A.

Nothing in this chapter shall prevent the county council from acting as the legislative body of county government in a state of emergency, or from exercising those powers and authorities set out in state statute and in the plan. The council's legislative authority shall include the power to legislate, budget, and appropriate and to perform any other duties as required by state statute and by the plan.

B.

The county council shall also fulfill those duties and responsibilities as required by any emergency response declaration or order to the extent it does not conflict with federal, state, or local law, or the provisions of this chapter.

(Ord. 1615 § 1 (part), 2007)

- ## 2.86.070 - Relocation of offices.

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A.

Whenever an emergency or disaster makes it imprudent or impossible to conduct the affairs of the county at its regular locations, the mayor, county council, elected officials, departments, and divisions may meet at any safe and convenient place, inside or outside Salt Lake County. Any temporary meeting location shall continue until a new location is established, the emergency or disaster is terminated, or county operations are able to return to their normal locations.

B.

Any official act or meeting required to be performed at any regular location of the mayor, county council, elected officials, or any department is valid when performed at any temporary location under the terms of this section.

(Ord. 1615 § 1 (part), 2007)

- **2.86.080 - Mutual aid.**

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A.

The mayor may, on behalf of the county, enter into such reciprocal aid, mutual aid, intergovernmental cooperation agreements or other contracts or plans with other governmental entities for the protection of life and property. Such agreements may include the furnishing or exchange of supplies, equipment, facilities, personnel and services and do not require fair and adequate consideration.

B.

The county may act as a participating political subdivision consistent with the Statewide Mutual Aid Act, Utah Code Annotated § 53-2-401 et seq.

(Ord. 1615 § 1 (part), 2007)

- **2.86.090 - Contracts for goods and services during an emergency.**

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A.

In accordance with the provisions of Section 3.20.040 of this code of ordinances, the county or any of its officers, employees, committees, or agencies may acquire goods and services in response to the exigencies of the emergency or disaster as are necessary and the mayor may suspend or waive compliance with time consuming ordinances (excluding Section 3.20.040 of the county code), policies, procedures and formalities prescribed by law pertaining thereto, including county purchasing ordinances regarding the acquisition of goods and services.

B.

The purchasing agent shall prepare and maintain a list of persons in each department or office who are authorized to act as emergency procurement designees, in accordance with Section 3.20.040(C).

(Ord. 1615 § 1 (part), 2007)

- **2.86.100 - Criminal penalties.**

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Any person who knowingly refuses to comply with an order to evacuate issued under this chapter or who refuses to comply with any other order issued during a state of emergency, as provided in this chapter and after notice of the order has been given to that person, is guilty of a Class B Misdemeanor.

(Ord. 1615 § 1 (part), 2007)

- **2.86.110 - Emergency management advisory committee.**

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A.

An emergency management advisory committee is created for the purpose of providing advice to the mayor and county council on matters, policies and issues relating to county government emergency or disaster planning, mitigation, response and recovery actions. The committee's activities shall include, but are not limited to:

1. Coordinating emergency management policy implementation;

2. Overseeing emergency management training for employees and members of the public;

3. Making recommendations to the county council regarding policies, procedures, or ordinance changes and amendments;

4. Developing an emergency operations plan, including providing for the continuity of county operations and essential functions;

5. Giving consideration to and making recommendations regarding a current list of private sources of aid and materials and of private contractors who may be able to assist in an emergency;

6. Making recommendations regarding "pre-contracts" and ongoing relations with private sources of aid and materials; and

7. Reviewing and making recommendations regarding interlocal and mutual aid contracts with other government activities for services in an emergency.

B. The committee shall report any finding or recommendation to the mayor and county council.

C. The committee shall meet at the direction of the mayor or the mayor's designee.

D. The emergency management advisory committee shall consist of:

1. The mayor or the mayor's designee;

2. The assessor, auditor, clerk, district attorney, recorder, sheriff, surveyor, and treasurer or said officials' designees;

3. One representative of each of the following county departments or divisions: Public works, community services, administrative services, human services, personnel, health department, and unified fire authority;

4. Two council members or designees;

5. One citizen member who has experience and training in emergency preparation and response, appointed by the mayor; and

6. Successors of any member, if that member is unable to participate.

E.

The committee shall be chaired by the emergency management coordinator or other mayor's designee.

F.

The committee may create and appoint its members to technical and other specialized subcommittees as needed to fulfill its obligations under this section.

G.

A quorum of the committee consists of nine persons and attendance by a quorum is required for any committee vote or action to be effective.

H.

In the event of an emergency or disaster and the mayor determines that a recommendation of the committee is either not available or not practicable, the mayor may waive that requirement or recommendation as needed to meet the needs of the public.

(Ord. 1615 § 1 (part), 2007)

- **2.86.120 - Severability.**

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The provisions of this chapter are declared to be severable, and if any provision of this chapter shall, for any reason, be held to be invalid or unconstitutional or if the application of this chapter to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the validity of the remaining provisions of the ordinance codified in this chapter.

(Ord. 1615 § 1 (part), 2007)

- **2.88.030 - State of emergency—Powers of the mayor pursuant to a proclamation.**

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

(a)

The mayor may, after finding that a public disorder, disaster, energy emergency or riot exists within the city of Union Gap or any part thereof which affects life, health, property, or public peace, proclaim a state of emergency.

(b)

The mayor, after proclaiming a state of emergency and prior to terminating such, may, in the area described by the proclamation, issue an order prohibiting:

(1)

Any person being on the public streets, or in the public parks, or at any other public place during the hours declared by the mayor to be a period of curfew;

(2)

Any number of persons, as designed by the mayor, from assembling or gathering on the public streets, parks, or other open areas of the city, either public or private;

(3)

The manufacture, transfer, use, possession or transportation of a molotov cocktail or any other device, instrument or object designed to explode or produce unconfined combustion;

(4)

The transporting, possession or use of gasoline, kerosene, or combustible, flammable, or explosive liquids or materials in a glass or uncapped container of any kind, except in connection with normal operation of motor vehicles, normal home use or legitimate commercial use;

(5)

The sale, purchase or dispensing of alcoholic beverages;

(6)

The sale, purchase or dispensing of other commodities or goods, as he reasonably believes should be prohibited or controlled to help preserve and maintain life, health, property or the public peace;

(7)

The use of certain streets, highways or public ways by the public; and

(8)

Such other activities as she or he reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace.

(c)

In imposing the restrictions provided for in this ordinance, the mayor imposes them for such times, upon such conditions, with such exceptions and in such areas of the city she or he from time to time deems necessary.

(d)

Any person willfully violating any provision of an order issued by the mayor under this section shall be guilty of a gross misdemeanor.

(Ord. 2221 § 1, 2000; Ord. No. 2699, § 3, 12-13-10)

- **https://library.municode.com/wa/union_gap/codes/code_of_ordinances?nodeId=MUNICIPAL_CODE_TIT2ADPE_CH2.88EMMA_2.88.020LISU**

2.88.040 - State of emergency—Disorderly conduct after emergency proclaimed—Penalty.

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After the proclamation of a state of emergency every person who:

(a)

Willfully causes public inconvenience, annoyance, or alarm, or recklessly creates a risk thereof, by:

Engaging in fighting or in violent, tumultuous or threatening behavior;

Making an unreasonable noise or an offensively coarse utterance, gesture, or display, or addressing abusive language to any person present;

Dispersing any lawful procession or meeting of persons, not being a peace officer of this state and without lawful authority;

Creating a hazardous or physically offensive condition which serves no legitimate purpose; or

(b)

Engages with at least one other person in a course of conduct, as defined in subsection A of this section, which is likely to cause substantial harm or serious inconvenience, annoyance, or alarm, and refuses or knowingly fails to obey an order to disperse made by a peace officer, shall be guilty of disorderly conduct and be punished by

imprisonment for not more than one year or fined not more than one thousand dollars ($1,000.00) or by both fine and imprisonment.

(Ord. 2221 § 2, 2000)

- **2.88.050 - State of emergency—Refusing to leave public way or property when ordered—Penalty.**

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Any person upon any public way or any public property, within the area described in the state of emergency, who is directed by a public official or peace officer to leave the public way or public property and refuses to do so, shall be guilty of a misdemeanor.

(Ord. 2221 § 3, 2000)

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- **2.52.030 - Declaration of emergency.**

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A declaration of a state of emergency within the city may be issued by the mayor (or the commission president when the mayor is absent or otherwise unable to perform the functions of mayor as provided in the city Charter); or the city manager if the nature of the emergency requires that immediate action be taken and it is not reasonably practicable for the mayor to issue the declaration of emergency prior to the time immediate action must be taken. Any declaration of emergency by the city manager shall be subject to review and revision by the mayor. All declarations of emergency shall be subject to review and revision by the city commission. A declaration of a state of emergency shall be terminated when the state of emergency ceases to exist.

(Ord 03-1015 §3, 2003; Ord. 00-1028 §3, 2000)

- **2.52.040 - Regulation and control.**

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The city commission may by resolution adopt procedures to prepare for and carry out any activity to prevent, minimize, respond to or recover from an emergency. These procedures may include, but are not limited to, the following measures:

A. Redirect city funds for emergency use and suspend standard city procurement procedures;

B. Establish a curfew which fixes the hours during which all persons other than officially authorized personnel may not be upon the public streets or other public places;

C. Prohibit or limit the number of persons who may gather or congregate upon any public street, public place, or any outdoor place;

D.

Barricade streets and prohibit vehicular or pedestrian traffic, or regulate the same on any public street leading to the emergency area for such distance as may be deemed necessary under the circumstances;

E. Evacuate persons from the area designated as an emergency area;

F. Close taverns or bars and prohibit the sale of alcoholic beverages;

G. Prohibit or restrict the sale of gasoline or other flammable liquids;

H. Prohibit the sale, carrying, or possession of any weapons or explosives of any kind on public streets, public places, or any outdoor place;

I. Curtail or suspend commercial activity;

J. Turn off water, gas or electricity;

K. Commit to mutual aid agreements;

L. Order such other measures as are necessary for the protection of life or property, or for the recovery from the emergency.

(Ord 03-1015 §4, 2003; Ord. 00-1028 §4, 2000)

- **2.52.050 - Responsibility of the manager.**

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The city manager shall oversee the emergency management program, and carry out the emergency duties or functions as prescribed by the resolution establishing procedures to deal with an emergency.

(Ord 03-1015 §5, 2003; Ord. 00-1028 §5, 2000)

- **2.52.060 - Emergency acquisition of resources.**

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During a declared emergency, the city is authorized to extend government authority to non-governmental resources (i.e. personnel, equipment), which may support regular government forces during an emergency, and may enter into agreements with other public and private agencies for use of resources. When real or personal property is taken under power granted by this section, the owner of the property shall be entitled to reasonable compensation.

(Ord. 03-1015 §6, 2003; Ord. 00-1028 §6, 2000)

- **2.52.070 - Time limit on emergency regulations.**

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A.

The proclamation of emergency shall become effective on its issuance and dissemination to the public by appropriate news media.

B.

A proclamation of emergency shall terminate forty-eight hours after its issuance, or on the issuance of a proclamation determining that an emergency no longer exists, whichever occurs first; however, the commission may, by resolution, extend a proclamation of emergency for additional periods of time as determined necessary.

(Ord 03-1015 §7, 2003; Ord. 00-1028 §7, 2000)

- **2.52.080 - Penalties.**

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No person shall knowingly violate any regulation promulgated pursuant to this chapter, and imposed in a state of emergency declared under this chapter. Violation of an emergency regulation shall subject the defendant, upon conviction, to a fine of not more than five thousand dollars per offense and/or confinement in jail not to exceed one year. Each day of violation shall be deemed a separate offense for purposes of imposition of penalty.

(Ord 03-1015 §8, 2003; Ord. 00-1028 §8, 2

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- **Sec. 11-5. - Mayor; powers; duties.**

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(a)

On an annual basis, the mayor shall review the eligibility and performance of the emergency management coordinator.

(b)

The mayor shall, once every two (2) years, review the emergency operations plan and, upon deeming it adequate, shall certify the plan to be current and adequate for the ensuing two (2) years.

(c)

When circumstances within the city indicate that the occurrence, or threat of occurrence, of widespread or severe damage, injury or loss of life or property from natural or human-made cause exists, the mayor may declare a local state of emergency. Such a declaration shall be promptly filed with the department of state police, emergency management division. This declaration shall not be continued or renewed for a period in excess of seven (7) days except with the consent of the city council.

(d)

If the mayor invokes such power and authority, he/she shall, as soon as reasonably expedient, convene the city council for one (1) or more emergency meetings, in accordance with the Open Meetings Act, to perform its normal legislative and administrative duties as the situation demands, and will report to that body relative to emergency activities. Nothing in this article shall be construed as abridging or curtailing the powers of the city council unless specifically provided herein.

(e)

The mayor may do one (1) or more of the following under a local state of emergency:

(1)

Direct the emergency management coordinator to implement the emergency operations plan.

(2)

Issue directives as to travel restrictions on local roads within the city.

(3)

Relieve city employees of normal duties and temporarily reassign them to other duties.

(4)

Activate mutual aid agreements.

(5)

Direct the overall disaster relief effort, including the disaster relief force, in accordance with the emergency operations plan.

(6)

Notify the public and recommend in-place shelter or evacuation protective measures.

(7)

Request a state of disaster or emergency declaration from the governor as described in section 11-6.

(8)

When obtaining normal approvals would result in further injury or damage, the mayor may, until the city council convenes, and subject to the city's charter, waive procedures and formalities otherwise required pertaining to the following:

a.

For a period of up to seven (7) days, send the disaster relief force and resources to the aid of other communities as provided by mutual aid agreements.

b.

For a period of up to seven (7) days, appropriate and expend funds from the city's contingency fund, said appropriation and expenditure being solely for the purpose of paying the disaster relief force, purchasing supplies and services, repair costs or other needs required specifically for the mitigation of the effects of, or in response to, the emergency disaster.

c.

For a period of up to seven (7) days, make contracts, and obtain and distribute equipment, materials and supplies for disaster purposes.

d.

Employ temporary workers.

e.

Purchase and distribute supplies, materials and equipment.

f.

If a state of disaster or emergency is declared by the governor, the mayor may assign and make available for duty employees, property or equipment of the city within or outside the physical limits of the city as ordered by the governor or the director of the Michigan Department of State Police in accordance with the Act.

g.

Engage in or direct any other action otherwise permitted by law to address the local state of emergency. In the event of foreign attack upon the State of Michigan, the mayor shall have the authority solely to exercise any

power the city possesses in case of such an attack as authorized by the Act until the city council convenes. This is not to be construed to otherwise limit the mayor's authority after the city council convenes.

(Ord. No. H-00-01, 3-14-00)

- ## Sec. 11-6. - Governor declaration request.

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If a disaster or emergency occurs that has not yet been declared to be a state of disaster or a state of emergency by the governor, and the mayor determines that the situation is beyond the control of the city, he/she may request the governor to declare that a state of disaster or state of emergency exists in the city. The emergency management coordinator shall immediately contact the district coordinator. The district coordinator, in conjunction with the emergency management coordinator, shall assess the nature and scope of the disaster or emergency, and they shall recommend the state personnel, services and equipment that will be required for its prevention, mitigation or relief.

(Ord. No. H-00-01, 3-14-00)

- ## Sec. 11-7. - City departments; liaison; duties.

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(a)

Each department of the city identified by the emergency management coordinator shall appoint an emergency management liaison who shall coordinate the emergency management activities of the department and act as a liaison between his/her department and the emergency management office on all matters pertaining to emergency management.

(b)

Each department identified shall appoint a minimum of two (2) people to serve as successors in the event the emergency management liaison is not available or requires assistance. Successors shall be listed in the appropriate annex to the emergency operations plan.

(c)

Each department liaison shall be responsible for the following:

(1)

Prepare and continuously update an annex to the city emergency operations plan providing for the delivery of emergency management activities by that department. The annex shall be in the form prescribed by the emergency management coordinator.

(2)

Recruit, appoint and organize private, volunteer and other personnel to be part of the disaster relief force to perform specific duties as assigned in the emergency operations plan.

(3)

Coordinate the department's emergency management efforts with those of other city departments.

(4)

Attend training courses relevant to the function of the department, and ensure staff is training so as to be able to implement assigned emergency functions.

(5)

Participate in periodic exercises to enhance the adequacy of the respective department's response capability.

(6)

Develop internal standard operating procedures (SOPs) to accomplish emergency notification and assigned emergency tasks.

(7)

Provide the emergency management coordinator with a list of personnel and resources available within the department and provide a list of those that may be needed by the department during times of emergency.

(8)

Identify and provide for the protection of vital records.

(9)

Implement the directives of the mayor or his/her designee under a local state of emergency.

(Ord. No. H-00-01, 3-14-00)

- **Sec. 11-8. - Volunteers; appointment.**

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Each city department is authorized to appoint volunteers to augment its personnel in the time of emergency to implement emergency functions assigned in the emergency operations plan. Such individuals are part of the disaster relief force and shall be subject to the rules and operational control set forth by the respective department through which the appointment was made, and shall be reimbursed for all actual and necessary travel and subsistence expenses.

(Ord. No. H-00-01, 3-14-00)

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- **ARTICLE II. - STATE OF EMERGENCY[2]**

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Footnotes:

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State Law reference— *Municipal authority to enact ordinances dealing with states of emergency, G.S. 14-288.12—14-288.14, 166A-7(d)(4), 166A-8.*

- **Sec. 6-26. - Determination of emergency.**

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A state of emergency shall be deemed to exist whenever, during times of great public crisis, disaster, rioting, catastrophe or similar public emergency, for any reason, municipal public safety authorities are unable to maintain public order or afford adequate protection for lives or property.

(Code 1974, § 2.61(a))

- **Sec. 6-27. - Issuance of proclamation.**

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In the event of an existing or threatened state of emergency endangering the lives, safety, health and welfare of the people within the city, or threatening damage to or destruction of property, the mayor is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of such a state of emergency, and, in order to more effectively protect the lives and property of people within the city, to place in effect any or all of the restrictions hereinafter authorized.

(Code 1974, § 2.61(b))

- **Sec. 6-28. - Extent of curfew.**

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The mayor is hereby authorized and empowered to limit by the proclamation the application of all or any part of such restrictions to any area specifically designated or described within the corporate limits of the city and to specific hours of the day or night; and to exempt from all or any part of such restrictions law enforcement officers, firemen and other public employees, doctors, nurses, employees of hospitals and other medical facilities; on-duty military personnel whether state or federal; on-duty employees of public utilities, public transportation companies, and newspaper, magazine, radio broadcasting and television broadcasting corporations operated for profit; and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health and welfare needs of the people within the city.

(Code 1974, § 2.61(c))

- **Sec. 6-29. - Imposition of restrictions.**

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During the existence of a proclaimed state of emergency, the mayor may impose by proclamation any or all of the following restrictions:

(1)

Prohibit or regulate the possession off one's own premises of explosives, firearms, ammunition or dangerous weapons of any kind and prohibit the purchase, sale, transfer or other disposition thereof.

(2)

Prohibit or regulate the buying or selling of beer, wine or intoxicating beverages of any kind, and their possession or consumption off one's own premises.

(3)

Prohibit or regulate any demonstration, parade, march, vigil or participation therein from taking place on any of the public ways or upon any public property.

(4)

Prohibit or regulate the sale of gasoline, kerosene, naphtha or any other explosive or inflammable fluids or substances.

(5)

Prohibit or regulate travel upon any public street, alley or roadway or upon any other public property except by those in search of medical assistance, food or other commodity or service necessary to sustain the well-being of themselves or their families or some member thereof.

(6)

Prohibit or regulate the participation in or carrying on of any business activity and prohibit or regulate the keeping open of places of business, places of entertainment and any other places of public assembly.

(Code 1974, § 2.61(e))

- **Sec. 6-30. - End of curfew.**

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The mayor shall proclaim the end of such state of emergency or all or any part of the restrictions imposed as soon as circumstances warrant or when directed to do so by the board of aldermen.

(Code 1974, § 2.61(d))

- **Sec. 6-31. - Extension of curfew.**

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Any proclamation may be extended, altered, or repealed in any particular during the continued or threatened existence of a state of emergency by the issuance of a subsequent proclamation.

(Code 1974, § 2.61(f))

- **Sec. 6-32. - Violations.**

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During the existence of a proclaimed state of emergency, it shall be unlawful for any person to violate any provision of any restriction imposed by any proclamation authorized by this section.

(Code 1974, § 2.61(g))

- **Sec. 6-33. - Enforcement.**

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The mayor, and in his absence the mayor pro tempore, and in the absence of both such officials the chief of police, are hereby authorized to enforce the provisions of this article for such periods of time as they shall deem necessary.

(Code 1974, § 2.62)

- **Sec. 6-34. - Price-gouging.**

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(a)

For a period of thirty (30) days from the declaration of a state of emergency by the mayor or board of aldermen of the city, no person, merchant or business within the city shall sell any goods or provide any services at a price that is greater than one hundred fifty (150) percent of the amount charged for said goods or services immediately prior to the declaration of the state of emergency, except as shall be provided herein.

(b)

Sales of goods or services above said prohibited price level shall be allowed only if the person or merchant can document by receipt or other form of verifiable paper-writing that the increase in price is due to an increase in price to the merchant of the item in question or increase in the costs of providing the service. Non-resident merchants or vendors not maintaining a place of business in Southport prior to the declaration of the state of emergency must document by receipt or other form of verifiable paper-writing the elevated price levels if the price charged for a particular item or service is greater than one hundred fifty (150) percent of the general market value charged by resident merchants or businesses.

(c)

Violations of this chapter shall be punished in accordance with G.S. 14-3, the offense being a general misdemeanor.

(d)

Each and every sale shall constitute a separate offense.

- **https://library.municode.com/mi/rochester_hills/codes/code_of_ordinances?nodeId=SPAGEOR_CH38EMMA**

Sec. 38-10. - Emergency power and authority of mayor.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

(a)

Generally. The mayor may exercise the emergency power and authority as specified in this section. Whenever a situation requires or is likely to require that the mayor invoke such power and authority, he shall, as soon as reasonably expedient, convene the city council to perform its legislative and administrative duties as the situation demands and shall report to the city council relative to emergency activities. Nothing in this chapter shall be construed as abridging or curtailing the powers of the council unless specifically provided in this chapter.

(b)

Interim authority. When obtaining formal approvals would result in delay of relief activity, the mayor may, until the council convenes, waive procedures and formalities otherwise required pertaining to the performance of public works; entering into contracts; incurring obligations; employment of temporary workers; rental of equipment; purchase and distribution of supplies, materials and facilities; and expenditure of existing funds. The council is also empowered to waive any such procedures and formalities.

(c)

Declaration of local state of emergency. Under the following circumstances, the mayor may declare a local state of emergency exists in the city and may assemble and utilize the disaster relief forces in accordance with the city emergency operations plan, and he may prescribe the manner and conditions of the use of such disaster relief forces:

(1)

Disaster or emergency. Whenever, on the basis of information received from authoritative sources, he feels that a large-scale disaster or emergency situation in the city or state is imminent.

(2)

Duration. During any period of disaster in the city or state and thereafter as long as he shall deem it necessary.

(d)

Declaration of state of disaster. Whenever the mayor deems that any condition in the city is beyond the control of local public or private agencies or has attained or threatens to attain the proportions of a major disaster, he may request the governor to declare a state of disaster exists in the city by instructing the emergency management coordinator to contact the district coordinator in accordance with section 14 of Public Act No. 390 of 1976 (MCL 30.414, MSA 4.824(24)).

(e)

Powers. The mayor, with the approval of the council, is empowered and has the authority to:

(1)

Expenditures for disaster. Appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for disaster purposes.

(2)

Health and safety assistance. Provide for the health and safety of persons and property, including emergency assistance to the victims of a disaster.

(3)

Disaster relief. Assign and make available for duty the employees, property, or equipment of the city relating to firefighting; engineering; rescue; health, medical, and related services; police; transportation; construction; and similar items or service for disaster relief purposes within or without the physical limits of the city.

(4)

Foreign attack. If a foreign attack occurs upon this state, waive procedures and formalities otherwise required by law pertaining to the performance of public work; entering into contracts; incurring of obligations; employment of permanent and temporary workers; utilization of volunteer workers; rental of equipment; purchase and distribution with or without compensation of supplies, materials, and facilities; and appropriation and expenditure of public funds.

(f)

Governmental succession. The mayor, with the approval of the council, shall establish procedures for the succession of government during emergencies where officials are unavailable for exercising the powers and discharging the duties of their respective offices.

(g)

Regulations. The mayor, with the approval of the council, may make regulations permitting the emergency management coordinator to assemble and utilize the disaster relief forces and provide disaster relief aid as prescribed in subsections (c), (d), and (e) of this section.

(Code 1976, § 2-05.04.01(A)—(F))

State Law reference— Municipalities with appointed coordinators, power and authority, MCL 30.410, MSA 4.824(20).

- ## Sec. 38-11. - Disaster relief forces.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

(a)

Director. The mayor, as executive head of the city government, shall be the director of the disaster relief forces of the city and shall be responsible for their organization, administration and operation, working through the emergency management coordinator.

(b)

Personnel, equipment and facilities. The employees, equipment and facilities of all city departments, boards, institutions and commissions suitable for or adaptable to emergency management activities may be designated as part of the total disaster relief forces. Such designations shall be by the mayor with the approval of the city council.

(c)

Emergency operations plan. All officers and employees of departments, commissions, boards, institutions and other agencies of the city designated by the mayor, with the approval of the council, as disaster relief forces shall cooperate with the emergency management coordinator in the formulation of the emergency operations plan, and they shall assist the emergency management coordinator in all matters pursuant to this chapter.

(d)

Rights of city employees. City employees assigned to duty as a part of the disaster relief forces pursuant to this chapter shall retain all of the rights, privileges, and immunities of city employees and shall receive the compensation incident to their employment.

(Code 1976, §§ 2-05.04.01—2-05.04.03, 2-05.04.05)

State Law reference— Powers, duties, rights, privileges and immunities of disaster relief forces while on duty, MCL 30.411, MSA 4.824(21).

- ## Sec. 38-12. - Volunteers.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

(a)

Authority to appoint. Each city department, commission, board, or other agency may at any time appoint or authorize the appointment of volunteer citizens to augment the personnel of such department, commission, board, or agency in time of emergency.

(b)

Subject to rules and regulations. Such individuals shall be enrolled as disaster relief volunteers and shall be subject to the rules and regulations set forth by the respective department, commission, board, or agency head for such volunteers.

(c)

Duties. The emergency management coordinator may enlist volunteer citizens to form the personnel of an emergency service for which the city has no counterpart or to temporarily augment personnel of the city engaged in emergency activities.

(d)

Formal records. The emergency management coordinator shall maintain formal records of all such volunteers for worker's compensation purposes.

(Code 1976, § 2-05.04.04)

State Law reference— Powers, duties, rights, privileges and immunities of disaster relief forces while on duty, MCL 30.411, MSA 4.824(21).

- ## Sec. 38-13. - Willful obstruction or action prohibited.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

It shall be unlawful for any person willfully to obstruct, hinder or delay any disaster relief forces in the enforcement or accomplishment of any rule or regulation issued pursuant to this chapter or to do any act forbidden by any rule or regulation issued pursuant to the authority contained in this chapter.

(Code 1976, § 2-05.06.01)

- ## Sec. 38-14. - Misrepresentation prohibited.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTION

It shall be unlawful for any person to wear, carry or display any emblem, insignia or other means of identification as a member of the city disaster relief forces unless authority to do so has been granted to such person by proper officials.

(Code 1976, § 2-05.06.02)

Disaster means an occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or manmade cause, including but not limited to fire, flood, snow, ice or windstorm, tornado, wave action, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous materials incident, epidemic, air contamination, blight, drought, infestation, explosion, hostile military or paramilitary action or similar occurrences resulting from terrorist activities, riots or civil disorders.

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https://library.municode.com/mi/orchard_lake_village/codes/code_of_ordinances?nodeId=CD_ORD_CH14EM

Sec. 14-21. - Emergency powers.

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Following such proclamation, the mayor may promulgate such reasonable orders, rules and regulations as he or she deems necessary to protect life and property or to bring the emergency situation within the affected area under control. Said orders, rules and regulations may provide for the control of traffic, designation of specific zones within the area in which occupancy and use of buildings and egress and ingress of persons and vehicles may be prohibited or regulated, control of places of amusement and assembly and of persons on public streets and thoroughfares, establishment of a curfew, control of the sale, transportation and use of alcoholic liquors, and control of the sale, carrying and use of firearms or other dangerous weapons, ammunition, explosives and inflammable materials or liquids deemed to be dangerous to the public safety. The mayor also may issue such other orders, rules and regulations, without being limited by the foregoing.

(Code 1982, § 2.04.03; Ord. No. 2.04, eff. 2-26-1982)

https://library.municode.com/ak/anchorage/codes/code_of_ordinances?nodeId=TIT3AD_CH3.80CIEM_3.80.060IMORREDUPEEM
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- ## 3.80.010 - Office of emergency management.

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There is established an office of emergency management for the municipality as an agency of that government, to be composed of the mayor and such other persons as he may appoint. The mayor shall appoint an emergency management director or may serve in the capacity and appoint a staff to serve at the pleasure of the mayor.

The office of emergency management, and all officers and employees of the municipality, together with those volunteer forces enrolled to aid them prior to or during a disaster, shall constitute the office of emergency management as provided by law.

The purpose of the office of emergency management is to provide an orderly means for planning to meet emergencies threatening life or property.

(GAAB 3.20.010; AO No. 83-159)

Cross reference— Executive organization, ch. 3.20; office of the mayor, § 3.20.010.

- ## 3.80.020 - Succession to office of mayor and acting mayor.

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If the office of acting mayor becomes vacant or if both the mayor and acting mayor are absent or unable to perform the duties of the office of mayor, the order of interim succession shall be determined as follows:

A.

The assembly member with the longest total period of tenure in office shall assume the office of acting mayor.

B.

If more than one assembly member shall have the same total period of tenure in office, that assembly member who received the largest number of votes at the last election at which such assembly members were elected shall assume the office of acting mayor.

(AO No. 114-76)

Charter reference— Municipal manager assumes duty of mayor, § 5.03(c).

- ## 3.80.030 - Definitions.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTIONCOMPARE VERSIONS

The following words, terms and phrases, when used in sections 3.80.040 through 3.80.090, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Civil disorder means a public disturbance involving:

1.

An act of violence by one or more persons part of an assemblage of four or more persons, which act constitutes a clear and present danger of or results in damage or injury to the property of any other person or to the person of any other individual; or

2.

A threat of the commission of an act of violence by one or more persons part of an assemblage of four or more persons having, individually or collectively, the ability of immediate execution of such threat, where the performance of the threatened act of violence would constitute a clear and present danger of, or would result in damage or injury to the property of any other person or to the person of any other individual.

Civil emergency means:

1.

A civil disorder.

2.

Any natural disaster or manmade calamity, including flood, conflagration, cyclone, tornado, earthquake or explosion, within the municipality or immediately threatening the municipality, resulting in the death or injury of persons or the destruction of property to such an extent that extraordinary measures must be taken to protect the public order, safety and welfare.

Curfew means a prohibition against any person walking, running, loitering, standing or operating a vehicle upon any public property, alley, sidewalk, thoroughfare, vehicle parking area or vacant premises within the municipality, except as required for persons officially designated by sections 3.80.040 through 3.80.090 and the municipality to duty with reference to the civil emergency.

Intoxicating liquor means whiskey, brandy, rum, gin, wine, ale, porter, beer and all other spirituous, vinous, malt and other fermented or distilled liquors intended for human consumption and containing more than one percent alcohol by volume.

(CAC 2.08.100)

Cross reference— Definitions and rules of construction generally, § 1.05.020.

State Law reference— Limitation on emergency powers, AS 26.23.200.

- ## 3.80.040 - Authority to issue emergency proclamation.

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Whenever the mayor determines that an emergency as defined in section 3.80.030 exists, he may declare by proclamation the existence of the emergency and shall have the power to impose by proclamation any or all of the regulations necessary to prevent disorder and to preserve the public health of the municipality as set forth in sections 3.80.040 through 3.80.090. Pursuant to Charter section 5.02(d), the assembly by resolution may declare that the emergency no longer exists. Any proclamation issued pursuant to this chapter shall have the force of law and shall supersede any conflicting provision of law during an emergency declared pursuant to this chapter.

(CAC 2.08.040; AO No. 79-153)

Charter reference— Mayor's emergency power, § 5.02(d); termination of declaration of emergency, § 5.02(d).

Cross reference— Office of the mayor, § 3.20.010.

State Law reference— Local disaster emergencies, AS 26.23.140; declaration of local disaster emergencies, AS 26.23.140(a).

- ## 3.80.050 - Dissemination and posting of emergency proclamation.

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The proclamation of an emergency as provided in sections 3.80.030 through 3.80.090 shall become effective upon its issuance to the newspapers of general circulation published in the municipality, and the radio and television stations located in the metropolitan area of the municipality. A copy of the proclamation shall be posted on the bulletin board and at such other places in the municipality as may be directed in the proclamation. The certificate of the mayor that the proclamation was duly declared, issued, disseminated and posted shall be prima facie evidence that all required actions have been fully performed.

(CAC 2.08.050)

State Law reference— Local disaster emergencies, AS 26.23.140; declaration of local disaster emergencies, AS 26.23.140(a).

- ## 3.80.060 - Imposition of orders and regulations during period of emergency.

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The mayor may impose by proclamation any or all of the following orders and regulations necessary to prevent disorder and to preserve the public health of the municipality. The mayor shall have authority to:

A.

Impose a curfew upon all or any portion of the municipality thereby requiring all persons in such designated and restricted curfew areas to remove themselves from the public property, streets, alleys, sidewalks, thoroughfares, vehicle parking areas or other public places, except that physicians, nurses and ambulance operators performing essential medical services, utility personnel maintaining essential public services, firefighters, members of the news media upon showing of authorized press cards, and municipal authorized law enforcement officers and personnel may be exempted from such curfew. The curfew may be applicable to any such hours of the day or night as the mayor deems necessary in the interests of the public safety and welfare.

B.

Order the closing of the following business establishments anywhere within the municipality for the period of the emergency:

1.

Any or all retail establishments or premises selling intoxicating liquor.

2.

Any or all alcoholic beverage dispensary establishments or premises, or portions of private clubs wherein the consumption of intoxicating liquor is permitted.

3.

Any or all gasoline stations and other establishments, the chief activity of which is the sale or distribution of liquid flammable or combustible products.

4.

Any or all establishments or portions thereof the chief activity of which is the sale, distribution, dispensing or giving away of firearms, explosives or ammunition.

5.

Any place of assembly where a mob or crowd may gather and where the mob or crowd cannot be adequately controlled by law enforcement officers.

6.

Any other business establishment or portions thereof the chief activity of which is the sale or distribution of dangerous or hazardous products.

C.

Prohibit any or all of the following activities anywhere in the municipality for the period of emergency:

1.

Selling, distributing or giving away gasoline or other liquid flammable or combustible products in any container other than a gasoline tank properly affixed to a motor vehicle.

2.

Selling, distributing, dispensing or giving away any firearms, explosives or ammunition of any character whatsoever.

D.

Designate any public property, streets, alleys, sidewalks, thoroughfares, vehicle parking areas or any vacant premises closed to motor vehicle and pedestrian traffic, except as required for physicians, nurses and ambulance operators performing medical services, utility personnel maintaining essential public services, members of the news media upon showing authorized press cards, firefighters and municipal authorized law enforcement officers and personnel, who may be exempted from the designation.

E.

Call up regular and auxiliary law enforcement agencies and organizations within or without the municipality to assist in preserving and keeping the peace within the municipality.

F.

Make use of all available resources of the municipal government, including municipal personnel, as may be reasonably necessary to cope with an emergency. The mayor may transfer or alter the function of municipal departments, agencies or personnel for the purpose of performing or facilitating performance of emergency services.

G.

Evacuate persons from any designated area.

H.

Issue such other orders or regulations immediately necessary for the protection of life and property.

(CAC 2.08.060; AO No. 79-153)

State Law reference— Emergency powers, AS 26.23.190; limitations on declaring local disaster emergencies, AS 26.23.200; interference with dissemination of news or public affairs information, AS 26.23.200(2).

- ## 3.80.070 - Unlawful acts during period of emergency.

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During the period of emergency declared by the mayor by proclamation, it is unlawful for any person to:

A.

Consume any alcoholic beverages while upon any public property, street, alley, sidewalk, thoroughfare, vehicle parking area or vacant premises, or in any motor vehicle driven or parked thereon, which is within a restricted area designated in the proclamation.

B.

Carry or possess any rock, bottle, club, brick or weapon, or any other missile or projectile, within a restricted area designated in the proclamation, with the intention of using any of the objects unlawfully against the person or property of another, except as carried or possessed by law enforcement officers or other designated personnel.

C.

Make, carry, possess or use any type of gasoline or petroleum base firebomb, explosive, Molotov cocktail or other incendiary missile.

D.

Possess flammable, explosive or combustible material with the intent to willfully and maliciously use such materials to set fire to or otherwise damage buildings or property.

E.

Enter any area designated by the mayor as a restricted area in the proclamation, except as to a person entering the restricted area in the performance of official duties, or with written permission from the municipality, or with proof of residence within the restricted area.

(CAC 2.08.070)

Cross reference— Offenses against persons, ch. 8.10; alcoholic beverages, ch. 10.50.

- ## 3.80.080 - Termination of emergency proclamation.

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The emergency proclaimed in accordance with the provisions of sections 3.80.030 through 3.80.090 shall terminate after 48 hours from the issuance of a proclamation, or upon the issuance of a proclamation or resolution of the assembly declaring that an emergency no longer exists, whichever occurs first, except that such emergency may be extended for such additional periods of time as determined necessary by resolution of the assembly.

(CAC 2.08.080)

- ## 3.80.090 - Compliance with official orders and regulations during period of emergency.

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Willful failure or refusal by any person to comply with the orders or regulations established by proclamation or the lawful orders of duly authorized law enforcement officers or personnel charged with the responsibility of enforcing the proclamation of emergency authorized in sections 3.80.030 through 3.80.080 is a criminal offense as set forth in section 8.30.015.

(CAC 2.08.090; AO No. 79-153; AO No. 2014-42, § 35, 6-21-14)

- ## 3.80.100 - Suspension of purchasing procedures during period of emergency.

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During a civil emergency the mayor and his designees may enter into contracts deemed to be necessary and in the public interest without regard to dollar amount and without following competitive bidding procedures required by title 7.

(AO No. 79-153)

- **3.80.110 - Exemptions from zoning regulations during period of emergency.**

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During a catastrophic civil emergency the mayor may, for purposes of restoring order, providing for housing or temporary shelter, reconstruction of damaged structures, and restoration of public services:

A. Notwithstanding the prohibition of certain specified land uses as provided in chapter 21.05, permit the use of temporary structures, including mobile homes, for emergency shelter or housing.

B. Notwithstanding the prohibition of certain specified land uses as provided in chapter 21.05, permit the use of temporary structures, including mobile homes, for restoration of business services.

C. Notwithstanding the provisions of chapter 21.12, permit the reconstruction or repair of nonconforming structures damaged or destroyed by the event that caused the civil emergency to be proclaimed.

D. Notwithstanding section 21.03.020E.3., waive the collection of land use fees with an application for a land use permit for construction, reconstruction, installation, repair or use of any structure provided for under this section.

In exercising emergency proclamation powers under subsection A or B of this section, the mayor shall indicate the period of time, not to exceed two years, that such temporary structures are permitted. The assembly may, by resolution, reduce or extend the time set by the mayor.

(AO No. 93-115(S), § 1, 8-17-93)

Ashira Mohammed

Mayor
Town of Pembroke Park
3150 SW 52 Avenue
Pembroke Park, FL 33023
Cell 954-275-7467
Office 954-966-4600 Ext
Fax 954-966-5186

/********** EMAIL DISCLAIMER **********/ Please note: Florida has a very broad public records law. Most written communications to or from Town Officials and employees regarding Town business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.

AGENDA ITEM REPORT

To: Town Manager
Subject: Annual Service Contract Review
Meeting: DRAFT WORKSHOP COMMISSION MEETING - Apr 08 2020
Department: Administrative
Staff Contact: Howard Clark, Vice Mayor

BACKGROUND INFORMATION:

Service contracts currently do not have a mechanism in place for the Town Commission to evaluate performance of service contractors on an annual basis, and to modify/update their contracts when necessary before their renewal.

FINANCIAL IMPACT:

None

RECOMMENDATION:

Approve for Resolution

AGENDA ITEM REPORT

To: Town Manager
Subject: Vice Mayor Agenda Items for April 8, 2020 Commission Meeting
Meeting: Agenda Regular Commission Meeting - April 08 2020
Department: Administrative
Staff Contact: Howard Clark, Vice Mayor

RECOMMENDATION:

Motion to approve and create resolutions

ATTACHMENTS:

Vice Mayor Agenda Items 20200408
Food Distribution Waiver & Release Statement-2
Certificate&Liability
Urban Health Partnerships

	Status:
Town Clerk, Deputy Town Clerk	Approved - Mar 31 2020
Finance director, Finance & Budget Director	Pending
Town Attorney, Town Attorney	None
Newall J. Daughtrey, Assistant Town Manager	None

Vice Mayor Clark Agenda Items for April 8th, 2020 Workshop Commission Meeting
April 3, 2020

1. Lobbyist Reports – Annexation
2. FEMA HMGP Flooding Projects and Grants Update
    a. SW 25th Street Stormwater Project (Second Funding) - $864,976.00
    b. Harding of Town Hall and Emergency Generator - $482,343.00
    c. 30th Avenue - Design Conceptual Drainage and Roadway
3. MPO/FDOT Projects
    a. CSLIP Grant Ranking
    b. MPO CSLIP Grant
    c. Surtax First Year Ranking
    d. Surtax Project Maps
    e. MPO/FDOT - Mast Arm Resolution
4. Agro-Eco Gardens & Centers
    a. Atlanta Fresh Food Access
    b. FRDAP Grant $50,000
    c. USDA Grant
        i. Counting People
        ii. Fruits and Vegetables Distribution (Release FORM)
        iii. Programs: Educational, Farmers Market etc...
    d. Offering Community Hours for Students
    e. Atlanta Fresh Food Access Report 2020
    f. Agro Analysis
    g. Miller Agro Food Desert Rev
5. Annual Upcoming Events and Resolutions
6. New Business
7. Old Business

TOWN OF PEMBROKE PARK AGRO-ECO GARDENS & CENTERS
3150 SW 52ND AVENUE ● PEMBROKE PARK, FLORIDA 33023 ● BROWARD (954) 966-4600 ● FAX (954) 966-5186

FOOD DISTRIBUTION WAIVER & RELEASE STATEMENT

Participants of this food distribution taking place on Saturday, March 28, 2020 at the Raymond P. Oglesby and Ryan Park are aware that the produce is donated and distributed "as is" and that the Town will not be responsible or liable for the condition or effects of any of the products distributed during today's activities. This is donated food being distributed "as is" by the Town of Pembroke Park. Please follow all safety precautions:

- Inspect all produce and goods, dispose of anything that is not satisfactory, and
- Wash thoroughly all produce and goods before consuming

By signing or accepting these donated goods and produce, I hereby release Town from, and waive on behalf of myself and my heirs and any minors indicated below, any and all causes of action, claims, demands, damages, costs, expenses, and compensation for damage or loss to myself and/or property that may be caused by any act or failure to act, of Town, or that may otherwise arise in any way in connection with any activities with or for Town. This Liability Waiver and Release extends to Town together with all of its staff, officers, directors, affiliates and agents. I assume the risk of any and all dangerous conditions in and about Town activities or in connection with any of the distributed food. IT IS MY LEGALLY BINDING AGREEMENT BY THIS LIABILITY WAIVER AND RELEASE TO EXEMPT THE TOWN OF PEMBROKE PARK AND ALL STAFF, OFFICERS, DIRECTORS, AFFILIATES AND AGENTS FROM ALL LIABILITY WHATSOEVER FOR PERSONAL INJURY, PROPERTY DAMAGE AND WRONGFUL DEATH. This waiver contains the entire agreement between myself and the parties released and their affiliates.

Compliments of the Town of Pembroke Park Commission

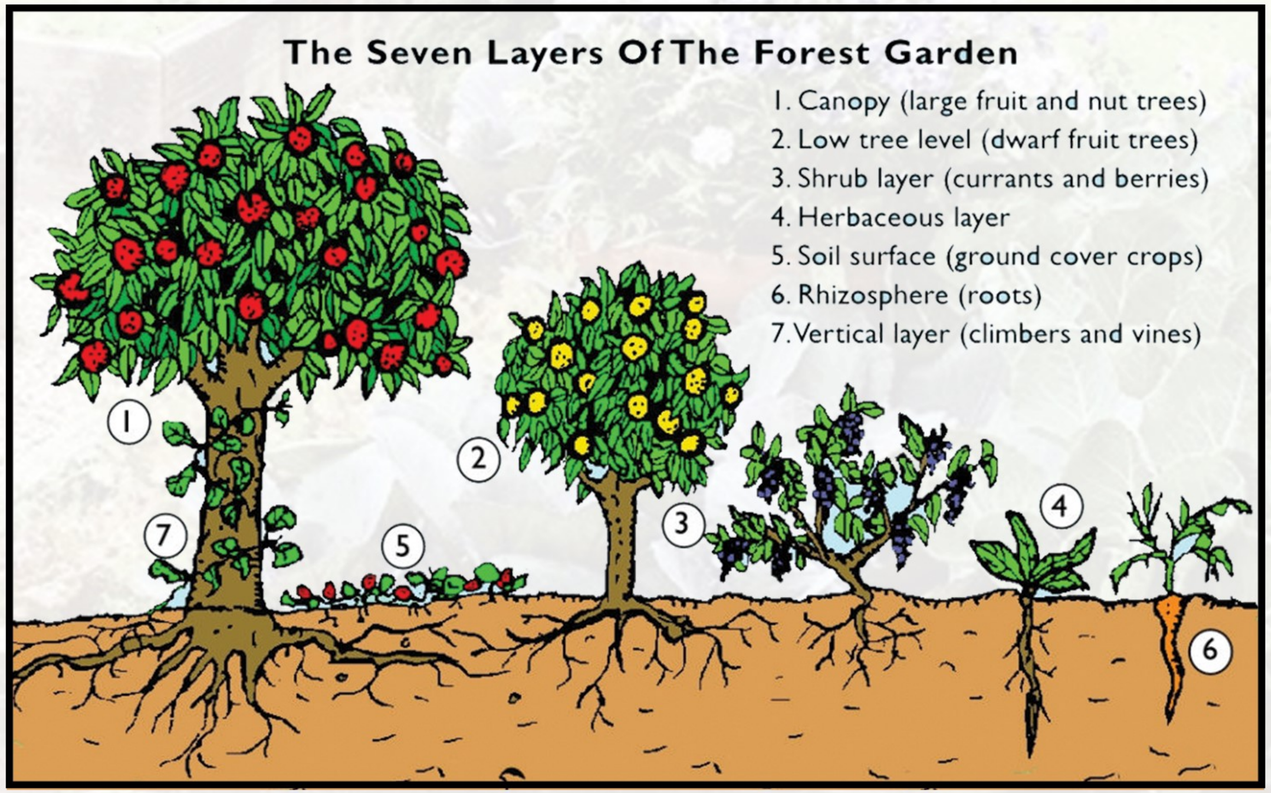
Mayor
Ashira Mohammad

Vice Mayor
Howard P. Clark, Jr.

Clerk Commissioner
Geoffrey Jacobs

Commissioner
Reynold Dieuveille

Commissioner
Georgina Cohen



The Permaculture Food Forest Garden

Disclaimer: The Town of Pembroke Park is not responsible for the food provided. Please thoroughly check and wash the produce before consumption.

From: Anthony Olivieri
To: Arely Lozano Cantu
Cc: Myriam Jacques; Ambassadorclark; Joy Brown; Elizabeth Beth Howard
Subject: Re: Follow-up Materials
Date: Thursday, April 02, 2020 12:24:12 PM

Pembroke Park and Arely,

How great you have a food forest! Actually, I am friends with Mario Cambardella, the former director of Urban Ag of Atlanta, who played a major role will the Browns Mill food forest. It is an excellent model. I am also friends with Elizabeth Beak, the ATL Food Systems Planner, who is an excellent resource.

I would love to see any policies you have with food access. I am not able to access your comp plan. If I recall, that document is with a consultant, and not online? In Municode, could you direct me to the keyword or section of the code that deals with food access?

Thank you,
Anthony

On Thu, Mar 19, 2020 at 10:07 AM Arely Lozano Cantu <arely@urbanhp.org> wrote:

> Thank you very much Pembroke Park team Agro-Eco team!
>
> I am excited to come check out the food forest and garden and learn more about what you are all working on. Thank you for sending the attachments so promptly. I will review and let you know what I find. Attached are a simple liability waiver & release and a sign-in sheet with the statement summary that you all could consider for food distributions. As I mentioned, these are generally displayed at the sign-in table and the people in charge of registration must make the participant aware of the message before they sign in. Please let me know what you think.
>
> During our conversation you mentioned you already have your food access projects/programs within your Town's plans and ordinances, correct? Still, you noted it would be ok for us to take a look and see if we find anything else that could further strengthen the sustainability of these efforts. If so, please make sure to also send those documents for Anthony Olivieri (cc'd here) and I to review. Finally, you also mentioned support with a potential agreement with the largest food forest in Atlanta. We can discuss this further when we meet in person, I just wanted to outline the items we'd discussed for reference.
>
> I hope you are all well and I look forward to continuing to work together to show how a small Town with a Big Heart for its people fights food desserts! Please don't hesitate to contact us with any questions or suggestions.
>
> Kind regards,
> Arely
>
> On Wed, Mar 18, 2020 at 5:38 PM Myriam Jacques <mjacques@townofpembrokepark.com> wrote:
>
>> Hello Arely,
>>
>> It was great speaking with you earlier. Find attached our current membership agreement. We are seeking to create similar "release of liability" language for our food distribution, also attached.
>>
>> We look forward to future partnership…
>>
>> *Best,*
>>
>> *Myriam Jacques, LEED AP*
>>
>> Public Services Assistant Director Agro-Eco Gardens & Centers Food Distribution Agreement
>>
>> Public Services Department
>>
>> www.TownofPembrokePark.com
>>
>> **☎(954) 966-4600, ext. 200**
>>
>> **(954) 275-2350**
>>
>> /********** EMAIL DISCLAIMER **********/ Please note: Florida has a very broad public records law. Most written communications to or from Town Officials and employees regarding Town business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.
>
> --
> Kind regards,
> Arely
>
> Arely B. Lozano Cantu
> Health and Community Development Program Manager

Urban Health Partnerships, Inc.
arely@urbanhp.org
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--

Anthony Olivieri
Founder, FHEED LLC
954.993.8005
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AGENDA ITEM REPORT

To:
Subject: MPO/ DOT Projects
Meeting: PUBLIC NOTICE - WORKSHOP COMMISSION MEETING- Apr 08 2020
Department: Public Works
Staff Contact: Todd Larson, Public Works Service Director

BACKGROUND INFORMATION:

The Town has been recommended and is working through the final processes for Grant Approvals to improve infrastructure. This is an update.

RECOMMENDATION:

Informational Purposes Only

ATTACHMENTS:

Awarded and Recommended Grants 4-1-20

	Status:
Town Clerk, Deputy Town Clerk	Approved - Apr 03 2020
Todd Larson, Public Works Service Director	Approved - Apr 03 2020
Finance director, Finance & Budget Director	Approved - Apr 03 2020
Newall J. Daughtrey, Assistant Town Manager	Pending

TOWN OF PEMBROKE PARK

3150 S.W. 52ND AVENUE PEMBROKE PARK, FLORIDA 33023· BROWARD (954) 966-4600 FAX (954) 966-5186

Memo

Ashira A. Mohammed
Mayor

Howard P. Clark, Jr.
Vice Mayor

Geoffrey Jacobs
Clerk-Commissioner

Georgina Cohen
Commissioner

Reynold Dieuveille
Commissioner

Newall Daughtrey
Assistant Town Manager

Christopher J. Ryan
Town Attorney

To: Ashira Mohammed, Mayor
Howard Clark, Jr., Vice - Mayor
Geoffrey Jacobs, Clerk-Commissioner
Georgina Cohen, Commissioner
Reynold Dieuveille, Commissioner
Newall J. Daughtrey, Assistant Town Manager

From: Todd Larson, Public Services Director

Date: April 1, 2020

Re: Awarded and Recommended Grants

Project	Amount	Funding Source	Status
SW 52nd Avenue and South Park Rd Sidewalks, Bike Lanes and Drainage	$3,164,242	MPO- CSLIP	Ranked #2 by MPO Board. Next Step is constructability review by MPO.
SW 25th Street Stormwater Improvements	$1,075,115	Surtax	Ranked in first year funding list for Surtax, awaiting Broward County Surtax Oversight Board review. Originally Scheduled for April 2, 2020, delayed by Health Emergency.
Bike Lane and Sidewalk improvement Project	$30,000	Surtax	Ranked for first year design funding, If gets final approval construction funds to follow. Awaiting Broward County Surtax Oversight Board review. Originally Scheduled for April 2, 2020, delayed by Health Emergency.
52nd Avenue Complete Streets	$144,000	Surtax	Ranked for first year design funding awaiting Broward County Review and approval. Awaiting Broward County Surtax Oversight Board review. Originally Scheduled for April 2, 2020, delayed by Health Emergency.

1

Project	Amount	Funding Source	Status
County Line Stormwater Connection	$90,000	Surtax	Ranked for first year design funding. Awaiting Broward County Surtax Oversight Board review. Originally Scheduled for April 2, 2020, delayed by Health Emergency.
SW 25th Street Stormwater Project	$864,976.00	HMGP Grant	FEMA final approval, grant agreement in process. Should receive grant agreement in April.
Hardening of Town Hall, Generator, Roof	$482,343	HMGP Grant	FEMA final approval, grant agreement in process. Should Receive Grant Agreement in April.

The John P. Lyons Lane Stormwater Improvements are in final environmental review with the state. When review is complete the project will be sent to FEMA for funding from HMGP grant funds.

AGENDA ITEM REPORT

To:	Commissioner Cohen
Subject:	Update Public Services Director Flooding Back-up. Commissioner Cohen/ Attorney Ryan
Meeting:	Agenda Regular Commission Meeting - April 08 2020
Department:	Administrative
Staff Contact:	Dierdre Davis, Administrative Assitant

BACKGROUND INFORMATION:

Continued discussion from March 12,2020 Commission Meeting

FINANCIAL IMPACT:

None

Office of Inspector General Report

02/02/2018

John W. Scott

BROWARD OFFICE OF THE INSPECTOR GENERAL

MEMORANDUM

To: Honorable Ashira Mohammed, Mayor, Town of Pembroke Park
and Members, Town of Pembroke Park Commission

From: John W. Scott, Inspector General

Date: February 2, 2018

Subject: **OIG Final Report Re: *Misconduct and Gross Mismanagement In The Town of Pembroke Park's Procurement of Professional Engineering Services, Ref. OIG 14-032***

Attached please find the final report of the Broward Office of the Inspector General (OIG) regarding the above-captioned matter. The OIG has determined that for 16 years, the town manager (who retired on January 3, 2018) and two other administrative officials engaged in gross mismanagement, misconduct, or both in the procurement of professional engineering services from Craig A. Smith and Associates, Inc. (CAS), the town's interim town engineer, consultant engineering firm, and (for twelve years of that time) its lobbyist or grant specialist.

The OIG's investigation into the town's processes for the procurement of engineering services revealed that, contrary to its own ordinance, the town failed to issue purchase orders prior to the procurement of engineering services on 66 engineering procurements from CAS. The OIG also determined that the town consistently used CAS's engineering services for the town's projects without regard for state and federal procurement regulations requiring the town to procure such services through competitive solicitation and negotiation and in a manner that was free of actual and apparent conflicts of interest.

In its response to the preliminary version of this report, the OIG received responses from the town (through the mayor), the vice-mayor, finance and budget director Georgina Rodriguez, public works director Todd Larson, and former town manager Robert Levy. In their responses, the individual parties do not challenge the OIG's overall findings. Instead, they offer explanations as to why they are not responsible for the deficiencies identified.

The OIG acknowledges that the town began to address the concerns raised in this report after this investigation became known to officials and staff. The OIG is specifically encouraged by the town's response which reflects its commitment to correcting the deficiencies identified by the OIG's investigation. In its response, the town reported on the changes already made and summarized the steps it intends to take in order to implement the remaining recommendations

John W. Scott, *Inspector General*
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offered by the OIG. To that end, we have requested that the town provide us with a status report in 90 days, or by May 3, 2018, regarding the town's progress.

Attachment

cc: Honorable Barbara Sharief, Member, Broward County Board of County Commissioners
Tom S. Wilde, Assistant Town Manager, Town of Pembroke Park
Individuals previously provided a Preliminary Report (under separate cover)

BROWARD OFFICE
OF THE INSPECTOR GENERAL

FINAL REPORT

==========

OIG 14-032
February 2, 2018

Misconduct and Gross Mismanagement in the Town of Pembroke Park's Procurement of Professional Engineering Services

BROWARD OFFICE OF THE INSPECTOR GENERAL

FINAL REPORT RE: ***MISCONDUCT AND GROSS MISMANAGEMENT IN THE TOWN OF PEMBROKE PARK'S PROCUREMENT OF PROFESSIONAL ENGINEERING SERVICES***

SUMMARY

The Broward Office of the Inspector General (OIG) has concluded its investigation into the Town of Pembroke Park's procurement of professional engineering services, determining that the town manager (who retired after we released our December 21, 2017, preliminary report in this matter) and the public works director engaged in misconduct and that the town manager, the public works director, and the finance and budget director engaged in gross mismanagement.

During the OIG's general review of the town's procurement process, we became concerned whether the town was circumventing competitive solicitation requirements.[1] We substantiated this concern. Chief among our disturbing findings was that, on 66 out of 67 documented procurements between 1999 and 2015, the town exclusively used Craig A. Smith and Associates, Inc. (CAS) – its interim town engineer *and* consultant engineering firm *and* (for twelve years of that time) its lobbyist or grant specialist[2] – for its engineering services needs.

We determined that the town did not issue any purchase orders prior to procurements, did not issue requests for qualifications (RFQs) or create a pool of qualified firms, did not issue requests for proposals (RFPs)[3] from that pool for individual projects, and did not competitively negotiate for engineering services. On at least 66 occasions, the responsible town officials disregarded the local code that mandated they issue prior purchase orders. On 22 occasions, they also flagrantly and repeatedly disregarded the laws that required that the town procure engineering services through a fair, open, and competitive solicitation; that terms be competitively negotiated; that the procurements be free of conflicts of interest; or some combination of these requirements. These laws included the Consultants' Competitive Negotiation Act (CCNA), which is applicable to all local governments in Florida and the federal regulations governing the federal grants that CAS sought and the town used to pay CAS for the engineering services.

The town paid CAS approximately $3,323,245 in public funds for those 22 projects between 1999 and 2015.

[1] We limited our scope to procurement processes in part due to our difficulty in obtaining town records, which in many cases made our assessment of the town's processes difficult or impossible

[2] CAS contracted with the town to provide services as a "[c]onsultant to obtain and administer Special Legislative Appropriation Funding on the TOWN's behalf, and … to administer the special funding projects relating to improvements in the TOWN." (Exhibit 4) Witnesses referred to this CAS role variously as "lobbying," "grant writing," and "grant specialist" services. We refer to this CAS role as "lobbyist or grant specialist."

[3] RFPs are written or electronically posted solicitations for competitive, sealed proposals. § 287.012, Florida Statutes.

The OIG also determined that the town manager, the public works director, and the finance and budget director engaged in gross mismanagement when they failed to properly administer the public funds used to procure CAS's services between 1999 and 2015.

The town began to address its procurement shortcomings after this investigation became known to officials and staff in or after August 2014.[4] In addition to the steps the town has already taken, it should implement the recommendations that appear at the conclusion of this report.

In light of our finding that town officials violated federal regulations in the procurement of federal grants, some of which Broward County sub-awarded to the town, in accord with our charter mandate, we are referring this matter to the Office of Inspector General of the U.S. Department of Housing and Urban Development (HUD) and the Housing Finance and Community Redevelopment Division of the Broward County Department of Environmental Protection and Growth Management for further action as those agencies deem appropriate.

Finally, in carrying out its charter mandate, the OIG has observed that some other Broward municipalities appear to fail to follow the CCNA. This state law applies to much of local governments' procurement of architectural, engineering, landscape architectural, and surveying and mapping services. We urge all local governments here in Broward County to take special note of the CCNA's requirements as detailed within this report and to counsel those responsible for the procurement of such professional services on the benefits of following and the hazards of failing to follow the CCNA.

OIG CHARTER AUTHORITY

Section 10.01 of the Charter of Broward County empowers the Broward Office of the Inspector General to investigate misconduct and gross mismanagement within the Charter Government of Broward County and all of its municipalities. This authority extends to all elected and appointed officials, employees and all providers of goods and services to the County and the municipalities. On his own initiative, or based on a signed complaint, the Inspector General shall commence an investigation upon a finding of good cause. As part of any investigation, the Inspector General shall have the power to subpoena witnesses, administer oaths, require the production of documents and records, and audit any program, contract, and the operations of any division of the County, its municipalities and any providers. The Broward Office of the Inspector General is also empowered to issue reports, including recommendations, and to require officials to provide reports regarding the implementation of those recommendations.

[4] The OIG's investigation was heavily dependent on the ability to receive town records when and as requested. Often during the course of our review, the town failed to provide adequate records of its past procurements in a timely manner, if at all. According to the public works director's response to this report, he is facing the same challenges today

RELEVANT GOVERNING AUTHORITY

Pembroke Park Town Charter

Part I, § 15 – Creation of departments, provides:

For the purpose of systematically handling the government, the Commission shall create the following departments, and one Commissioner shall have charge of each department: Executive Department, in charge thereof to be ex-officio the Mayor; Department of Taxes, the Commissioner in charge thereof to be the Clerk; Department of Finance, the Commissioner in charge thereof to be the Vice-Mayor; Department of Health and Zoning, one of the other Commissioners as is designated by resolution of the Commission; and Department of Public Works and Water, one of the other Commissioners as is designated by resolution of the Commission.

Pembroke Park Town Code

§ 2-84 – Duties, responsibilities

The duties and responsibilities of the Town Engineer shall be as follows:

(1) He shall prepare all specifications, designs, plans and contractual documents for all public work projects including, but not limited to, streets and roadways, drainage, water and waste water and sanitary sewage collection systems.
(2) He shall review all plat submissions and provide his written recommendation regarding same.
(3) He shall review all site plan submissions and provide his written recommendation regarding same.
(4) He shall review all plans and specifications for water, drainage, streets and roadways submitted by private developers and provide his written recommendation regarding same.
(5) He shall observe and review all engineering projects built by the Town or built for the Town under contracts with private contractors and provide a written report on his observations.
(6) He shall observe and review all engineering projects built by private developers under permits from the Town and provide a written report on his observations.
(7) He shall review cost estimates whenever costs are a basis for the fee to be charged for permits or otherwise.
(8) He shall advise the Commission as requested from time to time on all engineering matters.
(9) He shall advise the Commission immediately upon his observation of any project or undertaking within the Town that does not comply with sound engineering principles.
(10) He shall respond to questions on any engineering matter for the staff and employees of the Town.
(11) He shall appear at all Commission meetings wherein a matter relating to engineering is scheduled to be discussed and also upon the request of the Commission.

(12) He shall determine whether or not the elevations of all sites submitted for development are within the criteria as provided in the floodplain ordinance and submit his written report with respect to same.

§ 2-94 – Duties and responsibilities.

The duties and responsibilities of the Town Manager shall be as follows:

(a) To see that the policies and directions of the Commission with respect to the administration and operation of the Town are followed.
(b) To attend all meetings of the Commission.
(c) To prepare the agenda for all meetings of the Commission including, but not limited to, special and workshop meetings.
(d) To keep the Commission fully advised as to the needs of the Town.
(e) To recommend to the Commission for its consideration such measures as he or she may deem necessary, expedient or otherwise in the Town's best interests.
(f) To review the operations and administration of all departments and divisions of the Town government and to periodically report to the Commission as to the operations of same, and recommendations, if any, with respect to said department or division.
(g) To exercise general supervision over the operation of the Administrative Department of the Town. ...
(k) To assist the Budget and Finance Director and the Town Planner in making application for Federal and State grants as directed by the Commission. ...

§ 24-74. – Duties, responsibilities.

The duties and responsibilities of the Finance and Budget Director shall be as follows:

(1) To advise the Commission on all matters relating to fiscal affairs of the Town including budgeting and accounting;
(2) To assist in the preparation of the annual budget of the Town;
(3) To review expenditures to ensure compliance with the current budget of the Town;
(4) To recommend amendments and revisions to the annual budget when advisable;
(5) To review bookkeeping, accounting and disbursement procedures to ensure compliance with the statutes of the State and the ordinances and resolutions of the Town;
(6) To review investment policy to ensure the highest return to the Town on its investments and that such investments are made in accordance with the applicable statutes of the State and the ordinances of the Town;
(7) To perform such other duties as may be assigned by the Commission relating to the financial and budgetary matters of the Town.

§ 2-121. - Commission authorization required for procurements.

No services, materials and/or supplies shall be procured for or on behalf of the Town unless such procurement has specifically been authorized by the Town Commission in a regular or special meeting, except as may be otherwise provided in this article.

§ 2-122. - Purchase orders—Required.

No services, materials and/or supplies shall be procured for or on behalf of the Town unless prior to such procurement a purchase order shall have been issued therefor and signed by the Clerk-Commissioner or, in his absence or disability, by the acting Clerk-Commissioner, except as provided pursuant to section 2-124 of this division.

§ 2-123. - Same—Conditions for issuance.

The clerk-commissioner … is hereby authorized to issue purchase orders for any services, materials and/or supplies for which specific authorization has previously been made by the town commission in accordance with the provisions of section 2-121, and for any purchase or procurement of services, materials and/or supplies, the cost of which is less than five hundred dollars ($500.00), provided the purchase or procurement has been authorized in the then current annual budget of the town, and the proposed expenditure is within the amount appropriated for the purchase and there remains unencumbered and unspent in such appropriation a sufficient sum to pay for the item or items included in the purchase order; provided, however the clerk-commissioner … is hereby authorized to issue purchase orders upon the written request of the town engineer for projects previously approved by the commission in amounts exceeding five hundred dollars ($500.00), but not exceeding fifteen hundred dollars ($1,500.00), for work in connection with said projects ….

§ 2-124. - Regular, recurring procurements.

The Town Commission may, by resolution from time to time, provide for the payment for certain services, materials and/or supplies which are procured on a regular or recurring basis, either pursuant to contract or otherwise, without the requirement of a purchase order for same, or the submission of such invoice to the Town Commission for individual approval.

§ 2-125. - Authorization to pay for services and materials.

The Clerk-Commissioner is hereby authorized to pay upon receipt, or thereafter, any invoice or statement to the Town for services, materials and/or supplies that have been ordered pursuant to the provisions of section 2-123 of this division, provided such services, materials and/or supplies have been rendered or delivered in accordance with the provisions of the purchase order. The Clerk-Commissioner shall pay upon receipt, or thereafter, any invoice or statement for services, materials and/or supplies that have been approved for

payment by the Town Commission pursuant to resolution adopted in accordance with the provisions of section 2-124 of this division. …

§ 2-127. - Schedule of bills, invoices, to be on Commission agenda.

The Clerk-Commissioner shall attach to the agenda of each regular monthly meeting of the Town Commission a schedule of bills or invoices to be approved by the Town Commission, as well as a schedule of any bills or invoices that have been paid pursuant to the provisions of this article, and were not presented to the Commission on any prior schedule of bills or invoices for approval. …

§ 2-141. - Required for certain purchases.

(a) The purchase of any supplies, materials, goods, merchandise, printing, equipment or other personal property and the letting of contracts for construction projects in excess of three thousand dollars ($3,000.00) shall be permitted only after written competitive bids from at least three (3) different sources are received by the Commission for consideration.
(b) No purchase of any supplies, materials, goods, merchandise, printing, equipment or other personal property nor the letting of contracts for construction projects shall be permitted when the purchase price thereof is in excess of twenty-five thousand dollars ($25,000.00) per item, unless upon competitive bids received as provided in this division. …

§ 2-143. - Publication and posting of notice for bids.

Whenever competitive bids are required, pursuant to the provisions of this division, notice of the solicitation of such bids shall be published by the Clerk-Commissioner in a newspaper of general circulation in the County two (2) times at one-week intervals, with the first publication not less than ten (10) days nor more than twenty (20) days prior to the day the bids are to be received and opened. In addition, the Clerk-Commissioner shall cause such notice to be posted in two (2) conspicuous places in the Town Hall, which posting shall be made at least ten (10) days prior to the day the bids are to be received and opened.

Consultants' Competitive Negotiation Act (CCNA)

F.S. § 287.055, Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties. …

(2) DEFINITIONS.—For purposes of this section: …

(g) A "continuing contract" is a contract for professional services entered into in accordance with all the procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed $2 million, for study activity if the fee for professional services for each individual study under the contract does not exceed $200,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another. …
(l) "Negotiate" or any form of that word means to conduct legitimate, arms length discussions and conferences to reach an agreement on a term or price. For purposes of this section, the term does not include presentation of flat-fee schedules with no alternatives or discussion. …

(3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.—

(a) 1. Each agency shall publicly announce, in a uniform and consistent manner, each occasion when professional services must be purchased for a project the basic construction cost of which is estimated by the agency to exceed the threshold amount … or for a planning or study activity when the fee for professional services exceeds the threshold amount[5] ….
(b) Each agency shall encourage firms engaged in the lawful practice of their professions that desire to provide professional services to the agency to submit annually statements of qualifications and performance data.
(c) Any firm or individual desiring to provide professional services to the agency must first be certified by the agency as qualified pursuant to law and the regulations of the agency. The agency must find that the firm or individual to be employed is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual.
(d) Each agency shall evaluate professional services, including capabilities, adequacy of personnel, past record, experience, whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act, and other factors determined by the agency to be applicable to its particular requirements. …
(e) The public must not be excluded from the proceedings under this section.

(4) COMPETITIVE SELECTION.—

(a) For each proposed project, the agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with, and may

[5] The threshold for construction costs was $250,000 in 1999 to 2009 and $325,000 in 2010 to 2015. The threshold for planning or study activity fees was $25,000 in 1999 to 2009 and $35,000 in 2010 to 2015.

require public presentations by, no fewer than three firms regarding their qualifications, approach to the project, and ability to furnish the required services.
(b) The agency shall select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the agency shall consider such factors as the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. The agency may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations under subsection (5).
(c) This subsection does not apply to a professional service contract for a project the basic construction cost of which is estimated by the agency to be not in excess of the threshold amount … or for a planning or study activity when the fee for professional services is not in excess of the threshold amount. … However, if, in using another procurement process, the majority of the compensation proposed by firms is in excess of the appropriate threshold amount, the agency shall reject all proposals and reinitiate the procurement pursuant to this subsection.
(d) Nothing in this act shall be construed to prohibit a continuing contract between a firm and an agency.

(5) COMPETITIVE NEGOTIATION.—

(a) The agency shall negotiate a contract with the most qualified firm for professional services at compensation which the agency determines is fair, competitive, and reasonable. In making such determination, the agency shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For any lump-sum or cost-plus-a-fixed-fee professional service contract over the threshold amount …, the agency shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto will be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of the contract.
(b) Should the agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the agency determines to be fair, competitive, and reasonable, negotiations with that firm must be formally terminated. The agency shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency must terminate negotiations. The agency shall then undertake negotiations with the third most qualified firm.

(c) Should the agency be unable to negotiate a satisfactory contract with any of the selected firms, the agency shall select additional firms in the order of their competence and qualification and continue negotiations in accordance with this subsection until an agreement is reached....

(8) STATE ASSISTANCE TO LOCAL AGENCIES.—On any professional service contract for which the fee is over $25,000, the Department of Transportation or the Department of Management Services shall provide, upon request by a municipality, political subdivision, school board, or school district, and upon reimbursement of the costs involved, assistance in selecting consultants and in negotiating consultant contracts. ...

Federal Regulations

24 § 85.36 Procurement. ...

(b) *Procurement standards.*

(1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,
(ii) Any member of his immediate family,
(iii) His or her partner, or
(iv) An organization which employs, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or

agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest. …

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(c) *Competition.*

(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 85.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,
(ii) Requiring unnecessary experience and excessive bonding,
(iii) Noncompetitive pricing practices between firms or between affiliated companies,
(iv) Noncompetitive awards to consultants that are on retainer contracts,
(v) Organizational conflicts of interest, … and
(vii) Any arbitrary action in the procurement process. …

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations: (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. ...

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed.*

(1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources. …

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
(ii) Proposals will be solicited from an adequate number of qualified sources;
(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:
  (A) The item is available only from a single source;
  (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  (C) The awarding agency authorizes noncompetitive proposals; or
  (D) After solicitation of a number of sources, competition is determined inadequate.
(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.
(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section. …

(f) *Contract cost and price.*

(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. …

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000) …

2 CFR §§ 200.317-326

On December 19, 2014, the Office of Management and Budget (OMB) and all federal award granting agencies published a joint, government wide, interim rule. In this rule, HUD codified the requirements for federal awards and amended 24 CFR parts 84 and 85 by removing all substantive provisions. Additionally, it included a provision that federal awards made prior to December 26, 2014 be governed by parts 84 or 85. Federal awards made after December 26, 2014 are governed by 2 CFR §§200.317-§200.326. Through its investigation, the OIG identified eight Pembroke Park projects funded by federal awards. 24 CFR §85.36 governs seven of these awards, while 2 CFR §200.317-326 governs the remaining one.

The new provisions within 2 CFR §§ 200.317-326, applicable to the town's eighth project, are identical in substance to the provisions of 24 CFR §85.36, cited above.

INDIVIDUALS AND ENTITIES COVERED IN THIS REPORT

The Town of Pembroke Park

The town was incorporated in 1957. With a population of approximately 6,000 residents that doubles during the winter, the town is located off I-95 and Pembroke Road and has a total area of 1.6 square miles.

Five commissioners comprise the town's governing body. Currently, the mayor, the vice mayor, and two additional commissioners sit on the commission; there is one open seat. As of September 2016, the town payroll records reflected 30 full-time staff employees.

As directed by the town's charter, the mayor is charged with overseeing the executive department, the vice-mayor is charged with the department of finance, the clerk commissioner is charged with the department of taxes, and the remaining commissioners are charged, through resolution, with the department of health and zoning and the department of public works.[6] According to the organizational chart included in the town's comprehensive annual financial report for the past thirteen years,[7] the town attorney, deputy town clerk, and town manager report directly to the town commission. The finance and public works departments report directly to the town manager.

Craig A. Smith & Associates, Inc.

CAS is a civil engineering, surveying, and construction management firm that was incorporated in 1980. It has provided engineering services to the town since the 1980s. CAS served as the town's interim town engineer from August 1999 until March 2015. It was the town's consultant engineer from February 2000 until at least February 2017. It was also the town's lobbyist or grant specialist for part of this time, seeking and securing grants for engineering projects from October 1999 until August 2011.

[6] As reported here, the town's charter provides that the elected officials are in charge of different town departments. But we could not discern in law or fact what "in charge" means or how the town interprets the term, except to observe that the town manager appears to control the administration of the town. We found that the elected officials relied exclusively on the documents and recommendations that the town manager, the public works director, the finance and budget director, and the interim town engineer provided to them. The town commission as a whole also approved each of these procurements based on the assertions of the professionals. Especially considering the interviews of the mayor and vice mayor described herein, in which they credibly stated that they questioned staff on certain aspects of these procurements and the documents to support them and that they ultimately relied on the professionals, we find in this matter that the elected officials reasonably relied on the town manager's assertions that this was how the process worked.

[7] This organizational chart is outdated, considering the fact that there are now two assistant town managers but the chart only reflects one.

Robert Levy

Mr. Levy has worked for the town since the late 1980s, except between March 1995 and October 1997, when he was the city manager for the City of Wilton Manors. The town commission appointed him the town administrator (later changed to town manager) in 1997, and he has held the post since.[8] Although he described his duties as limited to advising the commission, the town code establishes his duties as the execution of the commission's policies and directions, advising the commission of town needs, recommending measures necessary or in the town's best interests, reviewing and reporting on the operations and administration of all town departments and divisions, exercising general supervision over administration, and assisting in applying for grants as the commission directs. The finance and budget director and the public works director report directly to him. As the town manager, while on contract, he reports to and serves at the pleasure of the town commission.

Todd Larson

Mr. Larson is the public works director for the town and has held this position since 2000. He is responsible for the public works department's procurement of goods, materials, and services valued over $500, which includes providing for the town's engineering needs. He reports directly to the town manager.

Georgina Rodriguez

Ms. Rodriguez has been the town's finance and budget director for 16 years and, although the town code states she is appointed by and serves at the pleasure of the town commission, she reports to the town manager. The finance department is responsible for the town's purchasing function. According to the town code, her duties include ensuring that town funds are spent in an appropriate manner, meeting all state, federal, and local requirements.

INVESTIGATION

Investigation Overview

The OIG's Contract and Procurement Oversight Program initiated a routine inspection of town solicitations for the year 2012. The review uncovered a number of issues and concerns, whereupon the OIG found good cause to initiate an investigation into the town's procurement of professional engineering services and its contractual relationship with CAS. The OIG's investigation substantiated misconduct and gross mismanagement where the town circumvented laws designed (1) to ensure that qualified firms have a fair chance to obtain government business and (2) to minimize government vulnerability to non-competitive rates.

[8] Mr. Levy retired from the town after the OIG issued the December 21, 2017, preliminary report in this matter. His retirement became effective January 3, 2018.

The investigation involved the review of substantial documentation including, but not limited to, contracts between the town and CAS; relevant town commission meeting minutes; memoranda drafted by town officials and consultants; town financial records; and federal, state, and county agencies' records. The OIG also conducted interviews with various witnesses, including town officials, town employees, and current and former CAS employees.

The Town's Relationship with CAS

1. CAS as Town Engineer

Pembroke Park employed a staff town engineer from approximately 1987 until 1999. During this time, the former town engineer outsourced the town's engineering services work to several outside consultants. One of those consultants was CAS. Following the former town engineer's retirement, the town commission, through an August 1999 resolution, appointed CAS as the interim town engineer until such time as the town could select a replacement town engineer. To that end and at that time, the town commission directed Mr. Levy to initiate the selection process for a contract town engineer under the CCNA (Exhibit 1), but that never occurred. CAS continued to serve and invoice the town as the "town engineer" for 16 years, until March 2015.[9]

According to the town code, the *town engineer* is charged with, among other duties, preparing all specifications, designs, plans, and contractual documents for all public works projects; reviewing and providing recommendations on all plans and specifications for water, drainage, streets, and roadways submitted by private developers; observing, reviewing, and providing reports on all engineering projects by or for the town under contracts or permits with private contractors; reviewing cost estimates when used as a basis for permit fees; advising the commission as requested from time to time; and responding to staff questions on any engineering matter.[10] CAS provided the town with its own description of the duties it intended to perform when hired as the contracted town engineer, including "normal functions of a Town Engineer, including meetings with Town Commissioners, [town manager] and [town] staff, local developers, residents and representatives of regulatory agencies" as well as "review developer plans, compute impact fee's [sic], etc., accumulate engineering data and provide inspection services as inspector of developer projects, as appropriate." (Exhibit 3)

[9] That CAS filled the role of interim town engineer until March 2015 is buttressed by CAS's own documents. In addition to the town's resolution appointing CAS as interim town engineer as featured in Exhibit 1, a number of CAS invoices demonstrate that CAS billed as the town engineer services through 2015. Additionally, CAS's March 2015 proposal for a town project is clear that CAS considered itself the town's engineer wherein the CAS senior vice president used the town as a reference, asserting, "CAS continues to provide overall Engineering Services for the Town and is assigned Town Engineer." (Composite Exhibit 2)
[10] Town of Pembroke Park Code of Ordinances, § 2-84.

2. CAS as Lobbyist or Grant Specialist

Two months later, the town hired CAS as the town's *lobbyist* or *grant specialist*. Specifically, in October 1999, the town engaged CAS's services to obtain and administer special legislative appropriation funding. (Exhibit 4) That is to say, CAS was charged with researching and applying for grant money to fund the town's engineering projects. It did so for the next twelve years until, on August 15, 2011, CAS requested that the town assign its (CAS's) contract to provide these services to "the new entity, CAS Governmental Services, LLC." (Exhibit 5)

3. CAS as Consultant Engineer

Four months after the town engaged CAS to be its lobbyist or grant specialist, the town hired the engineering firm to fill yet another role. In February 2000, the town entered into another agreement with CAS wherein CAS agreed to provide consultant engineering services "as requested by the TOWN." (Exhibit 6) The town contracted CAS to also "...provide and furnish the TOWN with all labor, services and supervision necessary to perform each work order project as assigned." At that time, the contract authorized CAS to provide consulting services on only two projects: the creation of an overall storm water master plan and the creation of an overall sanitary sewer system master plan aimed at determining corrective actions to resolve existing flooding conditions and at identifying needed improvements to the sanitary sewer system. In practice, CAS continued to provide consultant engineering services on virtually all engineering projects, and the town continued to pay for those services, although we found that this arrangement was invalid, as we explain later in this report.

In a local government setting, the *consultant engineer* or *consulting engineer* works on a contracted basis and at the direction of the engineer employed by the local government, in this case, the town engineer. The consultant engineer is expected to perform various duties such as assisting with the design and implementation of engineering projects, surveying and mapping, and preparation of construction documents. A review of CAS's 2000 consultant engineer contract revealed that the town historically charged its consultant engineer with similar duties. For example, according to its 2000 contract with the town, CAS intended to consult the town in "... the following disciplines: stormwater, water/wastewater, environmental, street/roads, process evaluation, cost-benefit analysis, land surveying and general engineering and Town planning services." (Exhibit 6) The town often used CAS as a *project engineer*, who carries the overall responsibility for the execution of the work related to a specific project, including supervision of the project team and their assigned activities.

Thus, by the year 2000, CAS held multiple roles within and for the town – as town engineer, lobbyist or grant specialist, and consultant engineer until 2011; and as town engineer and

consultant engineer until 2015.[11] We would not have found the town's relationship with CAS, by itself, to be misconduct; however, it laid the groundwork for the town to violate its ordinance, the CCNA, and federal regulations on grants.

Town Officials Improperly Procured Projects by Failing to Follow the Town's Own Procurement Law and State Procurement Law

Between the years of 1999 and 2015, CAS provided the town with almost all of its engineering needs. Our investigation revealed that the town manager and the public works director engaged in misconduct by consistently violating local and state authority in the procurement of CAS's services.

1. The Town Failed to Issue Purchase Orders for 66 Procurements from CAS[12]

Chapter 3, Article V of the town's ordinance sets forth the town's procurement procedures. In addition to including language which resembles the state's procurement requirements found in the CCNA,[13] the town includes its own requirements. One of these is that "[n]o services… shall be procured for or on behalf of the town unless prior to such procurement a purchase order shall have been issued. …"[14] It is a best practice to use purchase orders to memorialize terms and conditions between a government agency and its vendors for good or services.[15] Purchase orders for services detail the scope of work and type of work agreed to.

But after comparing documents that CAS provided against the town's documentation of procurements between 1999 and 2015 under which CAS-provided services were billed, we could not locate preceding purchase orders on at least 66 occasions.[16,17] Those procurements are detailed in OIG Appendix A and OIG Appendix B to this report.

OIG Appendix A lists town engineering projects that CAS worked on, but the OIG was unable to determine, based on the records that the town and CAS provided, what CAS's scope of work was for any of them. The town's finance and budget director informed the OIG that, while the town could produce purchase orders to pay CAS's invoices for the already procured services, the town did not issue purchase orders to CAS prior to the procurement of any of its

[11] The OIG began conducting interviews in conjunction with its investigation in August 2014.
[12] As reflected in OIG Table 2, one engineering project was awarded to Boyle Engineering. This procurement, also, did not have a preceding purchase order.
[13] § 287.055, Florida Statutes.
[14] § 2-122, Pembroke Park Code.
[15] Procurement contracts come in various forms. One of these forms is a short form contract known as a purchase order. *Watt, Patricia. An Elected Official's Guide to Procurement. Chicago: GFOA, 1995.* A purchase order formalizes all the terms and conditions of a proposed transaction, such as a description of the requested items, delivery schedule, terms of payment, and transportation. *Public Procurement Dictionary of Terms – The Comprehensive Reference for Public Purchasing Terms and Concepts.* Herndon: NIGP, Inc., 2008.
[16] Although a CAS executive opined that contracts were purchase orders, they are not. In any event, the vast majority of the 66 engineering procurements identified herein did not involve contracts other than CAS proposals the town signed.
[17] See footnote 11 above.

services.[18,19] Had town officials or staff issued prior purchase orders as the town's ordinance required, such documents would have reflected what services were intended by the parties – project design, design-build, construction management, or the like.

The town's most recent annual audit observed,

> The Town's procurement policy as written requires Commission approval for all purchases. ... This was deemed by management to be operationally cumbersome and has not been followed by the Town. In addition, an approved purchase order (PO) is required for all items, except recurring payments and items previously approved by resolution of the Commission. Based on discussion with the Town's management, they were unaware that this was how the policy was written. ... Purchases [sic] orders appear to be inconsistently used. Furthermore, the documentation provided appears to be more of a combined check request/purchase order form, several of which had no information in the PO section.[20]

Several individuals failed to ensure that purchase orders were issued prior to the procurement of engineering and lobbying or grant specialist services, therefore, there is no way to know what services were to be provided or what was to be approved. Without a written process designating exactly which staff members were responsible for generating and processing purchase orders, we fault the town manager and the director of public works for failing to ensure that purchase orders were in place prior to the procurement of engineering and lobbying or grant specialist services to approve and detail exactly what they were meant to pay for.[21]

2. The Town Failed to Competitively Solicit Engineering Projects

The town's procedure for the procurement of engineering services mandated that the town permit "the letting of contracts for construction projects" over $3,000 only after it received written competitive bids from at least three different sources and, for those over $25,000, only after following the receipt of competitive bids received as provided in the code, which required the publication and posting of notices for bids.

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[18] The town's finance and budget director made this assertion during a telephone conversation with OIG staff on February 24, 2016. Although we requested that the finance and budget director provide us this assertion in writing, to date, she has failed to do so. Instead, the OIG received an email from the town attorney explaining the town's general procedures for authorization and payment on CAS invoices.

[19] We searched the town's resolutions for evidence that the commission exempted CAS services from the purchase order requirement on any occasion and found none.

[20] Town of Pembroke Park, Florida Comprehensive Annual Financial Report for the Year Ended September 30, 2016. (Composite Exhibit 7 (excerpt))

[21] See our discussion in the section below titled, "*Town Officials Committed Gross Mismanagement by Failing to Properly Administer Public Funds,*" where we also fault the finance and budget director for failing to (1) compile written procedures for purchasing and accounts payable and (2) ensure that prior purchase orders were issued and approved before her department processed CAS invoices for engineering services rendered.

The CCNA required the town to screen for qualifications any firm that desired to provide it with professional engineering services. When the town estimated that (1) construction costs would exceed $325,000 or (2) a fee for a planning or study activity would exceed $35,000, the CCNA required the town to publicly announce a solicitation, that is, issue an RFP.[22]

Furthermore, the CCNA stipulated how the town was to select a firm to perform a proposed project. It required the town to evaluate current statements of qualifications and performance data on file together with those statements submitted by other firms, and it then required the town to conduct discussions with at least three firms regarding their qualifications, approach to the project, and ability to furnish the required services. The town was then to select, in order of preference, at least three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm was qualified, the CCNA required the town to consider several factors "with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms."[23] These factors included, but were not limited to, the ability of professional personnel, whether the firm was a certified minority business enterprise, and the firm's past performance. After three firms were selected, the town was then required to competitively negotiate the terms of the engineering contract with the most qualified of the firms.

The OIG determined that there were 22 CAS projects which the town should have competitively solicited because they met the thresholds of the town's ordinance, the CCNA, or both, as follows:

[22] Prior to 2010, these thresholds were $250,000 and $25,000 respectively. § 287.017, Florida Statutes (2009).
[23] § 287.055(4)(b), Florida Statutes.

OIG Table 1: Projects for which the Town Should Have Issued RFPs or Obtained Bids for Engineering Services (and Ultimately Paid to CAS), 1999-2015

OIG REF. NO.	CAS PROJECT NO.	TOWN PROJECT NO.[24]	DESCRIPTION/LOCATION	TYPE OF PROJECT	CAS TOTAL FEES
1	99-0733	3300	Carolina & 31st St. North	Planning activity	$ 194,667
2	99-0733	3342	Pembroke Industrial Park/Meekins Lake	Planning activity	77,593
3	99-0747	3305	Master Stormwater Plan	Study	79,150
4	99-0748	4105	Sanitary Sewer System Master Plan	Study	84,580
5	99-0785	--	SW 30th Ave Improvements - Phase II	Planning activity	210,000
6	01-1005	--	I-95 & Pembroke Road Pump Station	Construction	651,303
7	01-1015	--	Carolina Street Stormwater Pump	Construction	319,715
8	02-1087	4110	Hallandale Beach Force Main	Planning activity	37,000
9	02-1090	--	Rehab - 3 Lift Station	Planning activity	57,073
10	04-1248	4134	Improvements/Sewer PS	Construction	384,633
11	05-1324	--	Park Road Improvements	Planning activity	47,990
12	06-1377	3335	52nd & 56th Avenue	Construction	118,684
13	06-1380	9024	Pem Pk – SW 30th Ave	Planning activity	50,000
14	07-1419	9030	Pembroke Park 31st/32nd Year Funds	Planning activity	32,000
15	07-1437	3338	N Portion SW 52nd Avenue	Construction	364,440
16	07-1438	4140	Fix/Maintain Gen Ls 14,17,19	Construction	49,980
17	09-1521	4135	Route Survey SW 30th Street	Planning activity	39,000
18	09-1524	4136	SW 30th Avenue Area 5	Planning activity	45,000
19	10-1570	3337	Stormwater Master Plan & Map	Study	172,000
20	12-1646	3340	SW 30th Ave S SW Improvements	Construction	164,112
21	12-1647	--	FEMA Flood Elevations R	Study	38,760
22	15-1833	--	SW 31st Avenue Improvements	Construction	105,565
				TOTAL	$3,323,245

The town awarded all 22 projects listed in OIG Table 1 to CAS. Although we originally expected to find RFPs or other evidence of compliance with the CCNA for all of these projects, the OIG was only able to identify that the town issued eight RFPs for engineering services between 1999 and 2015, as follows:

[24] We could not locate a town project number for many engineering projects.

OIG Table 2: Occasions on which the Town Did Issue RFPs for Engineering Services, 1999-2015[25]

OIG Ref. No.[26]	Due Date	CAS Proj. No.[27]	Town Proj. No.	RFP Title/Description	No. of Bids	Project Name(s)	Contract Amount/ Awarded To
3, 4	11/24/99	99-0747 99-0748	3305 4105	for Surface Water (Stormwater) and Wastewater Engineering Services	7	Stormwater Master Plan; Sanitary Sewer Master Plan	$123,940 84,580 **CAS**
--	08/05/03	--	--	for Professional Engineering Services Design & Construction Services for 28th & 29th Year CDBG[28]	2	Antique Row Beautification Project (Phase I); Antique Row Beautification Project (Phase II)	83,684 95,276 **CAS**
13	04/20/06	06-1380	9024	for Professional Engineering Services Design & Construction Services for 31st Year CDBG	3	SW 30th Avenue Improvements (Phase I)	13,350 **CAS**
--	02/27/08			for Professional Engineering Services Design & Construction Services for 33rd & 34th Year CDBG	1	Pembroke Park Preserve Improvements Project (Phase I); Pembroke Park Preserve Improvements Project (Phase II)	86,266 80,538 **BOYLE**
15	11/21/08	07-1437	3338	for Professional Engineering and Construction Oversight for 2005 Florida Disaster Recovery and 2005 Florida Disaster Recovery; Supplementary Funds for CDBG Program	3	2005 CDBG DRI (Service Area 25 - SW 52 Ave. Infrastructure, Storm Drains and Street Improvements)	$341,003 **CAS**

[25] CAS was the only respondent to those RFPs that resulted in one bid each.
[26] Compare to the OIG reference numbers in OIG Table 1 (underlined).
[27] CAS and the town did not always reference a project number for the RFPs.
[28] According to HUD, the Community Development Block Grant (CDBG) program, provides communities with resources to address a wide range of unique community development needs. The program provides annual grants to 1,209 units of state and local government. Here, the federal government awarded CDBG grants to Broward County, which sub-awarded them to the town.

OIG Ref. No.[26]	Due Date	CAS Proj. No.[27]	Town Proj. No.	RFP Title/Description	No. of Bids	Project Name(s)	Contract Amount/ Awarded to
--	01/31/11	--	--	for Professional Engineering Services Design & Construction Services for 36th through 40th Year CDBG	2	Stormwater Improvements; Stormwater Improvements Phase II; Stormwater Improvements Phase III; Pembroke Park Preserve Improvements Phase IV	72,823 52,054 55,542 54,713 **CAS**
20	06/25/12	12-1646	3340	for Professional Engineering Design & Construction Oversight for FEMA Funds from the FEMA LPDM-2009 Program	3	Pembroke Park SW 30th Ave S SW Improvements	159,980 **CAS**
--	04/05/15	--	--	for Professional Engineering Services Design & Construction Services for 40th to 42nd Year CDBG	1	SW 25th Street Drainage Improvements	41,668 **CAS**

Of the eight occasions on which the town issued RFPs for engineering services, the town awarded CAS seven contracts (covering twelve out of fourteen projects).

As we explain in subsection 3 below, titled, "*The Town Failed to Abide by State and Local Procurement Authority on those Projects that Appeared to be Competitively Solicited,*" although the town issued these eight RFPs, its staff's efforts to competitively solicit the projects did not comport with the CCNA. Moreover, using the scant documentation provided by CAS and the town, we could only correlate five projects to an accompanying RFP, as indicated by the OIG reference numbers in OIG Table 1 and OIG Table 2.[29]
The OIG conducted several interviews with town officials and employees and CAS representatives to determine how the town procured the projects that are not listed in OIG Table 2, if they were not procured through an RFP.

[29] Even after reviewing records with town and CAS witnesses, the OIG experienced difficulty in matching the RFPs with the projects completed for several reasons, including that the town's and CAS's project numbers, names, and descriptions were different in some cases and absent in some others. We note that the town's 2016 Comprehensive Annual Financial Report, issued on June 30, 2017, reflected that the independent audit team of Grau & Associates, CPAs, experienced similar difficulties in reviewing purchasing documents for the fiscal year ending September 30, 2016, writing in the report, "[w]e noted certain instances where documentation provided was incomplete or inadequate." (Composite Exhibit 7 (excerpt))

The town's public works director Mr. Larson explained that sometimes the town commission requested engineering proposals solely from CAS because "Craig A. Smith was already there" as town engineer. He said that, while it was his understanding that CAS had a consultant engineering services contract for storm water, wastewater and other services, the consulting work it provided was based on each individual project's scope of work, not on the original consulting services contract. He told the OIG that he did not know about the CCNA.

The town's current town engineer, a former CAS employee who had filled the role of interim town engineer between 2008 and 2015 before being hired as a full time town employee, corroborated Mr. Larson's explanation. Specifically, the town engineer explained that, between 1999 and 2016, only CAS provided consultant engineering services to the town and that it was not until 2016 that the town competitively solicited for such services. According to the town's current town engineer, CAS was the town's sole provider of consultant engineering services between 1999 and 2016.[30]

CAS's senior vice president also said that CAS was the only firm providing professional engineering services to the town. He said that the town issued an RFQ and then entered a general engineering services contract with CAS. After the town awarded the contract to CAS, whenever the town had an engineering project to undertake, it asked CAS to submit a proposal. He stated that town staff reviewed the submitted proposal and cost information and, if satisfied, presented it to the town commission for approval. He confirmed that, most times, the town requested a proposal only from CAS. Whenever it requested CAS to submit a proposal for a project, the firm did not make any formal presentation before town staff. Rather, the firm described the scope of the work and the cost to the staff. Town staff then presented the proposal before the commission. When the town approved the proposal, the proposal was signed off by the town and became the contract for the project. This continued until approximately September of 2016, when the town issued an RFQ for professional services, as outlined later in this report.

CAS's president also explained the ongoing relationship between CAS and the town. According to him, it began in the late 1980s when, following an RFP, the town appointed CAS as its consultant engineer. Referring to the original 1980s contract as a "continuing contract," he explained that, until 2016, whenever the town required engineering services, it requested that CAS submit a proposal. If the proposal was satisfactory, the town then issued a work order authorizing CAS to perform the work.

His assertion that the town assigned CAS to all its engineering projects through a "continuing contract" was erroneous. We did not observe any contract between the town and CAS stemming from the 1980s. We did see that, in 2000, CAS and the town entered into a contract following a 1999 RFP for "Surface Water (Stormwater) and Wastewater Engineering Services," which called for proposals for the selected firm to conduct storm water and wastewater studies and for the town to use the selected firm for "continuing general

[30] As reflected in OIG Table 2, the town awarded an engineering contract to Boyle Engineering Corp. on March 4, 2009.

services."[31, 32] (Exhibit 6) Yet, Mr. Larson told the OIG that the consulting services that CAS provided the town was based on proposals for each individual project and not on the original consulting services contract. And, because this contract exceeded the estimated cost thresholds and lacked a time limitation except for a termination clause, it did not meet the controlling definition of "continuing contract" [33] and thus the CCNA applied to require the town to competitively solicit for these services. Finally, as written, the 2000 agreement purported to negate the CCNA's statutory requirements to qualify, issue RFPs, and competitively negotiate. But relevant legal authority has rejected using agreements to contract out of the provisions of the law – in this case, the CCNA.[34]

Like the OIG, the independent auditor recently determined that the town failed to observe its procurement process, labeling it a "significant deficiency." It reported that, for the year ending September 30, 2016,

> Inadequate documentation was provided in several instances to support compliance with the City's procurement procedures, including procedures for obtaining required quotes and bids to ensure competitive selection. Furthermore, per inquiry, sole source documentation was indicated without appropriate documentation to support designation or approval as sole source vendor.

The audit firm recommended that the town ensure the personnel involved know and abide by the official procurement process, that it consider updating the process to ensure appropriate controls that are also practical, and that it properly document and make accessible the records and approvals generated in the procurement process. Town management's response to these observations and recommendations was, "The Town is in the process of reviewing the Procurement Manual to ensure all of the auditor's comments are addressed. Management will contact the auditor to determine what sole source documentation or approval is needed." [35] (Composite Exhibit 7 (excerpt))

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[31] We could not identify that the town undertook any projects as a result of the studies. In fact, when we asked the CAS senior vice president to identify which projects stemmed from the list of locations CAS identified within the "Drainage Deficient Area Index" (DDAI) during the storm water study, he could not. He stated that the projects were "not going to match-up with [the DDAI]."

[32] As discussed below, this contract was not the result of a truly competitive solicitation and negotiation process.

[33] In 2000, §287.055(2)(g), Florida Statutes defined a "continuing contract" as "a contract for professional services entered into in accordance with all the procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for projects in which construction costs do not exceed $500,000, for study activity when the fee for such professional service does not exceed $25,000, or for work of a specified nature as outlined in the contract required by the agency, with no time limitation except that the contract must provide a termination clause." *See also* Op. Att'y Gen. Fla. 96-52 (1996).

[34] A contract cannot be read in a way that validates otherwise illegal conduct. *See Title & Trust Co. of Florida v. Parker*, 468 So. 2d 520, 524 (Fla. 1st Dist. App. 1985).

[35] We note that the town's purchasing code provided that, "[w]henever a department head desiring to purchase an item determines that such item is subject to the bid procedure stated in this division and is available from only a single source, that item may be excepted from the bid requirements set forth in this division, provided the department head files with the Town Commission a certificate of conditions and circumstances limiting the availability of such item and the Town

As reflected in OIG Tables 1 and 2, our investigation substantiated the fact that, between at least 1999 and 2015, the town contracted with CAS to provide engineering services for about ten projects without issuing any competitive solicitation and in disregard of the town's ordinance and the state's CCNA requirements.[36]

3. The Town Failed to Abide by State and Local Procurement Authority on those Projects that Appeared to be Competitively Solicited

According to the CAS senior vice president, the town did competitively solicit projects funded by external sources, such as federal grants, because external sources required it. As shown above in OIG Table 2, we identified eight occasions when the town issued RFPs, and upon inspection we found that, indeed, federal grants funded all these projects.[37]

Even though these eight projects met the criteria that subjected them to the above-referenced local and state requirements for competitive solicitation and negotiation, they, too, failed to comply with state and local procurement law, where interviews with town officials and CAS staff as well as the town's own records make clear that CAS was poised to receive almost all of the town's awards regardless of whether the town engaged in an RFP process. Indeed, the town even went so far as to issue an after-the-fact RFP for its polestar project – the storm water and wastewater master plans – in an effort to legitimize the award. That is to say, the town received CAS's proposal for these studies in February 1999, approved said proposal in May 1999, and had CAS commence work on the studies several months before the RFP for that project was issued in October 1999. (Composite Exhibit 8)

While the town's after-the-fact RFP is enough to substantiate misconduct in the procurement of its engineering services, there are other factors that corroborate this finding. For instance, we note that four of the eight RFPs resulted in fewer than three proposals, a requirement of the local and state standards.

More significantly, Mr. Larson, the town's public works director, explained that, during his time with the town, he conducted approximately half a dozen solicitations for professional engineering and construction services. He stated that he was not familiar with the CCNA, saying, "I don't know what that even is." He said he just wrote the scope of services and left it to others to review and approve. He did not recall anyone ever asking him to review the CCNA or to consider CCNA requirements when conducting solicitations.

Commission authorizes the purchase by a motion adopted at a regular or special meeting of the Commission, which motion must be approved by at least three (3) members of the Commission." § 2-144, Pembroke Park Code of Ordinances, Exception for items of limited availability.

[36] There were 22 CAS engineering projects listed in OIG Table 1 for which the town should have issued RFPs. We subtracted the twelve CAS projects covered by the eight RFPs reflected in OIG Table 2 to arrive at the figure of ten CAS projects that were missing in RFP.

[37] Not including the Surface Water (Stormwater) and Wastewater project, the town received at least approximately $1.9 million dollars in federal grants for the projects identified above. While we could not determine the value of the federal grant for the storm water/wastewater project, we were able to confirm that it was funded using federal grants evidenced by correspondence between CAS and Mr. Levy.

In describing the process he used to evaluate responses to the RFPs, he admitted to the following:

- He alone reviewed engineering proposals, submitted his evaluation and recommendation to the town attorney for review, and then submitted all supporting documents to the town commission for award.
- When drafting solicitation documents, he used the basic scope of work and any design documents that CAS created.[38]
- If CAS created cost estimates for project activities and supplies, sometimes he adjusted the cost estimates for inflation prior to using them.
- He did not release CAS's design documents and cost estimates when posting the solicitation documents, saying that prospective respondents knew that these documents were available and could request them.

The town did not abide by its own ordinance or the CCNA when appearing to competitively solicit projects funded by state or federal grants. The town did not endeavor to pre-certify any vendor as qualified to provide the town professional services as the CCNA required. Although the town did publicly solicit proposals on eight occasions, it did not make a meaningful attempt to vet and select three firms and then engage in discussions with them, as mandated by the CCNA. In several instances, the town proceeded with awards to CAS even when less than three bids were received, in violation of both the town's ordinance and the CCNA. Finally, after selecting CAS as the most qualified provider in seven out of eight occasions, the town made no effort to engage in arms-length discussions or competitively negotiate CAS's prices before awarding CAS the contract, all in violation of the CCNA.[39]

During his interview with the OIG, Mr. Levy acknowledged the benefits of competitive solicitation. However, he said he did not have a problem with the town continuously using CAS, considering CAS had developed the town's master plan. He told the OIG that a new firm would have "a learning curve" and insist on doing things its way. In Mr. Levy's opinion, it was more efficient for the town to work with the people that developed the master plan than with a new firm every time.

OIG interviews made clear that, prior to this office's investigation, Mr. Levy did not ensure that the public works director knew and followed applicable procurement law. Once he became aware of the shortcomings, he did not hold the public works director responsible for them. The public works director proceeded to procure engineering services without consulting readily available resources, including his supervisor and the consultant engineer, on how to do so.

[38] He later said he did not involve CAS in drafting the solicitation documents because he did not want CAS to have a conflict of interest.
[39] Through our investigation, we observed that the town also violated technical provisions featured §§ 287.055(5) and 287.055(6), Florida Statutes, such as requirements to include certain specific assurances in the contracts for engineering services. However, this report focuses on the town's substantive violations of the CCNA.

The Town Engaged in Misconduct by Violating Federal Authority on Grants

The town funded at least eight projects with federal grants, such as CDBGs.[40] The OIG investigation determined that the town's conduct in the procurement of engineering services paid for by federal grants also violated federal regulations.

1. *Conflicts of Interest by Allowing CAS to Fill Multiple Roles on the Same Projects*

24 CFR § 85.36 mandates that "[n]o employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved." The code goes on to describe that a conflict would arise when, among other relationships, "[t]he employee, officer or agent…" or "[a]n organization which employs…[the employee], has a financial or other interest in the firm selected for award." Further, it mandates that "[a]ll procurement transactions be conducted in a manner providing full and open competition consistent with the standards of Sec. 85.36." Two situations that the code considers to be restrictive of competition include "[n]oncompetitive awards to consultants that are on retainer contracts" and "[o]rganizational conflicts of interest."

CAS filled many roles within the town. CAS was the interim town engineer from August 1999 until March 2015, the town's consultant engineer from February 2000 until May 2017,[41] and the town's lobbyist or grant specialist from October 1999 until 2011. By many accounts, CAS as the town's lobbyist or grant specialist sought out and applied for grants on behalf of the town. To that end, the town was successful in obtaining several federal grants for its projects. When these federal grants were received, CAS, which was also the contracted town engineer, was involved with drafting and approving design documents, technical specifications, and cost estimates. CAS submitted complete breakdowns of the costs of project activities, including engineering designs, surveys, and related activities. Once the town approved the documents, they were included in the competitive solicitation for engineering services for that project.[42] CAS responded to the competitive solicitation, and the town ultimately selected CAS for seven of the eight projects for which CAS responded to the request for proposal.

This arrangement between the town and CAS was at the very least an apparent conflict of interest. The town paid CAS to seek out grants for engineering projects. During and after the time that CAS sought and obtained grants, the town charged CAS with creating the

[40] See footnote 22, above.
[41] On August 30, 2017, the town's assistant town manager/deputy town clerk advised that the town had entered into consulting engineer agreement with Keith and Associates in May 2017. According to the assistant town manager, this superseded CAS's 2000 agreement for engineering services.
[42] During one of his interviews, Mr. Larson explained that in drafting solicitations, he used the basic scope of work and design documents created by CAS. Mr. Larson later contradicted his initial statement by stating that he did not involve CAS in drafting solicitations documents because he did not want CAS to have a conflict of interest. We find Mr. Larson's initial statement to be more credible in light of the fact that it was corroborated by CAS's vice president.

documents that it then used for the relevant solicitations. The town then selected CAS to be the beneficiary of seven out of eight of these awards.

Mr. Larson was well enough aware of conflict of interest concerns by the time he interviewed with the OIG that he first described CAS's involvement in the process of issuing RFPs and then later stated that CAS had no involvement because that would be a conflict. He also said that he did not post the design and cost estimate documents – which CAS assisted in creating – with the RFP document but that prospective RFP respondents knew that those documents were available and could request them. If one prospective respondent requested the design and cost estimate documents, Mr. Larson made the documents available to all prospective respondents to place all the respondents on as "close to an equal footing as possible."

2. *Improper Procurement under State and Local Law Violated Federal Grant Regulations*

Sec. 85.36 also details the procurement standards that grantees and sub-grantees are required to apply in their use of federal grants. This section directed that sub-grantees use procurement procedures which reflect applicable state and local laws and regulations. As discussed in the first section of this report titled, "*Town Officials Improperly Procured Projects by Failing to Follow the Town's Own Procurement Law and State Procurement Law*," the town failed to follow state procurement authority as well as its own procurement procedures for its engineering services on multiple projects. To begin, the town failed to issue purchase orders for its projects over $500 in violation of its procurement ordinance. Further, the town failed to competitively solicit and negotiate projects as required by both local and state authority. Finally, in instances where the town issued RFPs in apparent compliance with the competitive solicitation process, a close review of the procurement documents for those projects revealed that they also did not comply with state procurement authority. Accordingly, the town improperly administered federal grant money.

Town Officials Committed Gross Mismanagement by Failing to Properly Administer Public Funds

In failing to follow procurement law and procurement best practices, town manager Robert Levy, public works director Todd Larson, and finance and budget director Georgina Rodriguez permitted the town to procure engineering services without requiring competition.

Even after the OIG questioned these officials about local, state, or federal procurement authority, none of them accepted responsibility for the proper procurement of engineering services.

Town manager Levy disavowed involvement in the administration of any department, despite the fact that his duties under the town code include "see[ing] that the policies and directions of the commission with respect to the administration and operation of the town are followed" and "review[ing] the operations and administration of all departments and divisions of the town government." He said that the town pays him a salary of "probably around" $250,000 per year and provides him with a car and benefits, as well. Although the public works director reports to him, Mr. Levy said he is only involved with public works administrative issues on an ancillary basis. He asserted that the code only

authorized him to advise the commission. With regard to CAS's consultant town engineer, Mr. Levy told the OIG that he was not involved in the hiring process, did not know how it was conducted, and did not seek to know. He said that he would have no reason to know about the contract because in a commission form of government "commissioners are almost sacrosanct." When asked, he said he could not recall Resolution Number 99-8-6, dated August 11, 1999, which appointed CAS to be the interim town engineer and directed Mr. Levy to "initiate the selection process for a contract town engineer pursuant to the provisions of Section 287.055, Florida Statutes [the CCNA]." He said he did not initiate the selection process as directed by the resolution as he did not feel it was a priority at the time. He also did not see any reason to change anything and no one directed him to do so, saying it was probably a case of "out of sight, out of mind." He said he was familiar with the CCNA but did not have any involvement with the town's solicitations and claimed he was not involved in ensuring that the town complied with the CCNA requirements. He said he avoided getting involved in procurements so that no one would think he was trying to influence vendor selection. According to Mr. Levy, the town attorney advised the commission on the CCNA, and Mr. Larson was responsible for compliance with the statute. He said he was unaware that he was the addressee for all CDBG communications from Broward County,[43] responding, "Do you know how many letters I get each day?" According to Mr. Levy, he made sure that staff was aware of the CDBG requirements. Yet, we know that the town continually violated a primary CDBG requirement to avoid relationships giving rise to actual or apparent conflicts of interest in the administration of the grants.

The mayor explained that, when she joined the commission in 2003, CAS was already working in Pembroke Park. Mr. Levy informed her that CAS was the town's consultant town engineer and had been providing services to the town since the 1990s. She said that Mr. Levy claimed he did not know CAS's contract terms and conditions as the contract was executed before he joined the town and that none of the town staff she spoke to seemed to know much about the contract. She understood that, before the town hired the former CAS employee as its town engineer, Mr. Larson wrote all bid specifications. Sometimes CAS was the only firm that responded to a solicitation. At times, CAS was the only firm the town asked to submit a proposal for an engineering project. CAS was ranked first and selected in all solicitations the town conducted. When staff presented recommendations for contract awards before the commission, the mayor assumed staff had followed the correct procurement procedures. She thought it was remarkable that CAS not only worked hard at solving Pembroke Park's storm water problems, but also sought grant funds to finance engineering projects at no apparent cost to the town. The mayor was often annoyed about the fact that the commission would not get back-up documentation for project approvals until a few minutes before a meeting. In some instances, the commission would get incomplete back-up documents. When she approached Mr. Levy about that issue, he insisted that this was how the process worked.

The vice mayor, who took upon the task of overseeing public works for part of the OIG period of review, was equally unaware of the lapses in the town's procurement process. He told the OIG that, when he oversaw public works, he ensured that the town engineer kept the commission informed on all his activities and assisted him in explaining project issues to the commission as necessary. He was

[43] The federal CDBG grants at issue were awarded to Broward County, the grantee, who in turn provided the monies to the town, the subgrantee.

only interested in ensuring that CAS performed the required work correctly and that the town's drainage work continued. The commission trusted Mr. Levy, the town attorney, and CAS to follow proper procedures when doing their work. Mr. Levy's responsibility was to ensure that the project was appropriate for the town and to raise objections if something was not right. He said his own job was to ensure that, before any public works project was initiated, the town attorney approved of it and the commission knew about it and voted to approve it. The vice mayor did not know how engineering services were procured but knew that Mr. Larson always presented his recommendations to the full commission. Only when the OIG investigation began did he start to hear rumors that staff was not following proper procedures. He said that, when the town attorney informed him that there were issues with some of the town's procurements, he placed the issue on the commission meeting agenda.

The town's public works director, Mr. Larson, said that he was not familiar with the CCNA, saying, "I don't know what that even is." We found this statement difficult to accept, where his own supervisor, Mr. Levy, said he was responsible for complying with the CCNA and where a key element of his very job was to oversee government procurement of engineering services. We further observe that, since 2000, Mr. Larson has been a member of the American Public Works Association, an educational and professional association of public agencies, private sector companies and individuals dedicated to providing public works, goods, and services. As such, public works management classes that include lessons in the purchasing of services, bidding for contracts, and contract management, have been available to Mr. Larson since 2000.

The finance and budget director, Ms. Rodriguez, acknowledged that her department was responsible for the purchasing function and acknowledged that the town's code of ordinances required that purchase orders be issued prior to the procurement of goods or services for over $500. Nonetheless, she admitted that, most of the time, her department processed check requests without prior purchase orders, describing that the commission approved invoices and the town made payments without her having to search for or locate the prior purchase order. Moreover, while she said her responsibilities included ensuring that all town funds were spent in an appropriate manner, meeting all state, federal, and local requirements, she could not name any, other than for law enforcement grants. She also said that the department head was not expected to provide any supporting documentation to validate invoice details. Those details should have included, for contracts for construction projects over $3,000, three competitive, written quotes or, for contracts for construction projects over $25,000, proof that the department followed the town's competitive solicitation process. Ms. Rodriguez also said she did not know what the "three-way match"[44] was and stated that the town did not do any three-way matching before making payments. We further note that, after sixteen years on the job, Ms. Rodriguez has also not produced a written manual for purchasing, accounts payable, or any other town finance function.

[44] The three-way match is a common internal control tool in accounting that is used to ensure that a paying entity only authorizes payment for legitimate and accurate invoices. When an entity, such as a municipality, receives an invoice from a contractor, the municipality's accounting department must match the invoice with the previously issued purchase order and the receiving report for the goods or services. If any details on one of the three documents do not match, the appropriate party must correct the error(s) until they do. Therefore, before the accounting department may enter a contractor's invoice into the accounting records and schedule it for payment, the invoice details must match what the municipality ordered and received, including the proper unit costs, calculations, totals, and terms.

We find that the laissez-faire fashion with which the town manager (whose salary ought to be commensurate with the level of his responsibility), the public works director, and the finance and budget director procured the town's professional engineering services resulted in the significant mismanagement of approximately $3,323,245 in public resources and constitutes gross mismanagement.

The Town's Corrective Actions since the Inception of the OIG Investigation

After the inception of this investigation, the town began to take steps to remedy the failures reported herein.

In 2015, the town relieved CAS of its role as town engineer. It hired the CAS employee that had been acting as interim town engineer as a full-time, on-staff town engineer in March 2015, and, upon his successful completion of a six month probationary term, the commission finalized the hiring in October of that year. In September 2015, the town formally contracted with CAS Governmental Services, a firm started by a former CAS employee and that we were told was otherwise unrelated to CAS, to act as the town's lobbyist or grant specialist.[45]

Then, in September 2016, for the first time in more than 16 years, the town competitively solicited a general engineering services contract in conformance with the CCNA. The town issued an RFQ and assembled an evaluation committee that included Mr. Larson and the staff town engineer. Seven engineering firms responded to the solicitation, and after reviewing the submitted responses, the evaluation committee recommended four firms for contract award.

In May 2017, the town executed a contract with Keith and Associates for engineering consultant services.

During their interviews, town officials credited the OIG's investigation as prompting the town's changes in procurement and agreed that the new process benefitted the town. The town engineer believed that having a number of engineering firms to choose from leveled the playing field, added value, and could possibly lead to cost savings. Additionally, he believed that competition among engineering firms increased the chances of finding more qualified firms and enhanced the quality of engineering work provided.

Although Mr. Levy said he thought that changing engineering firms on different projects was inefficient, he also said he saw value in having the town qualify more than one consultant engineering firm and conduct competitive solicitations. He acknowledged that the new solicitation process increased competition and could lead to better prices for the town. He further recognized that different firms could bring different skills that the town had not anticipated.

[45] While the town had been receiving its lobbying services from CAS Governmental Services, LLC since on or about August 2011, this arrangement was through an assignment of CAS's contractual duties at the request of CAS. (Exhibit 5))

Finally, the town commission formed a committee, comprised of the vice mayor and any staff members whose departments are being reviewed, to review the town's code of ordinances. As part of this effort, the vice mayor has initiated a review and rewriting of the town's procurement code.

INTERVIEW SUMMARIES

As a part of the investigation, OIG Special Agents conducted numerous interviews. Significant interviews are summarized below:

1. Interview of Robert Levy

Mr. Levy is the town manager. He was hired in March 1989 as deputy town clerk. He has been a town employee since then, except for three years between 1995 and 1997, when he was the city manager for the City of Wilton Manors. He has held various positions in Pembroke Park, including deputy town clerk, assistant town administrator, town administrator, and town manager. The town pays him a salary of "probably around" $250,000 per year and provides him with a car and benefits, as well.

He is a resident of the City of Plantation where, from 2005 through November 2016, he also served as councilman. During that time, he did not attend Pembroke Park commission meetings but instead attended Plantation council meetings as they occurred on the same night. The Pembroke Park commission adopted a resolution allowing him to attend the Plantation meetings instead of their own meetings. He kept up to date with Pembroke Park commission discussions he missed by reviewing draft minutes or listening to audio recordings of the meetings.

Pembroke Park has a commission form of government. The commissioners make all the decisions and commissioners are assigned day to day responsibilities over town departments. The mayor is in charge of administration, the vice mayor of finance and taxes, and the clerk/commissioner of the town clerk and all records. The deputy town clerk performs the everyday administrative functions and is the town's custodian of records.

Each commissioner has administrative responsibilities so that a particular department head works directly with the assigned commissioner. Mr. Levy, as town manager, is not involved unless the department head requests his assistance. Although Mr. Larson reports to him, Mr. Larson works with the commissioner assigned to public works, and Mr. Levy is brought in on an ancillary basis, if there are administrative issues to discuss.

He can only do what is authorized by code, which is to advise the commission. If the commissioners decide not to follow his advice, it is within their rights.

The town hired CAS as the town's consulting engineer and tasked the firm with creating a storm water drainage master plan. Mr. Levy was not involved with the hiring process and did not know how the process was conducted. He would have no reason to want to know because in a

commission form of government "commissioners are almost sacrosanct." If a contract was executed, the town commission approved it.

Mr. Levy could not recall Resolution Number 99-8-6, which appointed CAS the interim town engineer and directed him as the town administrator to "initiate the selection process for a contract Town Engineer pursuant to the provisions of Section 287.055, Florida Statutes." He did not initiate the selection process as directed by the resolution as he did not feel it was a priority. He did not see any reason to change anything and no one directed him to do so. It was also probably a case of "out of sight out of mind." The commission passes resolutions all the time, sometimes presenting different alternatives to what they already decided.

CAS was the town engineer by way of contract until 2015, when the town hired its current engineer. Mr. Larson, whom the town hired in 2000, was responsible for the contract. The vice mayor, who has been a Pembroke Park commissioner for about 26 years and was the commissioner assigned to public works, oversaw the contract as well.[46]

The CCNA requires consultants to submit their qualifications. However, Mr. Levy neither had any involvement with the town's CCNA solicitations nor was he involved in ensuring that Pembroke Park complied with CCNA requirements. He avoided getting involved in procurements so that no one would think he was trying to influence vendor selection. The town attorney advised the commission on the CCNA, and Mr. Larson was responsible for compliance with the statute. CAS advised Mr. Larson on the CCNA since he is not an engineer. Mr. Larson and the town engineer now both ensure Pembroke Park complies with the CCNA.

Mr. Levy did not know that all the CDBG communication from Broward County was addressed to him, asking, "Do you know how many letters I get each day?" While he was not involved in any CDBG activities, he ensured staff was aware of the CDBG requirements. Mr. Larson was the CDBG contract manager and worked with county staff when they visited the town. Mr. Larson reported the status of CDBG projects to Mr. Levy and the commission.

Mr. Levy was not involved in the 2016 RFP for engineering services conducted by the town engineer and Mr. Larson. The OIG's investigation resulted in the initiation of this solicitation. The OIG's questions on the length of CAS's interim contract were discussed in both staff and commission meetings, and the commission decided to conduct a solicitation for a new contract.

Mr. Levy described the OIG investigation as a constructive exercise; having an outsider review the town's policies is helpful. The town started making changes as a result of the investigation. For instance, a committee has been set up to review and update the town's code. Mr. Levy saw value in conducting a solicitation and qualifying more than one consulting engineer firm. A new solicitation increases competition and could lead to better prices for the town. Different firms could also bring different skills the town had not anticipated. However, Mr. Levy did not see a

[46] While Mr. Levy identified the vice mayor as the commissioner assigned to public works, resolution 97-9-6 appointed a different commissioner to be in charge of the public works department. We searched for but could not find a more recent resolution that assigned public works to the vice mayor.

problem with the town continuously using CAS because it developed the town's master plan. A new firm would have "a learning curve" and insist on doing things its own way. It is more efficient for the town to work with the people that developed the master plan than with a new firm every time.

2. *Interviews of Todd Larson*

Mr. Larson is the public works director for the town. He has been with the town since January 2000 and currently reports to the town manager, assistant town manager,[47] and the town commission. He procures all items for the department valued over $500.

Mr. Larson explained that normal procurement write-ups are processed for purchases over $500. The town is small; it has neither a purchasing agent nor a procurement manual. The directors for each department conduct the evaluation of proposals and make subsequent recommendations. Although the town's RFPs state that bidders' proposals will be reviewed by a review committee, the town does not have a selection review committee. He evaluates all bid responses for the public works department, ranks the vendors, and recommends a vendor for an award to the town attorney who reviews his work. After his review, the town attorney submits the recommendation and all supporting documents to the commission for award.

The town awarded CAS the RFP for the drainage project titled, "RFP for the Professional Engineering Design & Construction Oversight for FEMA Funds." For the past five years CAS has been the town engineer. CAS's duties included attending town staff meetings, performing preliminary traffic signage studies, and designing the current master plan for the town. Mr. Larson acknowledged that CAS had an advantage in RFPs, having designed the town's master plan at the town's request in 1999, which included that drainage project. Mr. Larson assured that "all of the bidders had the opportunity to contact [him] and acquire all of the necessary information to respond to the RFP." Mr. Larson explained that he solicited the drainage project through an RFP because the project was federally funded – a FEMA grant, which requires solicitation – funded 75 percent of the drainage project. Like FEMA grants, the federal government also requires a municipality to conduct a separate solicitation to procure engineering services on a CDBG grant.

CAS's legislative division located, researched, and applied for grants. CAS assisted the town in completing the grant applications and amendments for all of the projects in the master plan. CAS's master plan to address the town's drainage deficiency initially consisted of 23 projects. After it was approved by the commission, CAS's legislative division divided the master plan projects into smaller projects, which they thought was reasonable and fundable in order to coordinate the grant funding that they obtained for the town.

[47] In another interview, Mr. Larson indicated that he does not report to the assistant town manager.

Once CAS completed the preliminary design and located grant funds for several projects within the master plan, Mr. Larson selected CAS as the designer for the final design based on an RFQ.[48] CAS worked in three capacities in the town: town engineer, project designer, and construction manager. In 2000, CAS established the rates it would bill the town for town engineer services. The rates were never competitively solicited or negotiated. CAS adjusted the rates on an annual basis to include a cost of living increase and used the same rate sheet for billing of all work it performed.

Mr. Larson did not believe that the town had a contract with CAS for engineering services. CAS billed the town monthly and utilized the rate sheet described earlier. When the town requested it, CAS provided a proposal which included what it thought was necessary and included the rates it created. If he agreed with the specifications and the cost, Mr. Larson accepted the proposal and submitted it to the commission for approval.

The town hired its town engineer in March 2015. Prior to becoming a full-time town employee, the town engineer was the contracted town engineer through CAS. The town engineer's father was the town's full-time town engineer before the town hired CAS as the town's contract town engineer. While he was town engineer, the town engineer's father outsourced some work to CAS, including drawing project designs. He retired thereafter.

Some time ago, CAS conducted two studies within the town and produced two plans, the storm water and the sanitary sewer master plans. CAS created a list called the drainage deficient area index (DDAI) during the creation of those master plans.[49] This list prioritized locations with repetitive flood loss and projects that met grant criteria. However, there is no project list that corresponds directly to the listing of the 23 locations on the DDAI –"We don't list them that way." In fact, the DDAI did not have "a lot to do with the two master plans."

Mr. Larson explained that, during his time with the town, he has conducted approximately half a dozen solicitations for professional engineering and construction services. He reviewed all proposals for the public works department. The bidders were instructed to submit proposals to the clerk's office. After the proposals were logged, they were forwarded to him for review.

Mr. Larson initiated the work for a location by searching for applicable grants. When he identified a grant, he generally discussed it with the commission and submitted an application if the commission approved. When the funding became available, he initiated the solicitation process for the location. According to Mr. Larson, CAS had nothing to do with the RFP process, although he used CAS's basic scope of work and design documents when generating the solicitation. When CAS created cost estimates for the project activities and supplies, he sometimes adjusted the cost estimates for inflation and used those estimates for the solicitation.

[48] While Mr. Larson used the term "RFQ" in this discussion, the context was clear that he was referring to an "RFP." Indeed, other than the July 2016 RFQ for civil engineering services issued after our office began its investigation, no RFQs were included in the records provided by the town.
[49] In another part of the interview, Mr. Larson stated that the town commission developed the priority list.

Contradicting his earlier statement that he used CAS's work product in generating solicitations, Mr. Larson indicated that he did not involve CAS in drafting solicitation documents because he did not want CAS to have a conflict of interest. Although he did not post the design and cost estimate documents with the RFP document, prospective RFP respondents knew that those documents were available and could request them. If one prospective respondent requested the design and cost estimate documents, Mr. Larson made the documents available to all prospective respondents, including CAS. He did this to place all the respondents on as "close to an equal footing as possible." Of all the solicitations Mr. Larson conducted, CAS was the only awardee. Occasionally, CAS was the only respondent to a solicitation. Sometimes solicitations did not have any respondents at all.

In June 2016, the town engineer issued an RFQ in his solicitation for engineering services. This solicitation differed from the solicitations Mr. Larson had conducted. For the first time, the town used procedures and selection criteria stipulated in section 287.055, Florida Statutes, the CCNA. In his past solicitations, Mr. Larson wrote the scope of services and left it to others to review and approve. He did not recall anyone ever asking him to review the CCNA or to consider CCNA requirements when conducting solicitations. While Mr. Larson was familiar with the town's purchasing ordinance, he was not familiar with the CCNA stating, "I don't know what that even is." As far as knowledge of federal regulations, rules or guidelines applicable to the town as award grantees, Mr. Larson explained that he could not be expected to know all the statutes contained "in 15 million pages" although he tried his best to comply with relevant regulations.

Mr. Larson explained that sometimes the town only requested engineering proposals from CAS because "Craig A. Smith was already there" as town engineer. According to Mr. Larson, the town had an existing town engineer services agreement with the firm and CAS submitted proposals matching the commission's instructions. Mr. Larson understood that CAS had a consulting engineering services contract for storm water, wastewater and other services. However, CAS's consulting work was based on each project's scope of work, not on the original consulting services contract. While the town does not have an official contract manager, Mr. Larson kept the town manager abreast of project progress. Also, although Mr. Larson did not negotiate contracts, he notified the town manager if he saw an issue with the contract or prices.

Mr. Larson compared proposed engineering prices to the rates set by the federal government in order to determine whether they were reasonable. The federal government sets rates for engineering consulting services and the rates are expressed as a percentage of construction costs. The percentages are higher for smaller construction jobs and lower for big jobs. Mr. Larson can determine reasonable ranges for engineering costs and estimate project durations through his experience. Although he is not responsible for determining the reasonableness of proposed project costs, he conducts a preliminary review of each proposal, noting the percentage range of engineering costs before submitting the proposal to the town manager for approval. The town manager rarely questions or changes Mr. Larson's assessments before approving them for placement on the commission's meeting agendas.

All town purchases above $500 require commission approval. Mr. Larson has heard that the code also requires a purchase order to be issued for any purchase above $500. Purchases of engineering services from CAS were mostly through contracts which, in his opinion, were purchase orders. Each proposal that CAS submitted ultimately became the actual contract following commission approval.

Mr. Larson has been a CDBG grant manager since about 2001. He managed Pembroke Park's CDBG contracts with Broward County and was responsible for Pembroke Park's compliance with CDBG requirements. He knew where to get answers if he had questions on any CDBG issue and submitted draft documents to the county for review prior to publication or contract execution.

Mr. Larson understood that the CDBG contract required him to comply with HUD rules but did not know if he had seen 24 C.F.R § 85.36 before. He conducted an RFQ for engineering services for the 40th year CDBG project "under local rules."[50] The town received only one proposal for the solicitation.[51]

Regardless of whether CAS was acting as the interim town engineer or as an engineering consultant, it still carried out the responsibilities of a town engineer. CAS did not write the RFQ solicitation documents for which it submitted proposals, although it might have known the solicitations' scope of work. CAS did not write the 40th Year CDBG project's RFQ for engineering services nor did it review the responses because it intended to submit a proposal. Mr. Larson conducted that solicitation.

3. Interviews of Georgina Rodriguez

Georgina Rodriguez said she had been the finance and budget director for the town since 2001 and that she reported to the assistant town manager and the town manager.

Her duties and responsibilities include overseeing the town's financial operations, preparing the town budget, submitting bills to the town commission and processing payments, and preparing for audits of the town's financial statements. To her knowledge, her department was also responsible for the purchasing function. To that end, she ensured that all funds were spent in an appropriate manner, meeting all state, federal, and local requirements, as stated on the town's website. She did not know whether or not the town had a written job description for her position.

The town does not have an internal policy or procedure manual or any written accounting or purchasing policies or procedures, other than what is in the code of ordinances. The code required town commission approval and the issuance of a purchase order before the procurement of goods and services over $500. Ms. Rodriguez stated that her department did not include the purchase order information in the check request form that her department completed when processing an

[50] Again, while Mr. Larson used the term "RFQ", the context was clear that he was referring to an "RFP". Other than the July 2016 RFQ for civil engineering services issued after our office began its investigation, no RFQs were included in the records provided by the town.
[51] The town's records actually showed that this particular RFP received two proposals.

invoice for payment. To her knowledge, neither the town manager nor the commission required the information on the check request form when approving an invoice for payment.

When the town received an invoice from a contractor, the accounts payable clerk checked to see if the invoice was for a non-recurring expense, in which case the clerk completed the non-purchase order section of the check request form and sent the completed form, with the attached invoice, to the department head for review and approval. Each department head was required to review and approve payment of their contractors' invoices. After the department head approved the invoice, Ms. Rodriguez's department sent the two documents to the town manager, for his approval, before presenting it to the commission for final approval. Most of the time, the commission approved the invoice and the town made the payment without her having had to search for or locate the purchase order.

According to her, there was no identifiable distinction between those invoices for which she had searched and located the related purchase orders and ones for which she had not done any research at all. Department heads maintained and archived original purchase order documents, and finance maintained duplicates.

To her knowledge, no one at the town verified whether or not the department heads complied with the code requirement to issue commission-approved purchase orders to contractors. Her department relied on the department heads to verify the accuracy of invoice details. Other than a signature on the check request form denoting invoice approval, the department head was not expected to provide any supporting documentation to validate the invoice details. If either the clerk or Ms. Rodriguez had a question on an invoice, they called the department head for an explanation. She stated that she did not know what the "three-way match" was. According to her, the town did not do any three-way matching before making payments.

The town did not have a town engineer on staff until March 2015. Prior to that, the town had a contract for general engineering services with CAS. Mr. Larson managed the contract, which involved tracking project work schedules, reviewing and approving payment of CAS invoices, and archiving of records. Finance processed invoices for town projects and the town engineer's salary based on check requests submitted by the department heads and the assistant town manager. She was unable to determine if invoices submitted to finance were generated on a contract, as she processed requests for payments based on the project and assigned account numbers. While there is no manual, the finance and budget director created and used an informal, procedural checklist that included steps and procedures to process invoices. Per Ms. Rodriguez, the town solicited all projects over a certain value as described by ordinance and then the commission approved them.

Although she verified that there were supporting documents attached to the invoices, she relied heavily on the department heads, engineers, and consultants to verify that the invoices were accurate, the work was completed, and that the payment requests were justified.

Ms. Rodriguez stated that all capital improvement projects were competitively solicited unless there was an emergency. She described that Todd Larson, the public works director, and the

contracted lobbyist for the town determined what projects were paid utilizing grants. The town received the monies after completion of the bidding process. Finance was involved once the project had been awarded, completed, and the invoices submitted.

The town's engineer was CAS, and CAS's staff performed the engineering function for the town. Finance prepared checks to pay CAS after it rendered its services and the town received an invoice. Ms. Rodriguez stated that CAS's scope of services was not in a contract or agreement but was listed on the invoices it submitted to finance. It was the department head who signed off on CAS's invoices for general services, ensuring that the bill was accurate and the work was complete. Prior to issuing payments to contractors or consultants, the public works director or department head signed off on the invoices and submitted the documents to finance. She submitted the documents to the commission for its approval.

When she was asked how the town verified the town engineer's rates, she said that the town engineer was not paid monthly but rather the town used a progress payment method that is in the CAS contract. She said that the commission should have approved the rates and engineering services scope of work.

After having been shown the DDAI, Ms. Rodriguez stated she was unaware that the eight projects generated from the town master plan by CAS were not competitively bid.

She was neither involved with any grant application activities nor in the grant project budgeting process. Her department only became involved with grants when it received an invoice from a grant contractor. She did not review grant application or grant contract documents. Mr. Larson was responsible for all grant applications, grant management, and presentation of grant updates to the commission. She could not name federal, state, or local requirements the town was expected to meet in disbursing its funds, other than for federal law enforcement grants for the sheriff's department.

When a new contract was executed or a grant application approved, the department head requested her to create a new project in the accounting system. She was responsible for assigning the last four digits of an accounting number, the project number, to a new project. She acknowledged inconsistencies and duplications in some invoices. For instance, some invoices with project number 3300 had "general engineering services" as the project description, while other invoices with the same project number, had "town engineer services" as the project description.

4. Interviews of the Town Engineer

The town engineer also serves as the town's assistant public works director. He was hired on March 23, 2015. Prior to being a town employee, CAS employed him as a project engineer. In February 2008, CAS assigned him to the town to serve as its contracted town engineer. He left CAS when the opportunity to work for the town opened up in 2015.

In January 2008, while he was with CAS, his supervisor left CAS. His supervisor was "engineer of record" for the town. Sometime in February 2008, the CAS president called him into his office and told him that he (the now town engineer) was to start attending town commission meetings and be responsible for submitting the monthly engineer's reports to the commission.

At his first town commission meeting, he stood up to introduce himself as an engineer from CAS, and one of the commissioners asked him to introduce himself as "town engineer." A number of commissioners at the meeting spoke in support of his assignment as town engineer and also about his father who had retired from the town in 1999 after serving for twelve years as town engineer.

When he was asked to introduce himself as town engineer, he did not inquire as to what his duties and responsibilities as town engineer would be other than what the CAS president had told him. Attending town commission meetings and submitting monthly Engineer's Reports were the only two responsibilities added to his already existing responsibilities to the town. He continued working on the other projects he had worked on prior to the assignment. There was not much difference in the volume of project engineering work before and after he was assigned the town engineer role. Since that first town commission meeting, he used the title of town engineer in official communications.

When advised that the CAS senior vice president could not recall him using the title town engineer, he responded "News to me. Been so since 2009." Since that time, he had been "coming down to the town," attending commission meetings, and signing documents on CAS letterhead as town engineer. He had even sent emails, and some which he was copied on, which included his town engineer title.

His father, the town engineer prior to CAS's involvement, outsourced some town work to engineering consultants, including CAS. Between 1999 and 2016, CAS was the sole consulting engineer for the town. CAS completed the town's storm water and sanitary sewer master plans in early 2000 and created a DDAI list for the storm water master plan.

As the contracted town engineer, he was only involved in construction solicitations. Mr. Larson or other employees at CAS conducted solicitations for other projects. When conducting a solicitation, he was involved with design documents, technical specifications and cost estimates. Prospective bidders were required to pay for the solicitation documents.

If the bids were submitted to the town, the town sent him copies of the bids for evaluation. In his evaluation, he made sure that the bids included the documentation requested in the solicitation. He also made sure their cost estimates were reasonable. He then sent his bid comparison to the town commission along with his recommendations.

Last year, for the first time in more than 16 years, the town issued an RFQ pursuant to the CCNA. He managed the solicitation, which included writing the solicitation documents, establishing the evaluation committee, and facilitating meetings. The evaluation committee was comprised of Mr. Larson, a town building official, and himself. Seven engineering firms responded to the

solicitation, and after reviewing the submitted responses, the evaluation committee recommended four firms for prequalification; Calvin, Giordano & Associates, Inc., Carnahan Proctor and Cross, Inc., CAS, and Keith and Associates, Inc.

For future engineering projects, the town will select a consultant to provide engineering services from these four firms. Pembroke Park will solicit proposals from just these four firms for grants which require RFP solicitations for engineering services. The town will establish an evaluation committee to review the proposals and choose a firm based on the stated selection criteria.

The town engineer believed the OIG's investigation may have prompted the town's shift from a single source contract to multiple contracts. Having a number of consulting firms on contract would be beneficial to level the playing field, add value, and possibly lead to cost savings. Competition among engineering firms also increases the chances of finding more qualified firms and enhances the quality of engineering work provided.

The town engineer was not familiar with the town's purchasing ordinance. Although he had "heard of" the CCNA, he did not know the "intricacy of its form." He also did not know any federal or state procurement statutes or regulations he was required to follow when selecting service providers.

5. *Interview of the CAS President*

The CAS president is also a partner in CAS. His duties as president include running CAS operations and making sure the firm's engineers perform their duties. He and the senior vice president share administrative duties, with the president serving clients in the north and the senior vice president serving clients in the south of CAS's service area.

CAS's relationship with the town started in the late 1980s when, following an RFP process, CAS was appointed the town's consulting engineer. The CAS president explained that, in July 1999, the then-staff town engineer retired, and the town needed a town engineer on an interim basis. It was his understanding that the town engaged CAS as the interim town engineer until it hired Mr. Larson.[52] According to the CAS president, CAS was the town's consulting engineering but not the town engineer. He had no recollection of either CAS's proposal to provide interim town engineer services or the contract to do so. CAS never billed the town $5,000 per month for town engineer services.[53] He was only aware of the 1999 agreement, when the town appointed CAS as consulting engineer. When advised that CAS's senior vice president had informed that after Craig Smith left the firm, he (the CAS president) began assigning employees to work as town engineer in Pembroke Park, the CAS president conceded that perhaps he did. At that time, he worked from a remote office and was more involved with municipal clients while the CAS senior vice president worked in the main office handling mostly private businesses.

[52] Mr. Larson was hired in early 2000.
[53] The town's records showed that it paid CAS $5,000 for "town engineer per contract" on at least one occasion. (Exhibit 9)

In July 1999, Pembroke Park needed a town engineer on an interim basis after its town engineer retired and engaged CAS as interim town engineer until it hired public works director Todd Larson. Although Mr. Larson was not an engineer, he performed the same every day duties as the town engineer had performed, "only he didn't have a stamp for it." When the town required an engineer, Mr. Larson called CAS. The president gained this understanding based on the way the town and CAS worked together.

The CAS president explained that a consulting engineer and a town engineer performed separate functions. A consulting engineer was a consultant upon whom a client called whenever there was an engineering need. The consulting engineer advised clients on what could be done, on an as-needed basis. A town engineer performed more "in house, every day duties." Mr. Larson performed town engineer duties and his responsibilities included reviewing CAS's work and working with developers who had projects in the town. An engineering firm could work for a single municipality as both a consulting engineer and a town engineer, concurrently, if the municipality required both services.

The CAS president believed that CAS was the town's consulting engineer under a continuing contract. Continuing contract work was based on qualifications and, when the town required engineering services, it would request CAS to submit a proposal. If the proposal was satisfactory, the town issued a work order authorizing CAS to perform the work. According to the CAS president, the continuing contract had been renewed a number of times throughout the years. However, he could not recall ever reviewing the contract.

He was familiar with the CDBG program, as CAS has over 28 years of CDBG management experience. While in the past CAS managed and administered CDBG projects, it discontinued grant administration when it spun off the department administering grants. CAS provided the town with the engineering work required for CDBG applications, such as cost estimates, exhibits and sketches. As consulting engineer, CAS participated in the RFPs for the CDBG town projects.

CAS was the town's sole consulting engineer until a few months ago when, following a competitive solicitation process, the firm was awarded a new contract, along with four other engineering firms.

6. Interviews of the CAS Senior Vice President

The CAS senior vice president's duties include running the day to day operations of the company and working with clients on production issues. He was not aware that the town and CAS executed a contract for interim town engineer services on October 10, 1999, because "he was not the guy in charge" at that time. The town's current town engineer, a former CAS employee, was the town's project manager/engineer prior to the town hiring him. He reported to public works director Todd Larson and the town commission. Over time, he became the "point of contact" for the town. Another CAS employee had filled that role prior to the town's current town engineer. To the CAS senior vice president's knowledge, when the town's current town engineer was originally assigned

the liaison role when he was a CAS employee, no one communicated to him CAS's or the town's expectations.

In a later interview, the CAS senior vice president reviewed CAS's July 16, 1999, proposal for town engineer services; the August 11, 1999, commission resolution appointing CAS as interim town engineer; and his own March 2015 response to a request for proposals that stated, "CAS is the Consulting Engineer for the Town of Pembroke Park and has one of its longest client relationships with the Town which began in 1987… CAS continues to provide overall Engineering Services for the Town and is assigned Town Engineer." At that point, the CAS senior vice president conceded that CAS was, indeed, the interim town engineer. The town had hired the firm to provide town engineer services because it did not have a staff engineer, and CAS provided the services on an as-needed basis.

The CAS senior vice president went on to explain that the positions of consultant engineer and town engineer were separate and different. The differences between the role of consultant engineer and that of town engineer depended on what function CAS was providing. As town engineer, CAS provided services for the items that were identified and as consultant engineer it provided the expertise for the projects the town had identified and wanted completed. At times, CAS was also selected to be project manager on construction projects.

Although CAS submitted a proposal for town engineer in July 1999 and assigned employees to work as town engineer until March 2015, the firm did not bill for town engineer services based on the July 1999 fixed fee for many years.

The CAS senior vice president explained that, for more than ten years, CAS has been the only firm providing professional engineering services for the town through a consulting engineer services contract.[54] That contract resulted from an RFQ process conducted by the town. After the contract award, whenever the town had an engineering project to undertake, it asked CAS to submit a proposal. Most times, CAS was the only engineering firm requested to submit a proposal for a project. These requests were made in writing but were also, at times, verbal requests by Mr. Larson. Sometimes, Mr. Larson pushed back on prices before accepting the proposal and presenting it to the town commission for approval. In one of his interviews, the CAS senior vice president also explained that the prior general engineering services contract could be regarded as one active ongoing contract – he believed that it depended on one's interpretation.

The town did not possess the certifications and licenses that CAS had. There was no oversight on most work performed by CAS. The town was only qualified to review design plans. Non-engineers can review these plans or any design documents. Prior to the town hiring the former CAS employee as its full-time town engineer, no one reviewed CAS' documents. Mr. Larson was overwhelmed with work, and he only reviewed the draft grant application documents for technical

[54] In another interview, the CAS senior vice president indicated that other companies also provided engineering services to the town, naming one engineering firm he could recall.

sufficiency. No special certifications or qualifications were required to review grant application documents.

CAS wrote the town's storm water master plan a number of years ago. CAS updated part of the plan over time. CAS constantly had to re-prioritize projects within that plan. While CAS had been working to implement projects on the DDAI list featured in the master plan since 2000, he could not identify any locations on the list, remarking that CAS's work locations were "not going to match-up with [the DDAI]."

Whenever the town requested CAS to submit a proposal for a project, the firm did not make any formal presentation before town staff. Rather, the firm described to the staff the scope of the work and the cost. Town staff then presented the proposal before the commission. When the town approved the proposal, the town would sign the bottom of it, and that proposal became the contract for the project.

A few months ago, the town issued an RFQ for professional services. CAS submitted a proposal and was invited to make a presentation before town employees, including the town engineer and Mr. Larson. Following the vendor presentations, CAS was notified that it was prequalified for town projects. There are now four firms that have been qualified to perform engineering work for the town. The town will assign one firm from the list to undertake a project as funding becomes available. The assignment will be based on the project's requirements and the firm's qualifications. That firm will be asked to submit a proposal and cost for the project. In the meantime, CAS will continue to work as the town's consulting engineer, completing ongoing projects until the new contract is executed. The town had yet to execute a contract with any of the RFQ respondents.

CAS also provided the town with legislative assistance services until about four or five years ago. At one point, a number of different firms were providing this service to the town in addition to CAS. Sometimes CAS assisted the town with design, survey or other documents required for grant applications. CAS no longer provides this legislative assistance service in-house. The lobbyist that was assigned to the town left CAS and opened his own firm. The town executed a contract with that new firm. CAS also applied for some grants on behalf of the town, and also prepared the technical documents required as part of the application. The town lacked the technical expertise to prepare and submit FEMA grant applications.

If the source of a project's funds was external, such as with FEMA grants, the town was required to conduct a competitive solicitation. CAS submitted a complete breakdown of the costs of project activities including engineering designs, surveys, or related activities for the solicitation. CAS also performed the required detailed cost analyses. If the documents were approved, the town included them in the solicitation. These solicitations did not include vendor presentations or formal contract negotiations. The town mostly awarded its contracts to CAS. The town has never attempted to negotiate CAS's profit margin.

In the senior vice president's view, CAS did not conduct the town's solicitations – the town did. However, CAS described the project's scope, answered the technical questions posed for the town, and evaluated the submitted vendor proposals. Sometimes during solicitations, prospective bidders obtained solicitation documents from CAS. When this happened, CAS charged them a fee to cover the cost of reproducing the engineering design and survey documents.

He also explained that CAS worked for the town as both a consulting engineer and town engineer for many years. It was common practice in the industry for one firm to be engaged by a municipality to work as both a consultant and a town engineer concurrently.

The CAS senior vice president did not believe there was a conflict between CAS's role as consultant engineer and as town engineer. As consultant and as town engineer, CAS was an agent of the town. If the same firm could not perform the two functions, there would be no one to do the work. He did not know if CAS had ever requested an exemption from the federal conflict of interest regulations.

7. Interview of the Mayor

The mayor was first elected to the town commission in 2003, and has been re-elected three times.

When she joined the commission in 2003, CAS was already working in Pembroke Park. Mr. Levy informed her that CAS was the town's contracted town engineer and had been providing services to the town since the 1990s. None of the town staff the mayor spoke to seemed to know much about the contract.

According to the mayor, before the current town engineer was hired, Mr. Larson wrote all bid specifications. Sometimes CAS was the only firm that responded to a solicitation. At times it was the only firm the town asked to submit a proposal for an engineering project. CAS was ranked first and selected in all solicitations for which it put in a bid.

When staff presented recommendations for contract awards before the commission, the mayor assumed staff had followed the correct procurement procedures. She did not try to verify whether staff had conducted the solicitations properly nor did she ask if there might be a conflict of interest between CAS's role as town engineer and its participation in the town's solicitations. She was not very experienced in proper procurement procedures at the time. In fact, she thought it was remarkable that CAS not only worked hard at solving the town's storm water problems, but also sought grant funds to finance engineering projects at no apparent cost to the town. Mr. Levy informed her that this was how the process worked.

According to the town's code of ordinances, commissioners have administrative and executive responsibilities as well as legislative duties. When the mayor first became a commissioner, she was assigned the deputy town clerk responsibilities. Now that she is mayor, she is in charge of administration. However, in actuality, the mayor has no administrative control over anything; Mr. Levy runs everything.

The mayor recognized that the town has a number of issues but does not think commissioners are doing anything out of malice. Rather, the mayor believed that the commissioners merely ratify Mr. Levy's decisions. In commission meetings, a number of commissioners do not understand the issues discussed and thus rely on Mr. Levy.

Staff consistently produces supporting materials for agenda items just a few minutes before commission meetings are to start. This leaves commissioners with little or no time to read the documents and understand the issues scheduled for discussion. The mayor has repeatedly complained about this practice to no avail. Mr. Levy told the mayor that the distribution of supporting materials for the agenda just before the start of commission meetings was how things were supposed to be done. But the mayor observed that, even when staff provides materials, they sometimes withheld crucial information. For example, copies of contracts were often missing in back-up documentation.

Mr. Levy's contract does not stipulate his responsibilities as town manager. He used to not come to work on Thursdays because he had pension board meetings in Plantation where he was a city commissioner. Now, he does not show up on Mondays and does not use vacation time.

The mayor has often heard outsiders comment that it is difficult for a vendor to be awarded a contract in the town, as incumbent vendors routinely received awards. She has repeatedly complained to commissioners and staff about the poor quality of service from some of the town's vendors and has unsuccessfully tried several times to get the town to sign on new ones.

8. Interview of the Vice Mayor

The town's vice mayor was appointed as a commissioner in November 1990 and was elected to that post in March 1991. He has been re-elected every four years since then and has held various positions on the commission, including mayor, vice mayor and clerk-commissioner.

When the vice mayor first started in 1990, CAS was already working in Pembroke Park. The current town engineer's father was the town engineer and CAS was the consulting engineer. CAS informed the town commission that the town engineer was not performing his town engineer duties properly and, after Mr. Levy allowed him to "retire with dignity," the town appointed CAS to be the town engineer. The vice mayor did not inquire whether the town executed a contract with CAS for town engineer services. He was only interested in ensuring that CAS performed the required work correctly and that the town's drainage work continued.

The vice mayor did not recall any selection process to hire a permanent town engineer. He was not interested in knowing if a solicitation had been done or if procurement procedures were followed, as he trusted that everyone was doing their work properly. Town staff was required to keep the commission informed and the town attorney was also required to ensure that all procedures were conducted properly. Prior to each commission vote, the town attorney was supposed to ensure that each motion was legal.

The vice mayor was aware that the town recently conducted RFQs for engineering services. RFQs allow consultants to demonstrate their past performance and enable the town to seek and retain qualified consultants. RFPs, on the other hand, allow the town to obtain better prices for services. Solicitations promote competition and, generally, competition leads to better value for the town.

The vice mayor associates the hiring of a permanent town engineer in March 2015 with the OIG investigation. The current town engineer was the CAS contracted town engineer assigned to the town for about six years before he became a town employee. After the OIG investigation began, Mr. Levy informed the commission that the town would save money by hiring a full-time town engineer instead of retaining CAS as a contract town engineer. Mr. Levy managed the hiring process.

Although the town's charter assigns duties to the commissioners, the lead commissioner on an assignment does not manage projects or consultants on a daily basis. When he oversaw the public works department, the vice mayor did not go to the department and tell Mr. Larson what to do. The vice mayor trusted that Mr. Larson would do his job correctly. He assumed Mr. Larson was following proper procedures when conducting solicitations or managing grants.

As the lead commissioner for public works, the vice mayor ensured that the town engineer kept the commission informed on all his activities and that, before any public works project was initiated, the town attorney and the commission approved it. Mr. Levy's job was to ensure that the project was appropriate for the town and to raise objections if something was not right.

When the vice mayor was the lead commissioner on drainage, he did not fully know CAS's role. The vice mayor did not know how engineering services were procured but knew that Mr. Larson always presented his recommendations to the full commission. The commission approved funding for all projects. The vice mayor's responsibility was to make sure that neither Mr. Larson nor CAS authorized any work in the field without first seeking commission approval. If the vice mayor heard of any issues in the field, he would place the matter on the agenda so the full commission could discuss it. He required Mr. Larson and CAS to ensure the commission understood the issue before the engineer could proceed.

The commission trusted Mr. Levy, the town attorney, and CAS to follow proper procedures when doing their work. The commission never asked the staff to prove that they were following those procedures. Only after the OIG investigation began did the vice mayor start to hear rumors that staff were not following proper procedures. When the town attorney informed him that there were issues with some of the town's procurements, the vice mayor placed the issue on the commission meeting agenda.

The commission recently formed a code of ordinance committee, comprising of the vice mayor and staff members whose departments were being reviewed. Further, the vice mayor initiated a review and re-write of the town's procurement code. Finally, the OIG investigation resulted in the town re-examining its procurement policy and procedures. The vice mayor offered to send a draft copy of the revised procurement ordinance to the OIG for review.

RESPONSES TO THE PRELIMINARY REPORT AND OIG COMMENT

In accordance with Section 12.01(D)(2)(a) of the Charter of Broward County, preliminary copies of this report were provided to the implicated parties for their discretionary written responses. The OIG received a response from the town (through the mayor), the vice-mayor, Ms. Rodriguez, Mr. Larson, and Mr. Levy. They are attached and incorporated herein as Appendix C, D, E, F, and G, respectively. We appreciate receiving the responses, as well as the steps the town has taken to address issues identified by the OIG.

1. Response of the Town

In its response, the town acknowledges the serious nature of the findings in this report and assures that it never knowingly or intentionally endeavored to deviate from proper procurement procedures for professional engineering services. As grant providers repeatedly approved grant funding, the town assumed the procurement process was compliant with all applicable laws, rules, and regulations.

The town also explains that the commission was not directly involved with the procurement process. Instead, it relied on the experience and competency of the town manager, Robert Levy, who, as of January 3, 2018, is no longer with the town. The town notes that while it disagrees with certain assertions and representations in the report, it does not contest the report's overall findings as it would not be in the town's best interest and states that, "The Town unquestionably agrees that it can and must do better to ensure compliance with all operative statutory and procedural requirements" for engineering services procurement. It describes the steps it has taken to address the deficiencies found during the OIG's investigation, starting with the commission's overall direction to staff to reform the procurement process to be "more structured, transparent and competitive" and to implement the best practices identified in this report. To date, the town has selected a new consultant engineering firm through a CCNA compliant selection process[55] and has hired a full-time town engineer, a move that, according to the town, has already yielded measurably reduced engineering expenses. The town has also adopted a revised procurement ordinance. Finally, the town concludes its response with a description of how it intends to address the report's remaining recommendations.

2. Response of the Vice-Mayor

At the outset, the Vice-Mayor explains that the purpose of his response is to dispel any "misconception that he or other Town Commissioners are responsible for the administration of Town contracts" as Mr. Levy suggested. Instead, the Vice-Mayor continues, the town employs "professional staff, including several highly-paid and qualified senior managers and department heads to ensure the proper functioning of the Town…" The town manager, he

[55] According to the town, our report noted that the selection process for the new consultant engineering firm met the requirements of the CCNA. In fact, we did not investigate or pass on the validity of the selection process but rather observed that the process appeared to have been CCNA compliant.

points out, was the most senior professional manager employed by the town to ensure the proper operation and administration of all town departments.

The Vice-Mayor also disputes the town manager's assertion that he (the Vice-Mayor) is assigned to the public works department and attaches a resolution showing that he is not the commissioner appointed to the public works department. Further, the Vice-Mayor explains that, contrary to the town manager's characterization, neither he nor the commissioner assigned to the public works department played a role in administering public works contracts. Instead, when requested by the commission, the Vice-Mayor met with staff to obtain information about the progress of projects, and he in turn provided the information he was able to gather to the commission.

3. Response of Georgina Rodriguez

In her response, Ms. Rodriguez explains that, to the extent the town paid CAS invoices without properly issued purchase orders, she interpreted each CAS contract as a blanket purchase order for the project. Any misinterpretation of the effect of the CAS contract was in error and not an attempt on her part to avoid the requirements of the town's procurement ordinance.

Further, Ms. Rodriguez takes issue with statements that she was involved in the selection of CAS as engineer for the various projects as she was not involved in the selection of engineering contractors or any contractors for that matter.[56]

4. Response of Todd Larson

In his response, Mr. Larson explains that his position with the town was regarded as a support position for which there was neither a scope of authority nor training. He never believed that he had the authority to negotiate, approve, or otherwise commit the town to any of the contracts discussed in the report. Further, he never attempted to approve any town contract without explicit approval from the town manager, the commission, or both. In no instance did he make contractual decisions, make recommendations, or carry out any town decisions without relying on financial advice from the town manager or legal advice from the city attorney, as evidenced by communications between them. Accordingly, Mr. Larson takes issue with statements in the report suggesting that he had any decision-making authority.

Mr. Larson further advises that when he attempted to recommend the use of entities other than CAS or otherwise questioned the relationship between the town and CAS prior to starting his employment with the town, he was reminded (he does not say by whom) that he was not to exceed his authority and that his recommendations were unwelcome.

[56] The OIG did not allege that Ms. Rodriguez participated in the selection of any contractor or engaged in any procurement misconduct. Instead, this office found that Ms. Rodriguez committed gross mismanagement in failing to carry out the administrative duties that her department, the department of finance and budget, was responsible for.

He also explains that, to the extent that he had any control over which entity the town selected for a contract, it was only when he was charged with ranking proposals for approval. Contrary to the report's suggestion, he did not always rank CAS first. However, as his rankings were merely proposals, he had no authority to select the vendor or otherwise influence the decision with respect to contracting.

Based on statements that the town manager and commissioners made to Mr. Larson, he believed that CAS had a contract with the town for engineering services that was general in nature.

According to Mr. Larson, records exist to buttress this and other assertions in his response, but he has been unable to obtain those records from the town despite his numerous public records requests.

Finally, he takes issue with the town manager's characterization of his (the town manager's) role with respect to Mr. Larson's position and the characterization of the city attorney's role, both of which he describes as "understated." Mr. Larson also committed to participating in the town's efforts to "improve itself" in response to the OIG report.

5. *Response of Robert Levy*

Mr. Levy prefaces his response by advising that, after 30 years of public service, he voluntarily retired from the town as of January 3, 2018. As he has always endeavored to comply with relevant authority, he understands the gravity of the findings in the report. While he acknowledges that "mistakes were made," he seeks to clarify what he believes to be inaccurate statements. To begin, Mr. Levy explains that, while the report observes that he appeared to be in control of the administration of the town, it was actually the mayor who was in charge of administration and that the commission limited his duties and responsibilities; for example, for the past few years, the commission appointed a lead commissioner for every major project, from whom staff received direction.

Further, Mr. Levy denies having any input into the procurement of professional engineering services. According to him, the commission never asked him about those matters; the public works director and the town engineer handled them. When Mr. Levy asked, the public works director and town engineer "emphatically" advised him that they were familiar with and adhering to applicable procurement laws. He also relied on the town attorney's review of all documents to ensure compliance with the relevant laws. The fact that various state and federal departments gave final approvals on projects they were funding reinforced his belief that the town followed relevant authority.

In addressing ancillary issues, Mr. Levy also explains that, although his duties included preparing the agenda for town meetings, the deputy town clerk actually prepared it. Although he missed town meetings while he was a councilman with the city of Plantation, he did so with the town's authorization. Further, while he can understand the confusion behind his lack of

LagomHR

Lake Overflowing Fact-Finding Report

01/22/2020

Yolanda Menegazza

MEMORANDUM

DATE: January 22, 2020

TO: Town Commission
Town of Pembroke Park
3150 SW 52nd Avenue
Pembroke Park, Florida 33023

CC: Newall Daughtery, Assistant Town Manager
Chris Ryan, Town Attorney

FROM: Yolanda Menegazzo, HR Consultant for Town of Pembroke Park
LagomHR, Inc.
1000 SW 57th Avenue, Suite 200
West Miami, Florida 33144

SUBJECT: Lakes Overflowing Factfinding Report

Background:

On January 7, 2020 at 11:00 am Commissioner Cohen and the former Town Manager called a meeting with me to request that I, Yolanda Menegazzo HR Consultant for Town of Pembroke Park, formally investigate the incident of the lakes overflowing on December 23rd, 2019.

The Town of Pembroke Park controls the water levels for two (2) lakes. The Town of Pembroke Park has multiple pump stations, one (1) emergency pump station, and multiple valves that are all part of a system allowing the Public Services Department to manage the levels of the lakes.

The valves are to remain permanently open in order to allow for the natural flow of water between the lakes, with the exception of when the pump stations are being cleaned. When the pump stations are cleaned, the valves must be shut. Shutting the valves allows for no water circulation between the lakes, and the Public Services Stormwater/Wastewater staff can then use the vac truck for cleaning excess garbage. Once the cleaning of the pump stations is complete, the valves must be opened immediately. If there is a lake that has a higher level than a connecting lake, the open vale allows for the natural flow of water from the higher level lake to the lower level lake, which then equalizes the two (2) lakes.

The pump stations as well as the emergency pump are programmed to automatically turn on when the lake levels reach two and a half (2.5) feet. The pumps then move the water out to the I95 pump station, at which point the water runs through Hollywood and then out to City of Dania Beach to the ocean. The pumps then turn off automatically when the lake levels reach two (2) feet. Half (½) a foot of water represents about 3.2 million gallons of water according to the calculations of the Public Services Director. These pumps, including the emergency pump, is

monitored and tested a minimum of three (3) times per week by the Public Services Stormwater/Wastewater team to ensure it is operational.

The pumps at the I95 station regularly handle a large amount of water not only collected from the Town of Pembroke Park, but also from neighboring municipalities. However, they may shut off occasionally in heavy rainfall and flooding situations.

The Public Services Director serves as the official Emergency Management Officer of the Town of Pembroke Park. The Public Services Department is responsible for preparing in the event of a storm to manage the lake levels of the Town in order to prevent flooding and erosion.

Incident Report and Findings:

According to the National Weather Service South Florida, specifically the Hollywood area, received approximately 8.8 inches of rainfall in the early morning of December 23rd, 2019.

The Town of Pembroke experienced heavy flooding in the lakes and surrounding areas as depicted in the images in the following pages. There were several Town of Pembroke Park residents that experienced damage to their properties and the items inside their property.

The following issues lead to the Town of Pembroke Park lakes overflowing:

1. The valve near the 24th Street pump station by the Bamboo Lakes Mobile Home Park was closed shut.

Closed valves are in violation of the Public Services Department proper protocol established by the Public Services Director. The only exception is during the cleaning of the pump station(s).

The valves were closed shut in August 2019 in order to clean the pump station located on 24th Street. The Stormwater/Wastewater Crew claim they were instructed by their immediate supervisor (Superintendent) to open all of the valves except for the valve closest to the pump station on 24th Street, for that specific valve to remain closed.

When questioning the Superintendent, he claims he never instructed the Stormwater/Wastewater crew to close the valves and he was aware that the valves must always remain open. He stated he has been in the Town of Pembroke Park for a very long time, he was well aware of the standard protocol, and he would never instruct his crew to leave the valve closed after the cleaning unless he was instructed to do so by the Public Services Director.

It is important to note that the Superintendent was on vacation from December 20th, 2019 through January 7th, 2020.

2. The Stormwater/Wastewater Crew were unaware of the standard protocol/procedure that all valves must remain open at all times with the exception of cleaning the pump stations.

I specifically asked the Stormwater/Wastewater Crew in the presence of the Public Services Director, "Are you aware that the lake valves must always remain open with the exception of closing them for cleaning the pump stations?"

The response of the Stormwater/Wastewater Crew was, "No, we always follow the directions of our immediate supervisor because we are aware that the Public Services Director manages the levels of the lake."

When I turned to the Public Services Director, he stated, "I assumed everyone was aware of the procedure that the valves must always remain open."

3. The Emergency Pump in Bamboo Lakes did not automatically turn on as programmed.

The Emergency Pump in Bamboo Lakes did not automatically turn on as programmed due to the fact that the permanent circuit board was being repaired by the manufacturer. A temporary circuit board was placed in the Emergency Pump Station one (1) week prior by the manufacturer in order to repair the permanent board. The temporary circuit board disables the automatic feature of the

Emergency Pump Station, and therefore, must be turned on manually should you wish for the station to be operational.

The Public Services Director claims he was unaware of the Emergency Pump Station circuit board being repaired. Therefore, there was no instruction provided to the Stormwater/Wastewater Crew to manually turn on the Emergency Pump.

This Emergency Pump was not manually started by the Public Services Department staff on December 22nd, 2019 in order to lower the lake levels as is standard practice and preparation in the event of a storm.

The Emergency Pump was and continues to be fully operational, but must be manually turned on during the repair process of the circuit board.

4. The I95 Pump Station shut down due to the heavy rainfall and flooding.

According to an article published by SunSentinel, the Broward County Director of Highway and Bridge Maintenance stated that the heavy rain overwhelmed the drainage system at several locations. "County roads have storm inlets that collect water. The water then travels through a system of storm drains to a treatment area before it empties into lakes or the Intracoastal Waterway. When there is so much water at once, the collection system gets overwhelmed." See SunSentinel article attached to this report for more information.

5. The two (2) small pumps in the Bamboo Lakes that are privately owned that pump water from the drains into the lakes are non-operational.

These two (2) small pumps in Bamboo Lakes are privately owned and have been non-operational for several years according to the Public Services Director.

6. The Carolina Pump Station Valve managing Lake Trinity was closed.

The Carolina Pump Valve being closed prevented approximately one (1) to two (2) inches of water from transferring from Bamboo Lakes into Lake Trinity. The first (1st) pump at Carolina turns on automatically at 2.5 feet of water and the second (2nd) pump turns on automatically at 2.7 feet. It stays on until the water levels drop to two (2) feet.

7. The Public Services Department failed to prepare for the storm on December 23, 2019.

The Public Services Director serves as the Emergency Management Officer for the Town of Pembroke Park. As such, this responsibility includes proactively monitoring weather conditions and instructing the Public Services Department on managing the lake levels.

The Public Services Director claims there were no warnings/advisories of the severe weather that affected the Town of Pembroke Park in the early morning of December 23, 2019. The Public Services Director claims he subscribes to the Emergency Operations Center for Broward County and the South Florida Water Management District alerts. The Stormwater/Wastewater Crew stated that they occasionally monitor the weather if by chance they see it while watching local news, but it is not reviewed proactively on a daily or weekly basis.

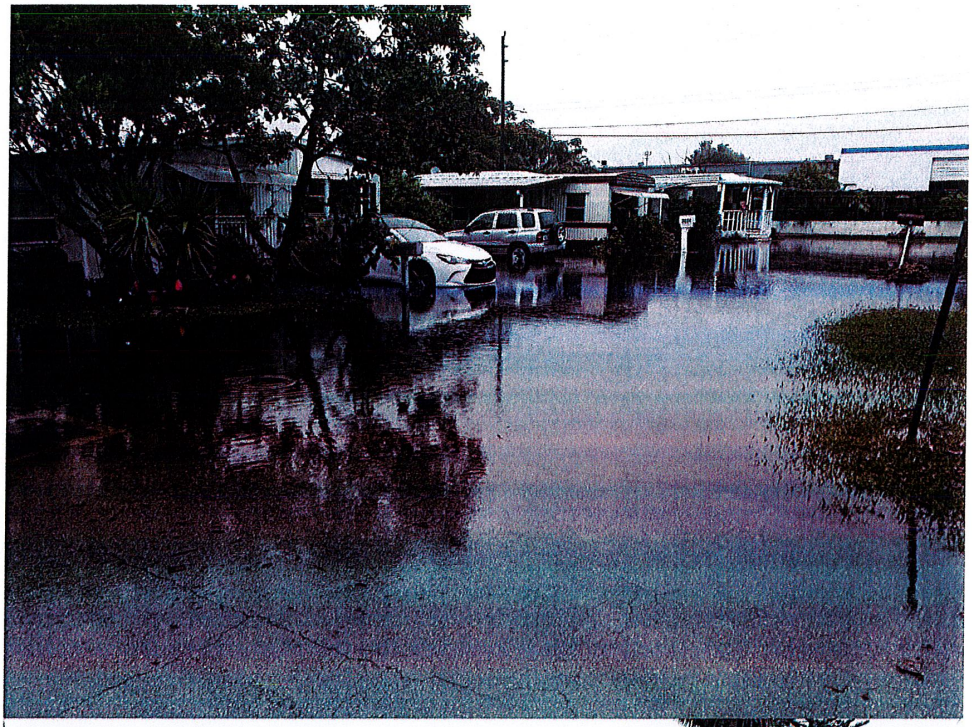
Upon reviewing past weather advisories, both national and local news advised of the storms that would affect the South Florida region in advance beginning on December 21st, 2019. Advisories from the National Weather Service and Local NBC6 are in the following pages.

In addition, there is essentially one (1) staff member responsible for proactively monitoring the weather, and there is no formal backup for the Public Services Director for this specific role.

8. The Town of Pembroke Park does not have a formal/written Emergency Management Plan, Preventative Maintenance Plan, or general policies and procedures for managing the lake levels.

9. There is a lack of supervision and communication in the Public Services Department.

Relevant Pictures:



NO
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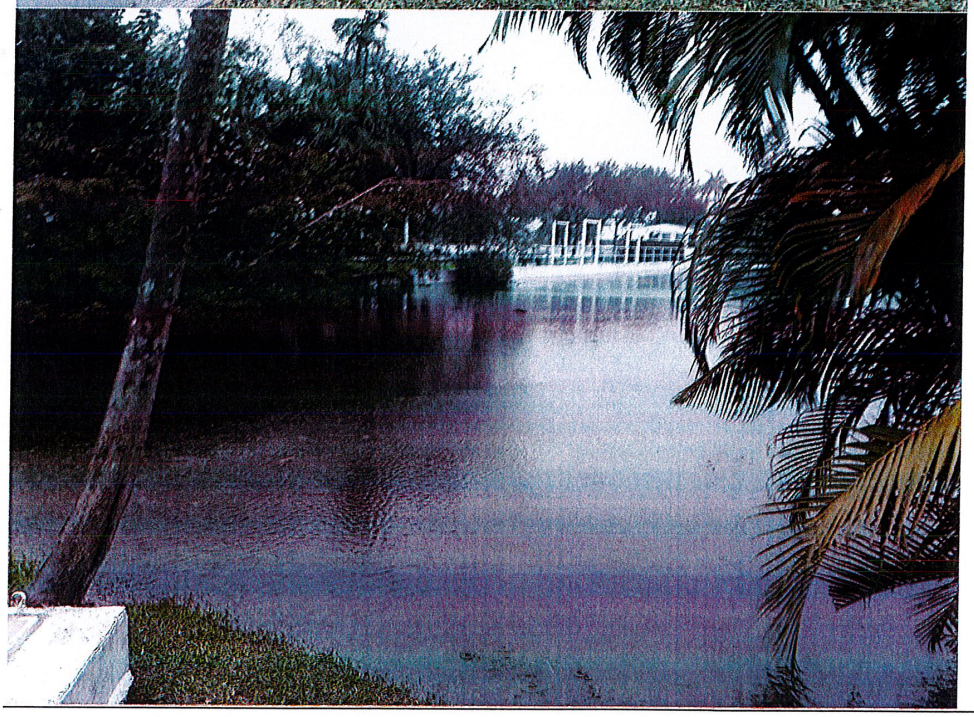


News Advisories:

There were multiple news advisories listed by the National Weather Service as well as local news.

The following pages depict screenshots from the National Weather Service Twitter Account Alerts on Saturday, December 21st, 2019 and Sunday, December 22nd, 2019 advising of severe weather, storms, and heavy rain for the early morning of December 23rd, 2019 in South Florida, specifically identifying Broward in the cone of "Greatest Severe Weather Potential," "Heavy Rain Potential," and under a Tornado Watch.

The following pages also contain screenshots of a video weather advisory from Local NBC6 on Sunday, December 22nd, 2019 in the late evening stating of the storm impacts including heavy downpours and flooding.

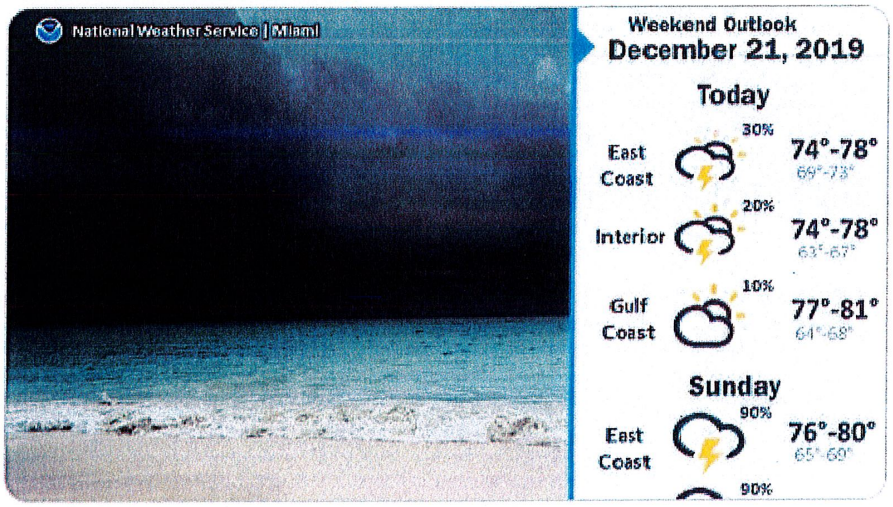
Recommended Plan of Action:

It is important to note that this report is not indicative of any specific employee lacking the skills and knowledge in performing their daily duties and responsibilities, especially those employees that carry long-tenured institutional knowledge of the Town of Pembroke Park history and operations. However, the Town of Pembroke Park's current culture is not adequate in managing the changes that are required in order to proactively prevent these situations from occurring in the future. The Town of Pembroke Park requires a great deal of structure, planning, and training in order to bring the Public Services Department to the highest level of operational efficiency. The existing Public Services Department administrative staff have failed to develop their management skills in the areas of project management, supervision of personnel, and long-term / short-term planning. In my professional opinion, the current team is not capable of handling the amount of changes necessary in the work that needs to be performed. The culture requires a drastic change as there are numerous vulnerabilities and areas of risk such as lack of written procedures and training as well as judgment failure. Again, this is not a personal attack on any specific employee, but instead an observation based on the information provided in this report and the failure to prevent the incident on December 23rd, 2019 from occurring, as the situation was preventable.

1. **Establish a formal Emergency Management Plan with a Standard Operating Procedures (SOP) Manual that includes a Preventative Maintenance Plan for all Pumps/Valves/and Lake Monitoring Equipment and a Weather Monitoring Plan with multiple back-up personnel.**
2. **Training for Public Services staff on established Emergency Management Plan.**
3. **Public Services Department Personnel Change**

NWS Miami @NWSMiami · Dec 21, 2019

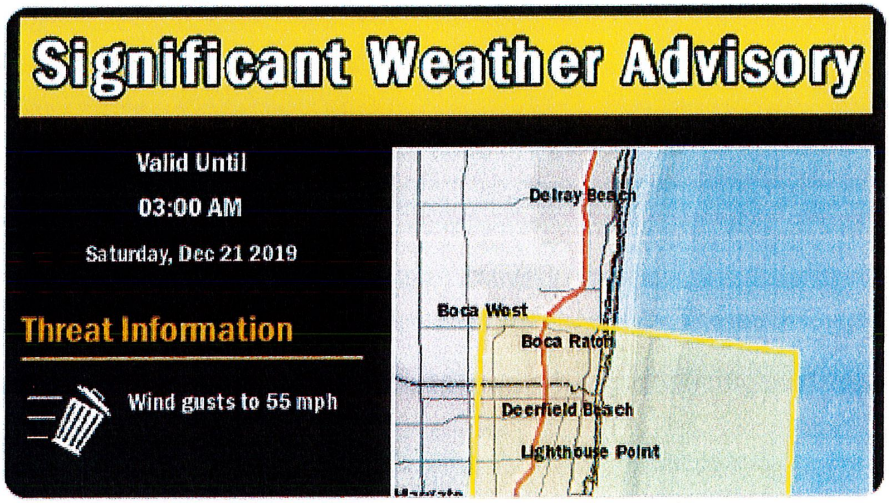
Dec 21 @ 6:30AM - Soggy weather is forecast across S. FL this weekend with the potential for strong to severe storms and hazardous weather conditions to develop on Sunday into Monday. Please stay weather-aware and keep up to date with the latest forecast information. #Flwx



8 22

NWS Miami @NWSMiami · Dec 21, 2019

2:42 AM EST 12/21/19 - Strong shower capable of producing funnel clouds approaching the east coastal areas of extreme NE Broward and Extreme SE Palm Beach County. #flwx



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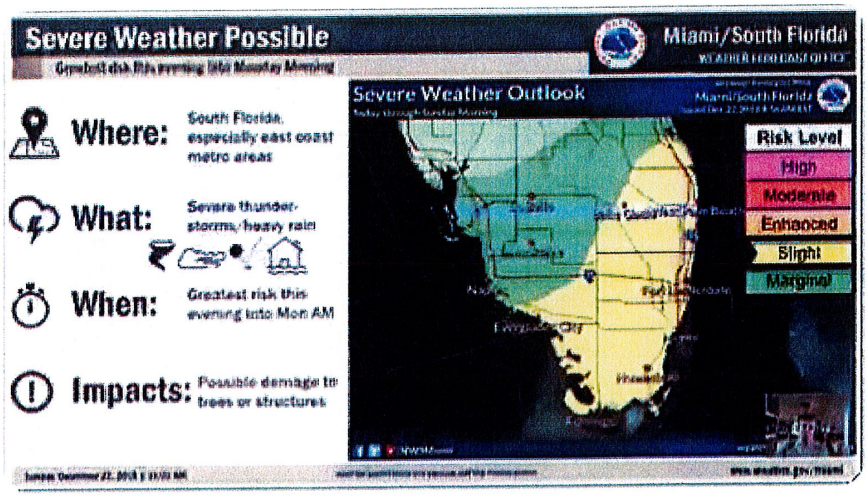
NWS Miami @NWSMiami · Dec 22, 2019

Dec 22 @ 1115am - Video update on severe weather potential later today into tonight. #flwx



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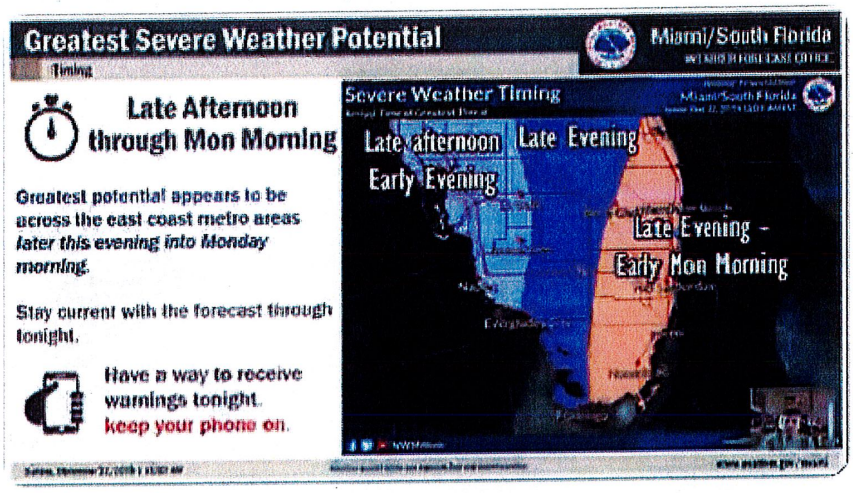
NWS Miami @NWSMiami · Dec 22, 2019

Dec 22 @ 1115am - Video update on severe weather potential later today into tonight. #flwx



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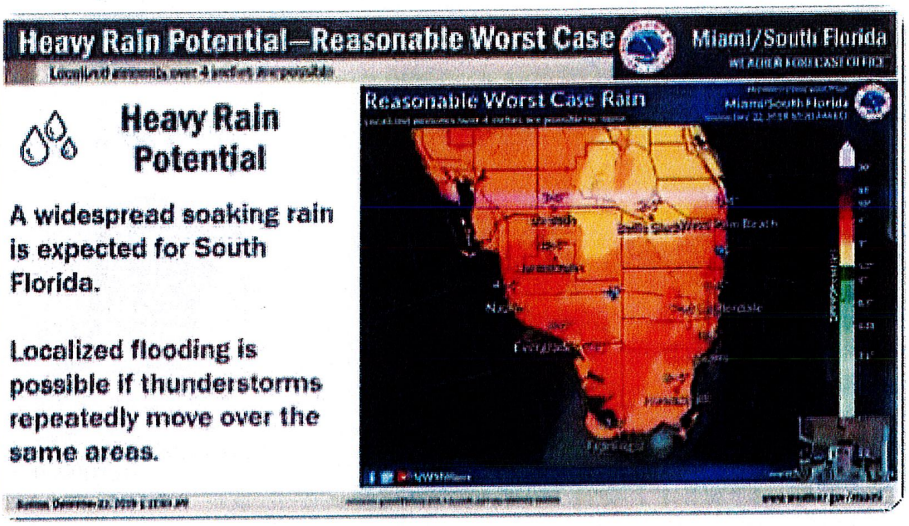
NWS Miami @NWSMiami · Dec 22, 2019

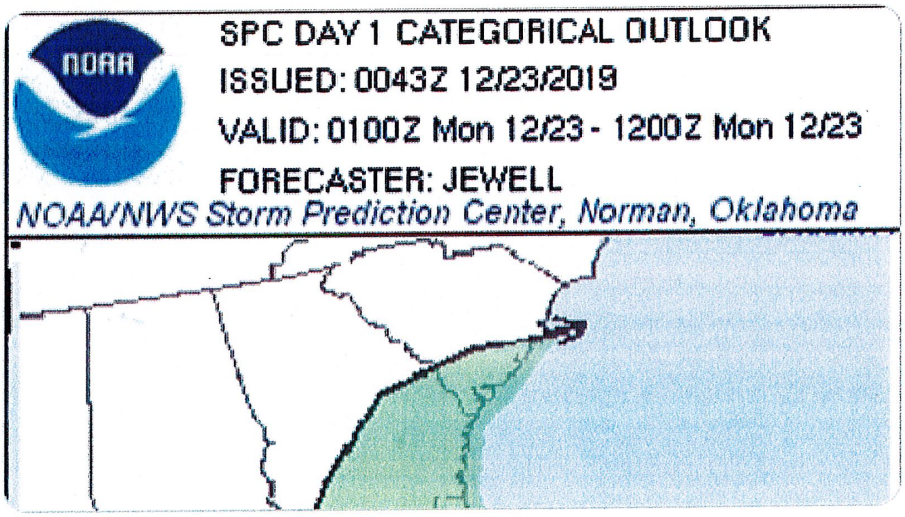
Dec 22 @ 1115am - Video update on severe weather potential later today into tonight. #flwx



2 57 71

NWS Miami @NWSMiami · Dec 22, 2019

The Storm Prediction Center has placed most of South Florida under a Slight Risk for Severe Weather tonight. We recommend have your NOAA Weather Radio ready, and keep your mobile device handy in case warnings are issued for your location.



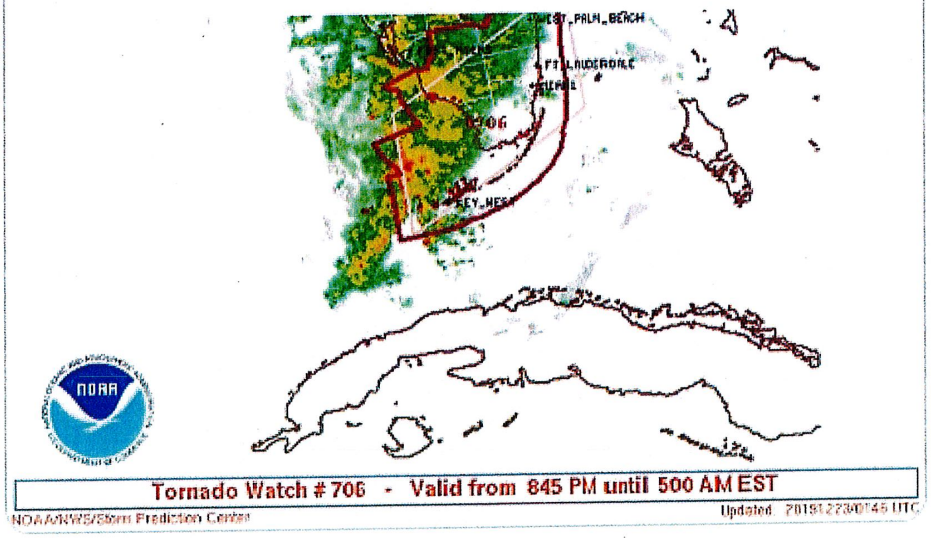
24 26

NWS Miami @NWSMiami · Dec 22, 2019

12/22 - A Tornado Watch has been issued for most of South Florida through 5 AM Monday morning. Please keep your phone on overnight and have multiple ways to receive warnings! #FLwx

NWS SPC @NWSSPC · Dec 22, 2019

7:47pm CST #SPC_Watch WW 706 TORNADO FL CW 230145Z - 231000Z, #flwx #cwwx, go.usa.gov/xpsCy



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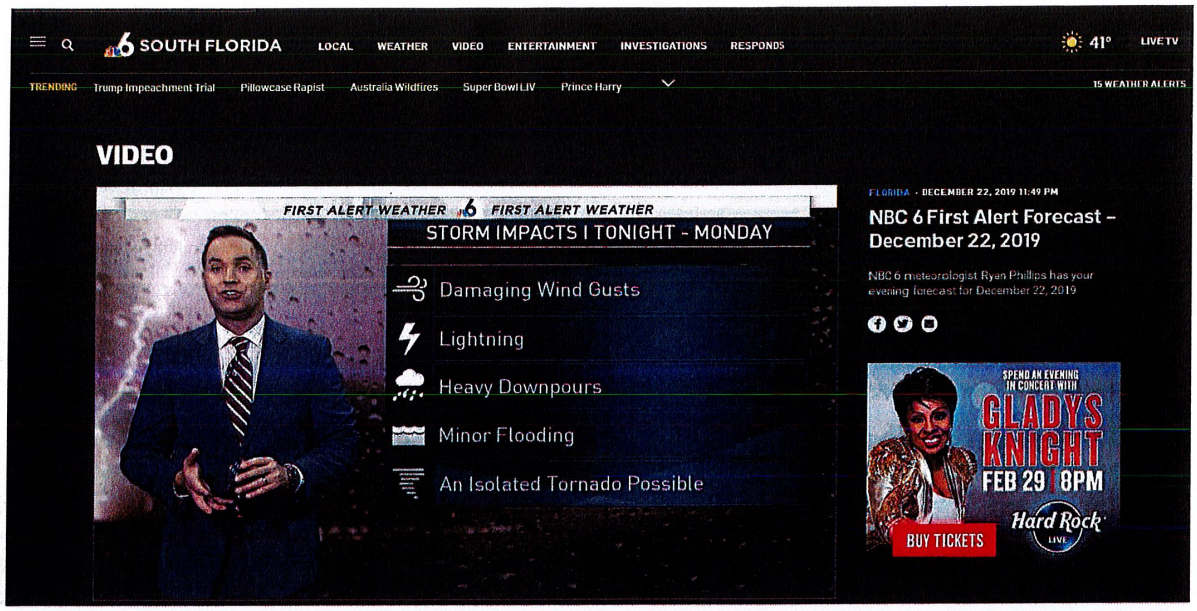
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Pillowcase Rapist
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Lightning
Heavy Downpours
Minor Flooding
An Isolated Tornado Possible
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NBC 6 meteorologist Ryan Phillips has your evening forecast for December 22, 2019
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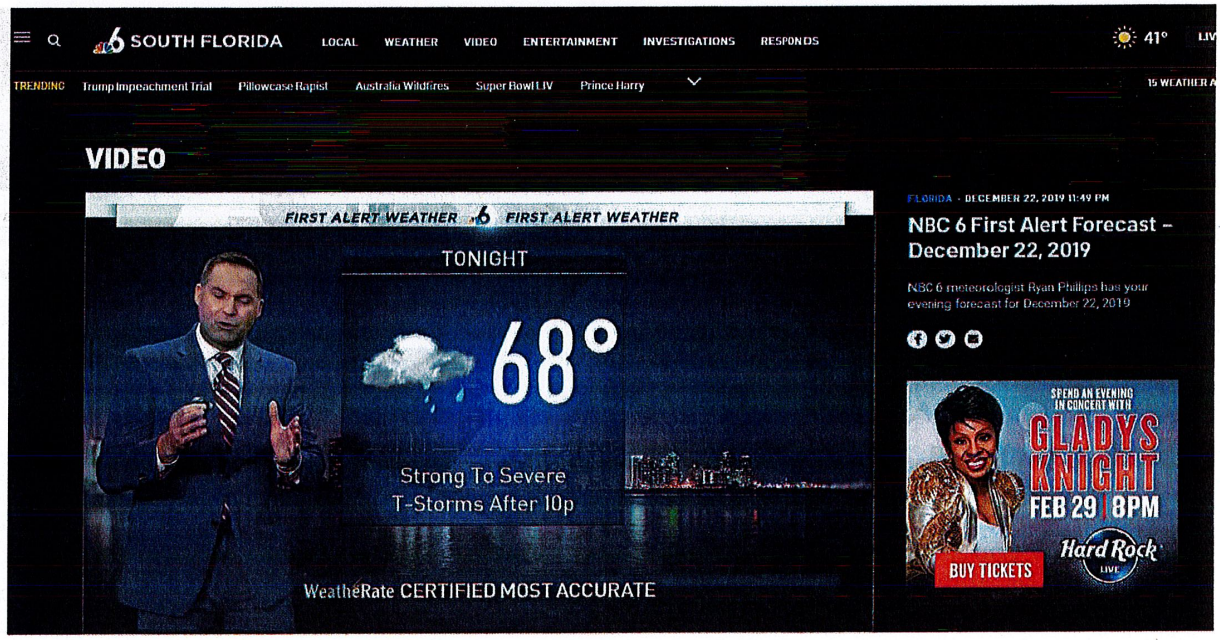
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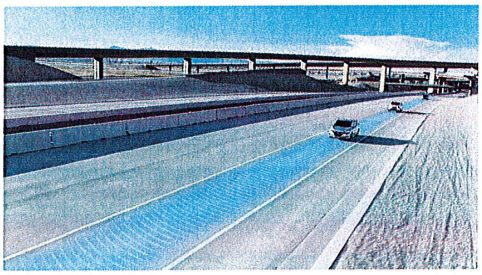
WEATHER FORECAST NEWS

Record rain swamps South Florida in waist-deep water

By DOUG PHILLIPS and EILEEN KELLEY
SOUTH FLORIDA SUN SENTINEL | DEC 23, 2019

This ad will end in 3 seconds



South Florida was swamped by heavy rains overnight that flooded streets and highways, stranded cars and closed the Fort Lauderdale airport.

AMAZING DEAL $1 A WEEK FOR A YEAR
Ends 1/23, cancel anytime SAVE NOW

Heavy rains Monday pulverized an almost 80-year-old record, dropping over 7 inches of rain in a few hours and topping the record by nearly 5½ inches.

The rare burst of storms around daybreak Monday flooded roads, submerged cars, stranded drivers and closed Fort Lauderdale-Hollywood International Airport for about three hours.

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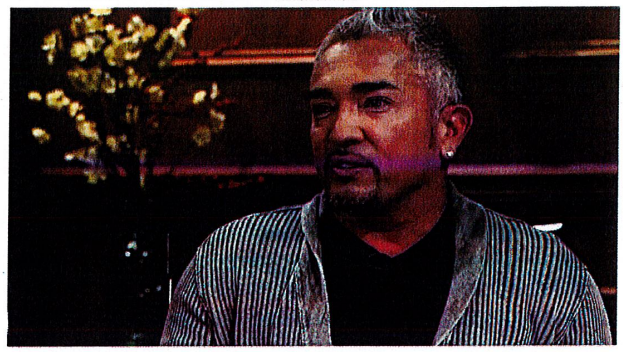

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Hardest hit were portions of Dania Beach, Hollywood and Hallandale Beach, where a National Weather Service observer noted unofficial rainfall of nearly 13 inches. Though most main roads were passable by mid morning, ankle to waist-high water persisted in some neighborhoods into Monday afternoon.

Emergency dispatchers for the Broward County Sheriff's Office took hundreds of flood-related calls, said Sgt. Don Pritchard. Hallandale Beach received 86 weather related calls for service. Twenty-three people called because they were stranded in submerged vehicles.

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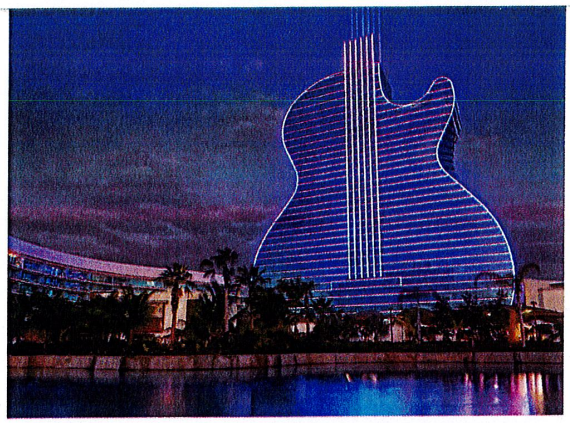

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The Hallandale Beach Police Department was working with towing companies to remove cars on the roads as well as to reach those stranded in their cars. Several traffic engineers were out working to repair traffic signals.

No one was reported to be hurt, but motorists and homeowners across the region reported water damage.

A stalled out vehicle sits in a flooded Gulfstream Park parking lot in Hallandale as another truck drives by on Dec. 23, 2019. Some parts of Hallandale, Hollywood and Dania Beach took on 12 inches of rainfall which resulted in severe flooding. (Susan Stocker / South Florida Sun Sentinel) 1 / 30

The storms erupted after a low pressure system formed in the Gulf of Mexico and slowly moved north, causing multiple storms to

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Florida often gets storms when cold fronts march across portions of the country, but the amount of rain — 7.13 inches at 6 p.m. Monday at Fort Lauderdale's airport — is uncommon, said National Weather Service Meteorologist Chuck Caracozza.

Normal rainfall at the airport is 2.46 inches for the entire month of December. This year, rainfall totaled 9.39 inches by 6 p.m. Monday.

The previous record for the airport on Dec. 23 was 1.57 inches in 1940.

Advertisement

The National Weather Service reported 8.8 inches of rain in Hollywood but just over 3 inches at Miami International Airport and just under 2 inches at Palm Beach International Airport. Neither airport experienced significant travel delays, but Fort Lauderdale-Hollywood reported 123 flights delayed and six canceled about 8 a.m.

Greg Meyer has been with the Broward County Aviation Department for 13 years and he has never seen anything like it.

RELATED: Racehorses relocated as stalls underwater at Gulfstream Park »

The airport has closed in preparation of hurricanes, but the last time it even came close because of rain was May 23, 2003.

Even then — in the midst of a 100-year flood event — only two of the three runways were closed down due to flooding.

"Today was worse," Meyer said.

Some 1.8 million travelers are expected to pass through the airport from Dec, 18 through Jan. 2. About 126,000 people were expected to pass through on Monday.

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Flooding affected at least 5 percent of the 1,200 lane miles of roads that Broward County owns or maintains, said Anh Ton, the county's director of highway and bridge maintenance.

Ton said the heavy rain overwhelmed the drainage system at several locations, including NW 27th Avenue near Sunrise Boulevard in Fort Lauderdale and Riverland Road in Fort Lauderdale and Andrews Avenue near Broward Boulevard, also in Fort Lauderdale.

"We've had 7 inches before, but that is spread out," Ton said.

County roads, Ton said, have storm inlets that collect water. The water then travels through a system of storm drains to a treatment area before it empties into lakes or the Intracoastal Waterway. When there is so much water at once, the collection system gets overwhelmed.

That's exactly what happened Monday.

Crews used pumps and vacuum trucks to lower the water level on the roads, "allowing for safe travel without closing any roads," Ton said.

By midday, Ton said he was not aware of any homes being flooded along county roads.

Fort Lauderdale's airport tweeted about 4 a.m. that the facility was closed because of severe rain and flash flooding. Well before the call to close the airport, social media was lighting up with posts about the conditions.

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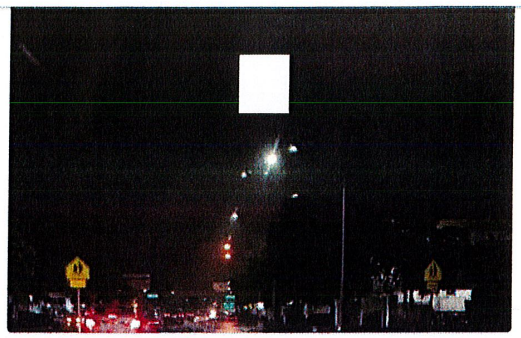

56 4:03 AM - Dec 23, 2019

22 people are talking about this

"The flooding is insane," someone heading there for a 2 a.m. pickup wrote. "Cars are stalled out and people are driving on sidewalks."

Flights were resuming about 6:30 a.m., but traffic heading to the airport was extremely heavy, and some airport services, such as shuttle buses, were continually disrupted, officials said.

In Terminal 2, Nikki Gavallas waited in a long line at the counter for Delta Airlines with her husband and two daughters, 3 and 14 months.

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Our adventure this morning started really early. We were supposed to have a 7:30 flight to Atlanta that got delayed to 8:30 and we've been stuck in traffic trying to get to the airport," Gavallas said, while trying to take it all in stride.

"But it's OK, our kids are being great," she said.

LATEST WEATHER FORECAST

After a chilly night, South Florida's temperature should thaw out and rise (just like the iguanas)

Watch out for falling iguanas! Weather service issues alert

Much cooler weather heading for South Florida

By early Monday, most of the worst weather had moved east, off the coast.

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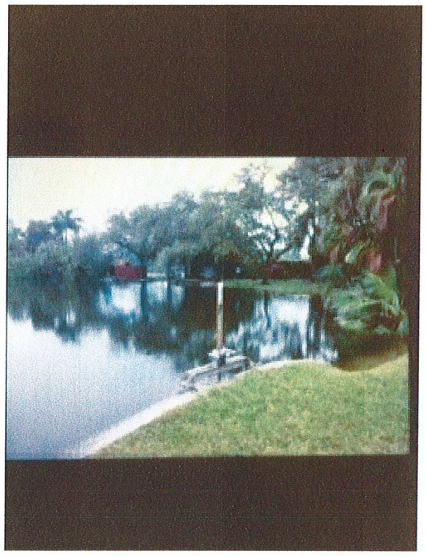
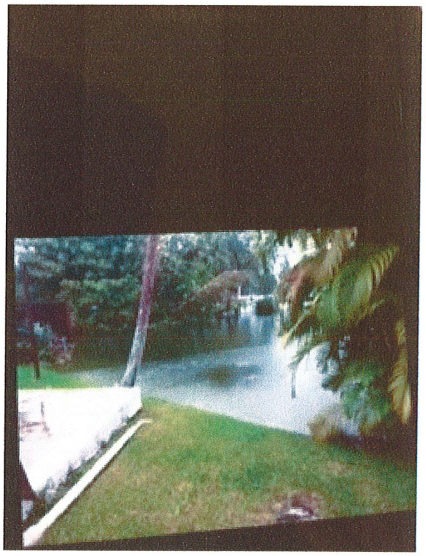
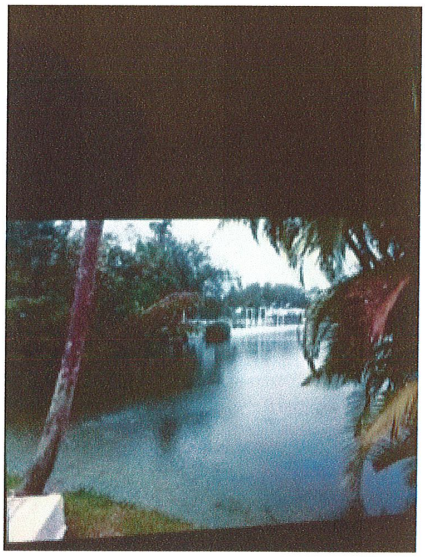
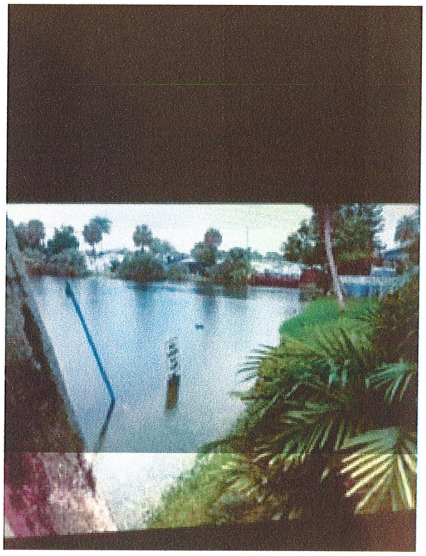
Photos: Bamboo Lakes Flooding 12/23/2019

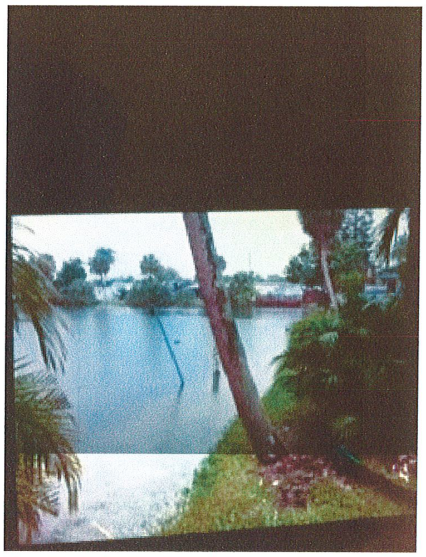
Commissioner Georgina Cohen

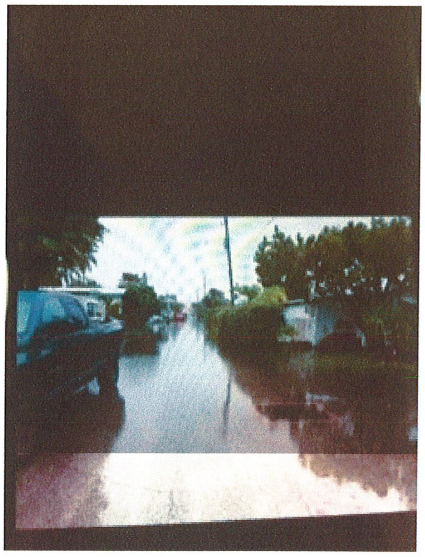


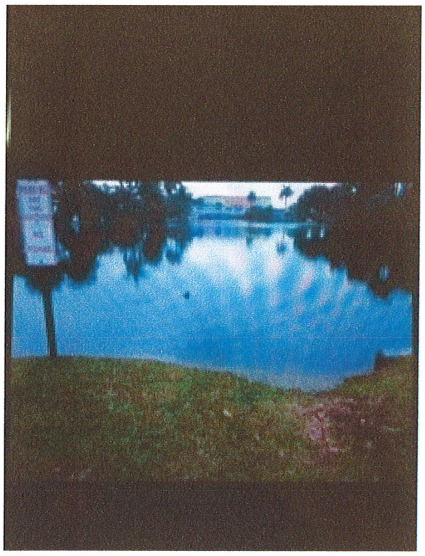


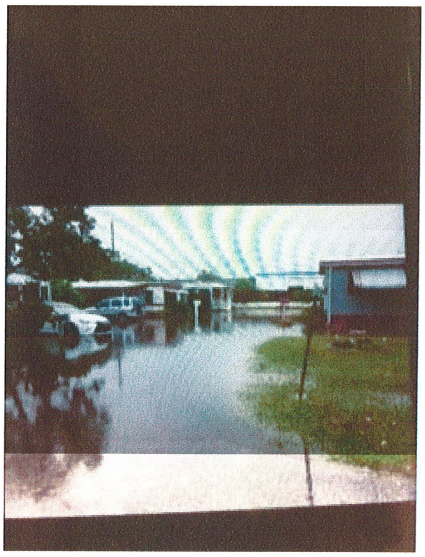


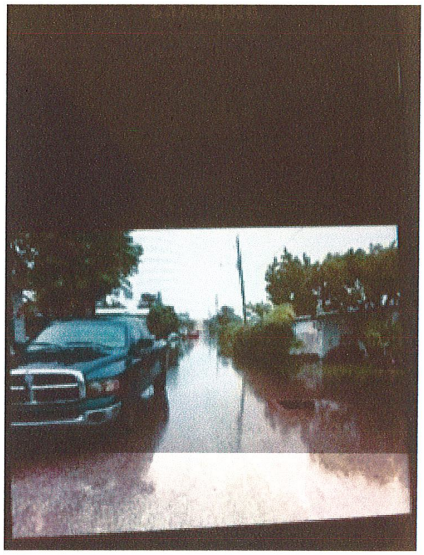


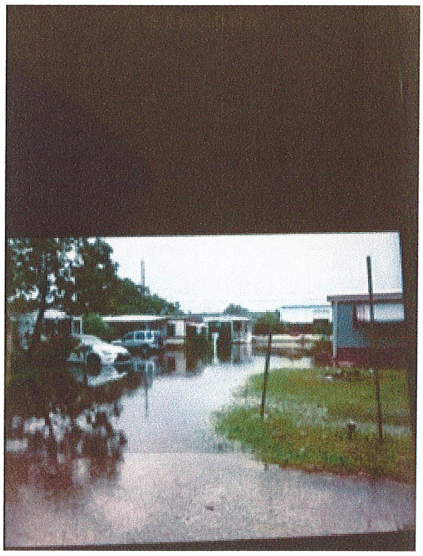


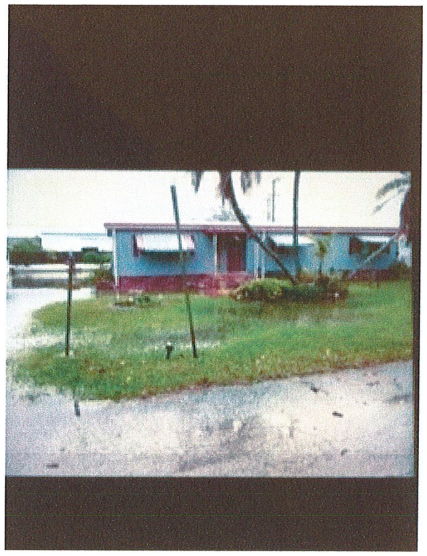


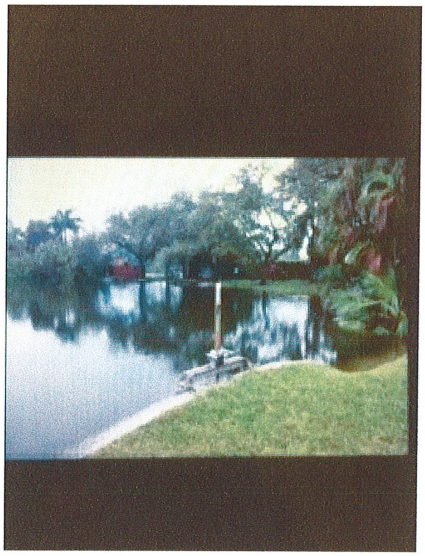












Text Communication

08/03/2019 thru 01/23/2020

Commissioner Georgina Cohen

full Thread

Verizon

Todd Larson 2 Georgina Cohen Sat Aug 03, 2019 9:36PM ET

MESSAGE

I called the box and the on call employee will check lake levels and verify running pumps. The Carolina station should be running.

Georgina Cohen 2 Todd Larson Sat Aug 03, 2019 9:38PM ET

MESSAGE

Ok
Please make sure the pump gets on.
Thanks

Georgina Cohen 2 Todd Larson Sun Aug 04, 2019 8:31AM ET

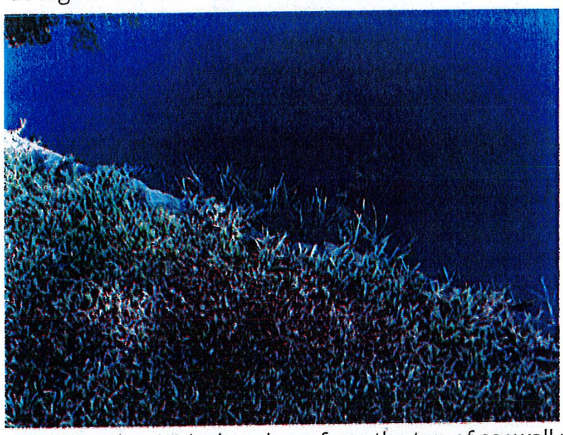
MESSAGE

Please put the bump on and lower the waters (the pump on walkway) went down a LITTLE, but not enough, need the pump on.
Will take more pictures.
Thank you for your attention to this problem. I will talk to you tomorrow (Monday) have a nice day!

Commissioner Cohen

Georgina Cohen 2 Todd Larson Sun Aug 04, 2019 8:44AM ET

MESSAGE



It's about 2 inches down from the top of seawall right now. If we get more rain today, we will be back above the seawall and cause erosion. I will try calling you. Thanks again Todd.
Commissioner Cohen

Georgina Cohen 2 Todd Larson Sun Aug 04, 2019 10:11AM ET

MESSAGE

Just was watching the news(flooding threat in Broward later today) the pump on the walkway is now on. We need to keep a watch on this. I will keep you posted on my end.
Thanks for having the Gary put the pump on the walkway on. Will be in touch.
Thank you again

Commissioner Cohen

Georgina Cohen 2 Todd Larson Sun Aug 04, 2019 2:24PM ET

MESSAGE

Weather here is terrible
rain is coming down in buckets. Thank God the pump is on! Will keep you posted.

Georgina Cohen 2 Todd Larson Sun Aug 04, 2019 7:26PM ET

MESSAGE

Why is the pump off on the walkway??

Georgina Cohen 2 Todd Larson Sun Aug 04, 2019 7:33PM ET

MESSAGE

The water level is still high the pump on the walkway is not on I don't know if it ran out of gas or what's going on please call me at your convenience

Verizon

Georgina Cohen 2 Todd Larson Sun Aug 04, 2019 8:44AM ET

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It's about 2 inches down from the top of seawall right now. If we get more rain today, we will be back above the seawall and cause erosion. I will try calling you. Thanks again Todd.
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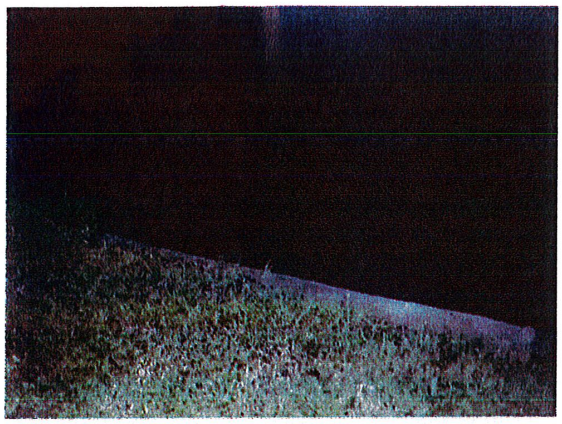
Georgina Cohen 2 Todd Larson Sun Aug 04, 2019 7:34PM ET

MESSAGE

I did try calling you maybe you didn't hear your phone if you get my message please call me

Georgina Cohen 2 Todd Larson Sun Aug 04, 2019 8:26PM ET

MESSAGE



Georgina Cohen 2 Todd Larson Sun Aug 04, 2019 8:27PM ET

MESSAGE

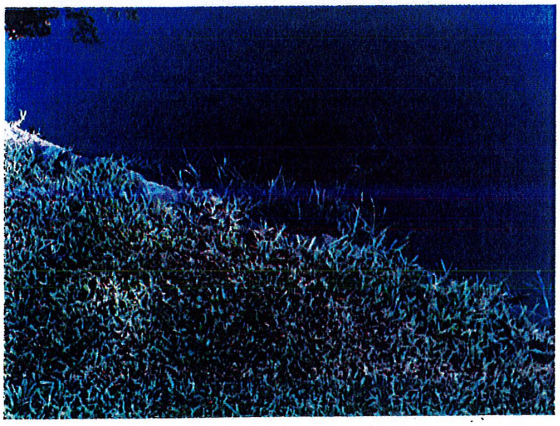
Georgina Cohen 2 Todd Larson Sun Aug 04, 2019 8:28PM ET

MESSAGE

Tonight's pictures

Georgina Cohen 2 Todd Larson Sun Aug 04, 2019 8:29PM ET

MESSAGE



Todd Larson 2 Georgina Cohen Sun Aug 04, 2019 10:57PM ET

MESSAGE

The lake is at about 2.5 feet. That is just about where the pumps start. Two pumps are pumping at Carolina and one at 24th St. The lake should continue to drop overnight.

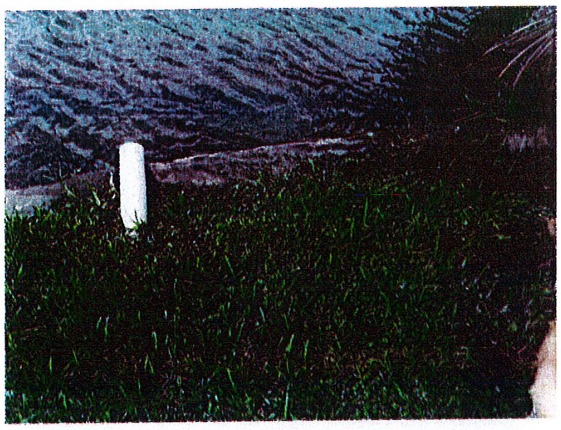
MESSAGE

Georgina Cohen 2 Todd Larson Fri Aug 09, 2019 3:08PM ET

Todd again the water level is very high over the top of my Seawall please make sure the pump is on
Thanking you in advance please make sure this matter is taken care of ASAP

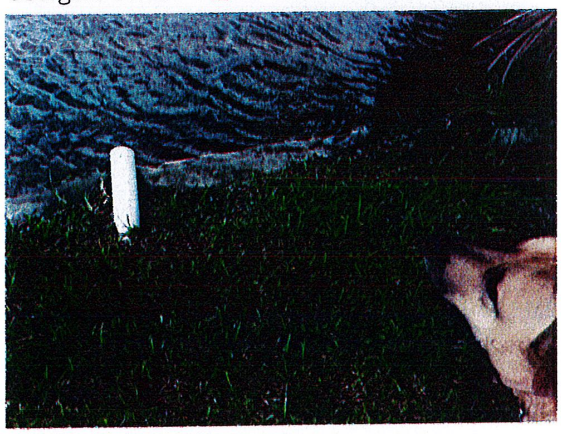
MESSAGE

Georgina Cohen 2 Todd Larson Fri Aug 09, 2019 3:09PM ET



MESSAGE

Georgina Cohen 2 Todd Larson Fri Aug 09, 2019 3:10PM ET



MESSAGE

Todd Larson 2 Georgina Cohen Fri Aug 09, 2019 3:34PM ET

I'll call you back.

MESSAGE

Georgina Cohen 2 Todd Larson Mon Aug 12, 2019 1:23PM ET

Can you please call me
The the water levels are high in the bamboo Lakes when we talked on Friday you said you were going to have the guys see if there was anything dead or leaves that might be causing the high waters in the Lake I hear the pump on the walkway but it doesn't seem like anything's going down please call me so I know what's going on you also said something about having electrician look at the electric on the walkway and Carolina Street please call me thank you looking forward to hearing from you

MESSAGE

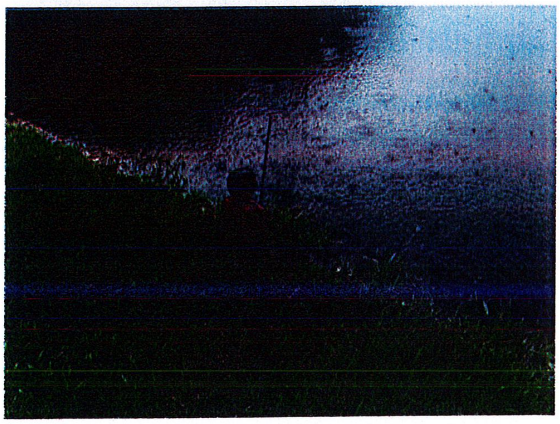
Georgina Cohen 2 Todd Larson Mon Aug 12, 2019 9:25PM ET

Georgina Cohen 2 Todd Larson Mon Aug 12, 2019 9:26PM ET

MESSAGE

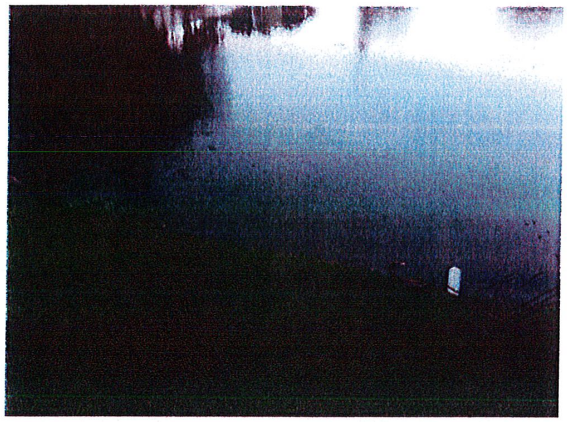
Georgina Cohen 2 Todd Larson Mon Aug 12, 2019 9:27PM ET

MESSAGE



Georgina Cohen 2 Todd Larson Mon Aug 12, 2019 9:28PM ET

MESSAGE



MESSAGE

Georgina Cohen 2 Todd Larson Tue Aug 13, 2019 10:33AM ET

Just wanted to let you know Todd that the water is still high it's over the seawall can you see to it please that this lake is lower before you
leave to go to Orlando tomorrow we don't need problems with the OIG.

Thanking you in advance
Commissioner Cohen

I will send another picture

MESSAGE

Todd Larson 2 Georgina Cohen Sat Aug 31, 2019 8:31PM ET

Just wanted to update you on the storm. 60% chance of tropical storm winds. 10 % hurricane force. No evacuations yet. No shelters yet.

MESSAGE

Georgina Cohen 2 Todd Larson Thu Jan 23, 2020 7:37AM ET

Please make sure all pumps are functioning and that the lakes are being monitored
Rain forecast

MESSAGE

Todd Larson 2 Georgina Cohen Thu Jan 23, 2020 7:46AM ET

Message received

MESSAGE

Georgina Cohen 2 Todd Larson Thu Jan 23, 2020 2:14PM ET

Rain is coming down hard are the pumps on

MESSAGE

Todd Larson 2 Georgina Cohen Thu Jan 23, 2020 5:24PM ET

Lakes are at minimum 2 ft level

Report Generated 2/14/2020 4:04 PM ET by Mark Pakula

Commission Workshop Minutes 08/12/2019

Commissioner Georgina Cohen

WORKSHOP COMMISSION MEETING TOWN OF PEMBROKE PARK
MONDAY, AUGUST 12, 2019 - 7:00 PM

AMENDED AGENDA
CALL TO ORDER: 7:33 PM
PLEDGE OF ALLEGIANCE
ROLL CALL

PRESENT:	MAYOR	ASHIRA MOHAMMED
	VICE MAYOR	HOWARD P. CLARK, JR.
	COMMISSIONER	REYNOLD DIEUVEILLE
	CLERK COMMISSIONER	GEORGINA COHEN
STAFF:	TOWN ATTORNEY	CHRISTOPHER J. RYAN
	TOWN ATTORNEY	ANDRE PARKE
	TOWN MANAGER	AGATHA MUSE-SALTERS
	ADMIN SERVICES DIRECTOR	NATASHA JOSEPH
	DIRECTOR OF PUBLIC WORKS	TODD LARSON
	BUDGET/FINANCE DIRECTOR	HARRY TAUBENFELD
	INFORMATION TECH DIRECTOR	MARK PAKULA
	INTERIM BUILDING OFFICIAL	MIGUEL NUNEZ
	BILLING CLERK	MICHELLE GROOMS
	ASSISTANT PUBLIC WORKS DIRECTOR	MARIAM JACQUES
	TOWN PLANNER	MICHAEL MILLER
	PUBLIC SAFETY OFFICER	CHIEF COKER
	FIRE SAFETY	CHIEF KANE
ABSENT:	CLERK COMMISSIONER	GEOFFREY JACOBS/ EXCUSED

1. DISCUSSION: Approval of Bills $500.00- Finance Department

In response to questioning by Mayor Mohammad, Attorney Ryan stated that there has not been any change on the Progressive Waste Litigation. Attorney Ryan stated that a report was sent to them with what needed to be done with the rehabilitation of the building and also the storm water drainage; to date neither project has been completed. A letter was sent from Attorney Hawkman who is the Lead Council for the Town asking for an update. They responded stating that they are having it evaluated and will get it done. The court filed a "Motion to Dismiss" the matter in the event there is no progress. The discussion continued.

In response to questioning by Commissioner Cohen, Director of Public Director Todd Larson stated that the irrigation pump was replaced at the preserve.

2. DISCUSSION: Finance & Budget Update – Finance Department

Budget/Finance Director Harry Taubenfeld stated that in his review, he has nothing new to report other than the few accounts that have exceeded their budgeted amount. Mr. Taubenfeld stated that for revenue year end, it appears that the Town may be slightly short, around Two

Hundred Fifty Thousand dollars ($250,000.00) to Three Hundred Thousand ($300,000.00) in total revenue when discussing the general funds and enterprise funds. He continued to state that the savings on the expense side should offset any revenue short falls the Town may have come year end. In response to questioning from Mayor Mohammad, Mr. Taubenfeld stated that he's removed the Building Department out of the general fund which shows that there is a surplus of funds of Four hundred Thousand dollars ($400,000.00) in revenue over expenses.

In responding to Mayor Mohammad, Administrative Services Director, Natasha Joseph stated that employee vacation buy backs are done every June and November, but this year they are running behind. Mayor Mohammad is authorizing employee vacation buy outs, Ms. Joseph stated that she will get with Ms. Price and get two (2) weeks' vacation information to the employees and have them sign. (Inaudible)

Budget/Finance Director Harry Taubenfeld stated that in preparing for next year's budget, he's requesting for budgeted events.

Mayor Mohammad suggested that she would like the commissioners to think about hosting their own events and market themselves with in their Districts, along with participating group commission events. Mayor Mohammad stated that she will bring this up for discussion again next week.

3. DISCUSSION: Broward Sheriff Office (BSO) Contract Issues- Vice Mayor-Lead Commissioner Clark/Lead Attorney Parke

Attorney Andre Parke provided an update of the Contract Issues and stated that he has been in communication with BOS regarding such; the only reply he received was that BOS is not a local Governmental entity covered under Chapter 164, therefore Conflict of Resolution was not needed. Attorney Parke requested to speak with them regarding all issues, no reply as of yet. The discussion continued

Currently there are two (2) issues. An unresolved dispute where the commission will need to make a determination as to how to move forward, this issue remains open. The second issue is the overcharge for services. The discussion continued.

4. DISCUSSION: Broward Sheriff Office (BSO) Contract - Vice Mayor-Lead Commissioner Clark/Lead Attorney Parke

Attorney Parke stated that there was an issue regarding the City of West Park Fire Service Contract. BSO indicated that they will no longer be paying fifty percent (50%) for their Fire Services, where it's been indicated from The Town that we will only be paying for forty percent

(40%), which is off of the empirical data. Vice Mayor Clark suggested passing the dispute on the agenda for August 26th, 2019. The discussion continued.

IT Director Mark Paulka stated that the Town has a Master Calendar that everyone can utilize. He indicated that there are two separate calendars one is for personal the other is the Master Calendar which is for the entire town. Mr. Paulka stated that here was a glitch in the system that was fixed and verified that it was running by checking everyone's computer. The discussion continued

Mayor Mohammad stated that she would like Mr. Paulka to schedule a group training this Wednesday and would like the program installed on each Commissioners phone. The discussion continued.

5. DISCUSSION: Information Technology Update- IT Director Pakula

a. Document Imaging Project

Information Technology Director Mark Paulka provided a brief history of the document imaging projects plan to scan all documents, and to eventually scan all documents for the public portal/ public document request directed by the Commission. Mr. Paulka stated that he's received three quotes between the price ranges of Sixty Thousand ($60,000.00) Dollars to One Hundred Thousand ($100,000.00)Dollars. In responding to Mr. Paulka question, Mayor Mohammed stated an RFP is needed.

b. Computer Software – Office 365

Information Technology Director Mark Paulka is requesting permission from the Commission to move forward with starting the migration from our old legacy servers to Office 365. He's started the design feature which would entail a mirrored server (Fault Tolerance), one server would be located in this building, and the other server will be up in the cloud. The discussion continued

In response to questioning by Mayor Mohammad, Mr. Paulka stated that he will get pricing regarding the Governmental (G3) or(G5) licenses for the Office 365 before the 26th of August. The discussion continued.

c. Website

Information Technology Director Mark Paulka stated that he and Commissioner Jacobs will be meeting with three (3) vendors on August 23rd from 9 A.M. to 1 P.M. to get an overview of the web designer's functionality. The discussion continued.

6. DISCUSSION: Building Department Update- Interim Building Official Nunez

Interim Building Official Miguel Nunez stated that the Administrative Staff are looking for avenues on how to reduce and stabilize our budget. One item that was proposed was to move from having an independent contractor to a part time inspector and plans examiner. Mr. Nunez stated that they have provided a draft ordinance to Public Services Director Todd Larson, about how to increase getting additional points on the (Community Rating System) CSR which will also assist in saving flood insurance for our residence. The discussion continued

Mr. Nunez stated that the proposed budget will be constantly reviewed the next three (3) years to monitor the proposed savings. The discussion continued.

7. DISCUSSION: Building Plan Review and Inspection Services-Public Service Director Larson

   This was previously discussed on the other agenda

8. DISCUSSION: Business Tax Receipt and Billing Update- Business Tax/ Billing Clerk Grooms 8:22-8:49:08
   a. FY 17-18 Inactive Accounts
   b. Update on Public information Request
   c. Sign Variance Credit Balances
   d. Update Status of minutes
   e. Waiver Request- Just insurance Brokers
   f. Waiver Request – Lift masters

9. DISCUSSION: Code Enforcement Department Update – Chief Code Enforcement Officer Louis

   Chief Code Enforcement Officer Louis gave a brief description of the different categories of Code Enforcement. Incidents are complaints or calls that are looked into or are working on the case, but no written notice of violation has been issued. New Code Cases are opened notice of violation for and pursuing through the Code Board for citation. Ongoing cases are opened notice of violations and are pursuing through the code board. Mr. Louis stated that for the month of July there are currently 6 (six) new cases and (3) three closed cases. The next Code Board hearing is August 22, 2019.

10. DISCUSSION: Parks Department Update – Parks' Supervisor McKine

    No Discussion Held.

11. DISCUSSION: Public Safety – Chief Coker

    Public Safety office Chief Coker provided an update as to how their department is getting ready for back to school on Wednesday. Chief Coker stated that her staff did a walk thru through the

DRAFT

schools to familiarize themselves with the layout of the school; they also created an operational plan which includes enforcing oncoming traffic to slow down while in school zones.
For the month of July, Chief Coker stated that there have been five hundred fifty eight (558) calls of service, thirty four (34) accident investigations and ninety (90) citations. In the mobile home parks, there have been a total of two (2) residential burglaries and overall for the Town, there have been a total of nine (9) incidents, four (4) car thefts, one (1) truck theft, one (1) business burglary and one (1) homicide. The discussion continued.

Chief Coker gave a brief description regarding Sheriff Gregory Tony's Initiatives which included the Marjory Stoneman Program Committee, school safety, Real Time Crime Center and an Eight Pack Leading Control Center. Chief Coker also indicated that there will be a new Training Facility being built in Fort Lauderdale. The discussion continued.

Chief Coker stated that there is a community awareness gathering called Drive Way Initiative on August 20, 2019 starting at 6:30 P.M. at Pembroke Park Apartments. The discussion continued.

12. DISCUSSION: Fire Safety – Chief Kane

Chief Kane stated that seventy one (71) kids from The Town of Pembroke Park attended the Summer Sizzle which was a one day Fire Safety Camp located in Coral Springs, FL.

Chief Kane said a few words of remembrance on the Memory of Captain Kerr for his nineteen (19) years of service to the Town of Pembroke Park. Commissioner Cohen suggested to Vice-Mayor Clark to do a proclamation for Captain Kerr, Vice Mayor Clark agreed.

Chief Kane will present his statistics at the Regular Meeting Monday August 26th.

13. DISCUSSION: Status of Town Projects- Vice-Mayor Clark/ Public Service Director Larson
    a. Florida Department of Transportation (FDOT)/Metropolitan Planning Organization Update- Vice mayor Clark/ Public Services Director Larson
    b. Metropolitan Planning Organization (MPO)

Vice Mayor Clark stated that the FDOT sent a letter to the Mayor and Commissioners thanking them for the proclamation that was presented.

Vice Mayor Clark stated that he and Director of Public Services Todd Larson will attend an MOP meeting on September 18, 2019 at 9:30 A.M. in which they will present all projects. Vice mayor Clark stated that he would like to connect all bicycle pass with the walking trails. The discussion continued.

Director of Public Services Todd Larson stated that a letter was received from the State of Florida regarding three (3) projects that was applied from HMGP, have been moved to Tier 1 which are being processed for funding. The three (3) projects are as follows;

Town Hall Hardening, this project will cover the windows, doors and the generator. The elevator upgrade was not approved. Mr. Larson stated that he is working on getting the paperwork completed for the questions asked.

John P Lyons Drainage – Mr. Larson stated that the pump station and the last section of the drain pipe. Mr. Larson is supplying additional information requested.

SW 25th St Drainage – Mr. Larson stated that this is located by the Behan Park down across Park Rd. where Lake Shore Mobile Home Park is. The will be upgrading the drainage size and a pump station.

Mr. Larson stated that between all three (3) projects there is about Two Million ($2,000,000.00) Dollars in grant funding, and the rest will be taken from the drainage fund. Mr. Larson stated that he will request the additional funding out of next year's budget. Mr. Larson continued to state that it will take about two (2) weeks to have them review the responses and about two (2) to (3) months to receive a response with the final offer of the Grant. The discussion continued.

Vice Mayor Clark stated the importance of finishing the Master plan. He stated that he would like to go on record stating that people are being misconstrued; we do not have the capacity to hook up their water. These areas have been flooding for decades. Commissioner Cohen stated that the Town is not keeping up with the pumping of the lakes, water is over sea wall. In responding to Vice Mayor Clarks questioning, Public Service Director Todd Larson stated that the pumps are working correctly and once the grant projects are completed, this will assist with the flooding. Mr. Larson also stated that According to the permit, we are not allowed to pump until the water reaches 2.5 feet, but Mr. Larson will look into lowering the turn on level. The discussion continued

Commissioner Cohen stated for the record that this problem is causing erosion, we are losing a lot of land, and that the erosion on linear walkway. Commissioner Cohen stated for the record when Mr. Lyons was employed there were never any flooding problems. The discussion continued.

Vice Mayor Clark suggested that another engineer is needed. In response to questioning by Vice Mayor Clarke, Mayor Mohammad stated that there are contractors on contract that the Commissioners can reach out to. The discussion continued.

Mayor Mohammad made a comment about the pictures showing that something is wrong with the automation line. Attorney Ryan stated that all photographs need to be presented so that all of the public can be viewed for everyone can see so that we may comply with the Sunshine Laws. Note: all pictures were emailed to Administrative Services Director Natasha Joseph. The discussion continued.

In response to questioning by Mayor Mohammad, Mr. Larson stated that there is no drainage on 30th Ave., between Hallandale and the S Curve, the past the Piano place owner Mr. ** would not allow the drainage to be install, this needs to be added at a later date.

In response to questioning by Mayor Mohammad in regards to only three (3) lights from the Doctors Toy Store to the Hallandale Beach Blvd. are currently working . Mr. Larson stated that a batch of light bulbs were ordered, the electrician is installing them but hope to be done by the end of the month.

In response to questioning by Mayor Mohammad in regards to replenishing the free library, Mr. Larson stated he wasn't sure where to get them but Attorney Ryan suggested putting a General Notice on the website. The discussion continued.

Commissioner Cohen stated for the record that pictures of the Lake were sent to Mr. Larson.

14. DISCUSSION: Disaster Debris Removal and Disposal Service Bid Award – Public Services Director Larson

In response to questioning by Mayor Mohammad, Mr. Larson stated that Mariam sent the contracts to review to Attorney Ryan. Attorney Ryan stated that he has the Agreements and will follow up. The discussion continued.

15. DISCUSSION: Capital Improvement Plan Amendment- Vice-Mayor Clark/ Public Service Director Larson

Public Services Director Todd Larson stated that still waiting for any additions for Capital Projects. This also has to do with selection of projects needed for the Legislative Procreations but look at additional projects to include and update the Project list for the upcoming budget year. The discussion continued.

16. DISCUSSION: 2019 Healthy Community Champions Recognition Program – Vice Mayor Clark- Public Services Director Larson

Code Enforcer Jeffrey Louis stated that he and Public Service Director Todd Larson worked up the application with all the bullets and points, Mr. Louis still needs to get with the Town Planner Michael Miller to get the comprehension plan to add to the application. The discussion continued.

17. DISCUSSION: Legislative Update- Vice-Mayor Clark/ Attorney Sigerson
    a. Petitions
    b. Annexation

DRAFT

Vice Mayor Clark provided an update in regards to a meeting. Vice Mayor Clark stated that this is on the 3rd and final hearing in front of the Florida League of Cities. The discussion continued.

Mayor Mohammad stated that she would like to hold a Town hall meeting here at the end of the month.

18. DISCUSSION: International Promotions, business, Community Involvement- Vice Mayor Clark
    a. Special Recognition for: Coca Cola, Pembroke Park Church of Christ, Professional Firefighters Association, and Club Richelieu

Vice Mayor Clark stated that they are still moving forward Mr. Larson has the plaques and all that's needed is a date.

b. Argo-Eco Center/ Community Garden/ Food Forest/ Grants

Vice Mayor Clark stated that we past a motion that we will apply for any and all funding which includes a legislative budget request. Vice mayor Clark also stated that he is still going to Atlanta to find out who their contacts are to make connections. Mayor Mohammad stated to Vice Mayor Clark to direct staff to look at all grants.

Administrative Services Director Natasha Joseph asked if a Resolution was needed. Further discussion continued regarding which project needed Resolution. Attorney Ryan stated that he will get with Connie regarding Resolutions. The discussion continued.

c. Exercise and Playground Equipment

In response to questioning by Mayor Mohammad, Public Service Director Todd Larson stated that the two (2) pieces of the exercise equipment one being repair and once being in storage should have been installed or a PO should have been issued. The other three (3) or Four (4) pieces that are missing have been added to the proposed budget request and will follow up once the budget is in place. The discussion continued.

INFORMATIONAL

d. Wellness Programs- Focal Point and Aging and Disability Resource Center (ADRC)

Vice Mayor Clark stated that this program is in effect, we just need to get the news out. (Inaudible) Mayor Mohammad suggested that she would like the Town to do our own Senior Walk and invite them to participate. The discussion continued.

e. 2019 Winter Festival- Club Richelieu

Vice Mayor Clark stated that this winter he would like to see all the groups get together to get involved in Cultural Diversity. The discussion continued.

DRAFT

f. FITCE 2019

In response to questioning by Mayor Mohammad, Administrative Services Director Natasha Joseph stated that registration has been completed for the table for and for individuals. The discussion continued

g. Free Trade Zone- Building

Vice Mayor Clark stated that Barbara will set it all up.

h. Francophone/Francophile

Vice mayor Clark stated that staff did not notify Commission regarding this event in March. Vice Mayor Clark requested that Ms. Joseph investigate as to who received this email. The discussion continued.

19. DISCUSSION: Agriculture Education and promotion Facility Funding and 2019-20 Legislative Appropriations- Vice Major Clark/ Public Service Director Larson

No Discussion held.

20. DISCUSSION: Contracts- Mayor Mohammed/ Vice Mayor Clark/ Attorney Ryan

Attorney Ryan stated that the RFP's for a Town Attorney, Planner and Information technology were written. Town Manager Agatha Muse-Salters stated that she would like to put all three (3) contracts on hold until a complete analysis can be done and more information can be added. The discussion continued.

In response to questioning by Vice Mayor Clark, Director of Public Works stated that several employees did not want to work in the Community Forest. Mayor Mohammad stated that when this originally started a few years ago in 2013, the Commission Directive was that staff would not work in the Community garden to be maintained by the Community. Mayor Mohammed stated that if the money can be found in the budget, an additional person can be hired. The discussion continued.

Ms. Salters stated that she would like the opportunity to go over the Parks and Recreation staff with Mr. Larson and get back with the commission.

Commission Cohen suggested that the linear walkway needs to be walked, that the park is being neglected. The discussion continued.

In response to Vice Mayor Clarks questioning, Mayor Mohammed stated that they have the ability to hire, there is no need to bring this back on the agenda. The discussion continued.

DRAFT

21. DISCUSSION: Resurface Exterior of Town Hall – Mayor Mohammed

Mayor Mohammad suggested moving forward on updating City Hall and to go out for bid. Mayor Mohammad would like this to go out for a bid. In response to Mayor Mohammad's questioning, Mr. Larson stated that a RFP could go out as a design/build RFP or as a two (2) step bid, meaning design it, do the specs then build out the specs. His recommendation was to do it as a one (1) bid process. The discussion continued.

22. DISCUSSION: 2019 Mayors National Youth Summit Update – Mayor Mohammed

Mayor Mohammad stated that this item was not on the agenda therefore, it was not addressed.

23. DISCUSSION: Town Vehicles Policy – Mayor Mohammed

Mayor Mohamad stated that The Town needs to create a vehicle policy and to move forward with Omnitrax. In response to questioning by Mayor Mohammad, Attorney Ryan stated that they have been slow in responding, but there have been discussions, Attorney Ryan stated that he will let them know we have deadline to meet.

Director of Public Works Todd Larson stated that currently the State has a contract with Verizon that can provide the same services as Omnitrax. Mr. Larson has the information and will forward to Attorney Ryan. The discussion continued.

24. DISCUSSION: Alcoholic Beverage Sales Extended hours licenses – Annual Fees- Consultant Town planner Miller

Mr. Miller stated that the owner and operator of the Polo Club, located at 56th Avenue and Hallandale Beach Boulevard was unhappy with the outstanding fees for the Alcoholic Beverages Extended Hours Sales License due to the community. Currently there are two (2) businesses that have been granted the sale of alcoholic beverages sale extended hours licenses. One is being Scarlett's Cabaret which operated seven (7) days a week with a seating capacity of eight hundred (800) and the Polo Club which is operated two (2) days a week with a seating capacity of about one hundred (100), both establishments being changed the same for the annual fee. The discussion continued.

Mr. Miller is recommended the Commission consider having the annual fee adjusted due to size and hours of operation. Mayor Mohammad stated to be fair to businesses in our community, size of business and hours of operations can be adjusted. Mayor Mohammed stated to the Commission to email Mr. Miller with their recommendations.

25. DISCUSSION: Seneca Commerce Center (SCC)-Right-of-Way Encroachment Agreement-Consultant Town Planner Miller

Mr. Miller stated that Seneca built a buffer wall at the intersection of 40th Avenue and 25th Street. According to Mr. Miller there was additional right away dedicated with plaque but during inspection although, not noticeable, it was determined that a piece of the wall they built was at the intersection, within the public right away. When brought to their attention, Mr. Miller stated that the wall could be torn down and to build another wall on their property, but they are requesting an Encroachment Agreement. The discussion continued.

In response to Mayor Mohammad's questioning, an exact square footage could not be given, therefore, Mayor Mohammad requested to Mr. Miller to obtain the market value of encroaching along with an evaluation. The discussion continued.

26. DISCUSSION: Sign Code Analysis – Consultant Town Planner Miller

Mr. Miller provided a follow up regarding the Sign Code regarding gas stations. Mr. Miller stated that in his opinion, the current sign ordinance needs an overall update. The discussion continued.

Mr. Miller also referenced to strip lighting at gas stations. Mr. Miller stated that the Town of Pembroke Park does not allow strip lighting around canopies or an outline in a window. Colors are acceptable. The discussion continued.

Vice Mayor Clark suggested that the Commission would like to see lightbulbs and the direction was to create the ordinance to allow similar lighting as Miramar or Hallandale. The discussion continued.

27. DISCUSSION: Koinonia Worship Center Expansion Project – Consultant Town planner Miller

Mr. Miller gave a history on the Koinonia Worship Center which is the old complex on Hallandale Beach Blvd.. About two (2) years ago, to expand their facility, they purchased the vacant lot south behind Swifties laundromat on 48th Avenue.

Due to the eighty (80) foot dedicated right away on 48th Ave., Koininia Worship do not want to dedicate the eighty (80) right away and are requesting a waiver from the local government or for us to petition to change the traffic ways plan. Public Works Director Todd Larson stated that the request is being opposed because it prevents the side walk to being the standard width across, currently the side walk is narrow and has power pull, isn't ADA compliant. The discussion continued.

28. DISCUSSION: Surplus and Salvage Equipment – Deputy Town Clerk Joseph

Administrative Services Director Natasha Joseph stated that there are computers and equipment to have salvaged from 2002 to current; these items are of no value to the Town and need to be disposed of. The hard drives have already been taken out therefore they can be taken to Bark or disposed of. Ms. Joseph is seeking approval from the Town to have this computers removed from the premises.

In response to Vice Mayor Clark, Attorney Ryan stated that the Amendment to the procurement code provides a section that approves getting rid of surplus items as long as the Commission approves the list, which will be brought to next week's agenda, it's acceptable.

Public Works Director Todd Larson wanted to address the Commissioners regarding Moil Station. He stated that, this discussion was pulled from the Agenda, due to the face that their attorney could not attend; therefore they wanted to have the Moil Signage brought back up at the regular meeting. Mr. Larson stated that he recommend approval in accordance with plan review because this is the same plans that were approved with the last Moil Station.

29. DISCUSSION: Florida Department of Transportation Revised Fiscal year 2019-2020 Work Order for Street Lighting and maintenance – Public Service Director Larson

    Attorney Ryan stated that this needs to be brought by resolution.

30. DISCUSSION: Recognition for Streets, Roads, and Parks for Assisting in the Argo-Eco Garden – Vice Mayor Clark/ Public Service Director Larson

    (Inaudible) Vice Mayor Clark is requesting certificates for their outstanding work at the garden.

31. DISCUSSION: Execution of the CDBG 45th Year (Preserve Park ADA Prefab Restroom Building) – Public Services Director Larson

    Mr. Larson stated that we've been awarded for funding for the rest room on the east side of the park. In response to questioning by Mayor Mohammad, Mr. Larson stated that he will get pricing. (inaudible) The discussion continued.

32. DISCUSSION: Recommendation for Added Units- ITB 19-03 CDBG 44thYear Preserve Tot lot Playground- Public Services Director Larson

    Mr. Larson took proposal from the different pieces of equipment the Commission preferred, and checked with them as to what could be added. Mr. Larson stated that due to the limited space and issues with fall heights, they recommended adding additional crawl through tunnels to the project which revised the total. The discussion continued.

    In response to being questioned by Attorney Ryan, Mr. Larson stated that these changes were approved.

33. DISCUSSION: Execution of First Amendment to 44th Year CDBG Agreement Preserve Tot lot Playground- Attorney Ryan/ Public Services Director Larson

Mr. Larson stated that a three (3) month extension was given to ensure this project is completed within the allotted time frame.

COMMISSIONERS COMMENTS:

Commissioner Cohen welcomed to The Town the newly appointed Town and Assistant Town Manager. She also reiterated to keep the linear walkway cleaned.

Vice Mayor Clark stated that he would like Mr. Larson to join him to his trip to the Food Garden in Atlanta, GA. Attorney Ryan stated to add this item to the Agenda so the Commissioners can an informed decision on Mr. Larson going to Atlanta, GA. The discussion continued.

Mayor Mohammad stated that there were two (2) Proclamations request for a seventy (70th) and One Hundred (100th) Birthday. Mayor Mohamad asked if there was any way a proclamation can be held without bringing to the Commission. In response to questioning by Mayor Mohammad, Attorney Ryan stated that it should be put on the Consent Agenda, so there is an Official Act of Commission. The discussion continued.

TOWN MANAGER/ PERSONNEL COMMENTS:

In response to questioning by Administrative Services Director, Natasha Joseph, Attorney Ryan stated that two (2) additional I Pads can be purchased under the Agreement as long as the terms are the same.

In response to questioning by Vice Mayor Clark, Town Manager Salters stated that the RFP for a Town Attorney was put on hold because complete analysis needs to be rewritten to avoid any conflict of interest. The discussion continued.

PUBLIC COMMENTS:

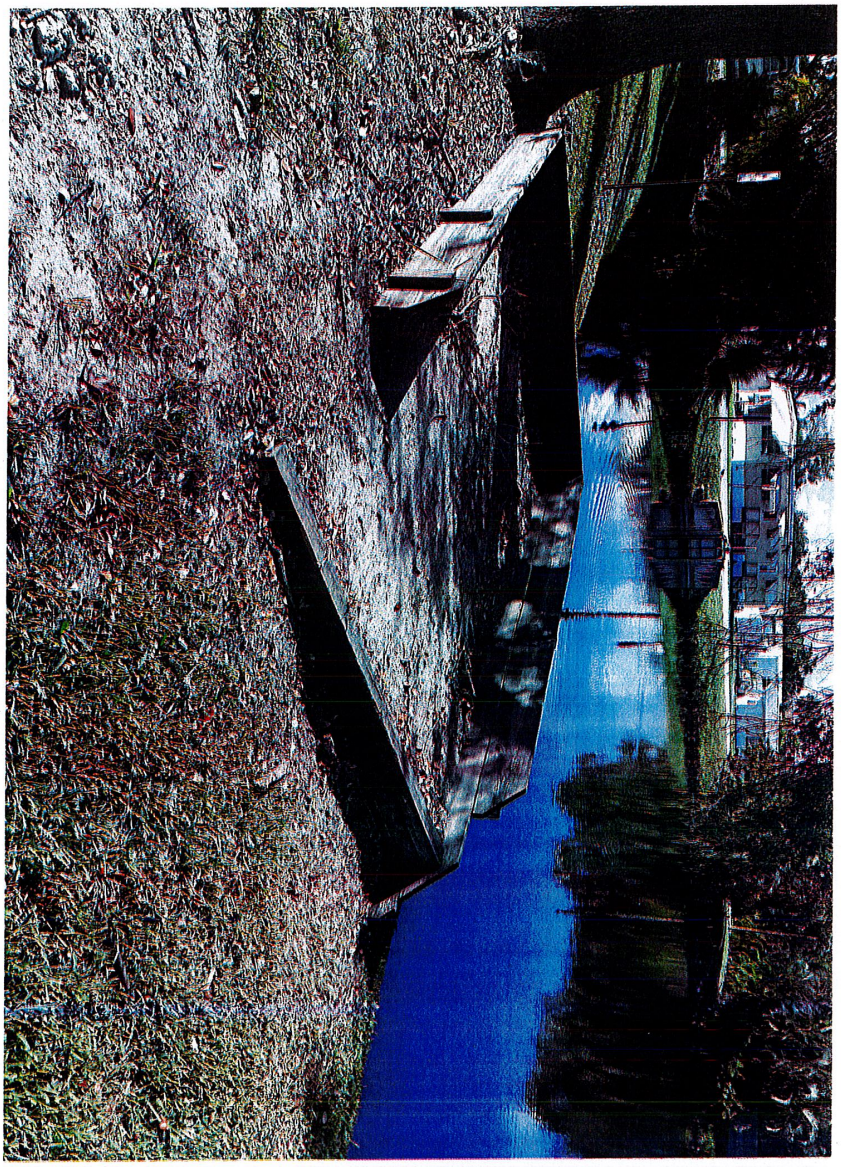
None.

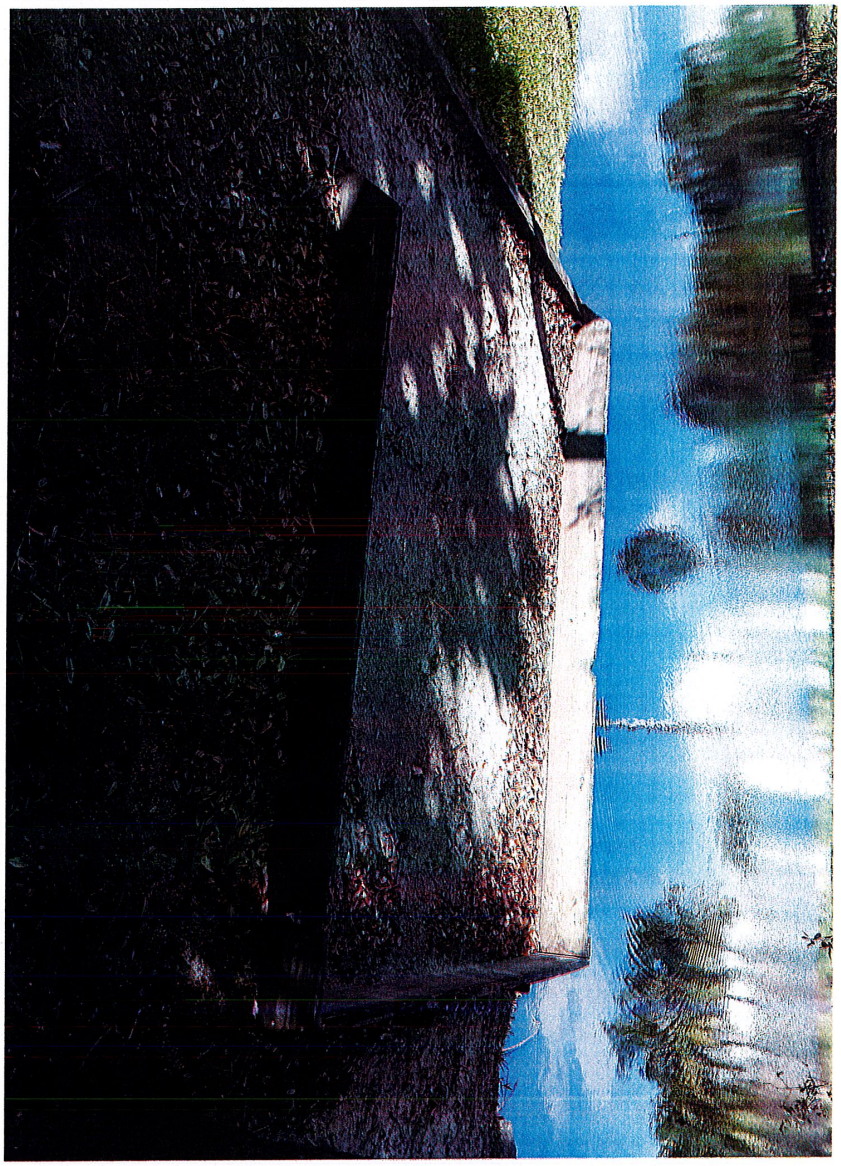
Since there was no further business, ****** made a motion to adjourn the meeting. The motion was carried unanimously by voice vote and the meeting was adjourned at 10:43 P.M.

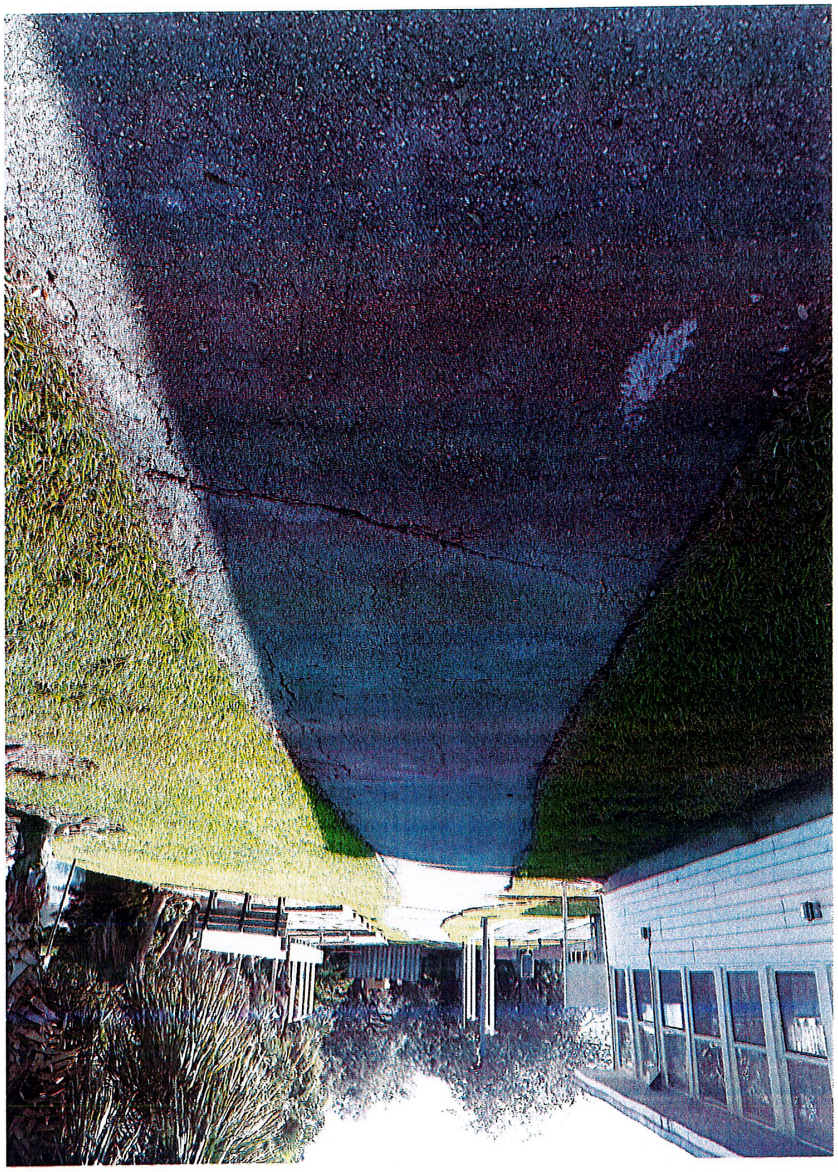
Howard P. Clark Sr. Linear Walkway

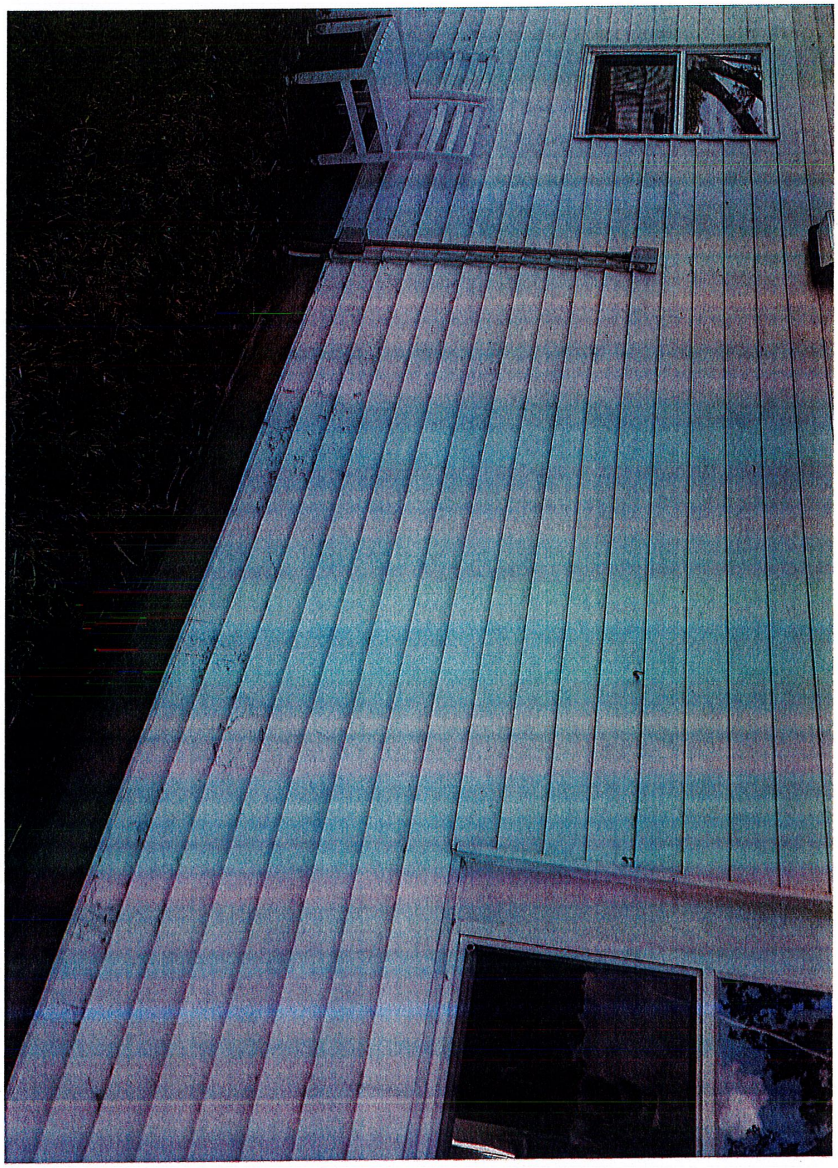
10/31/2019

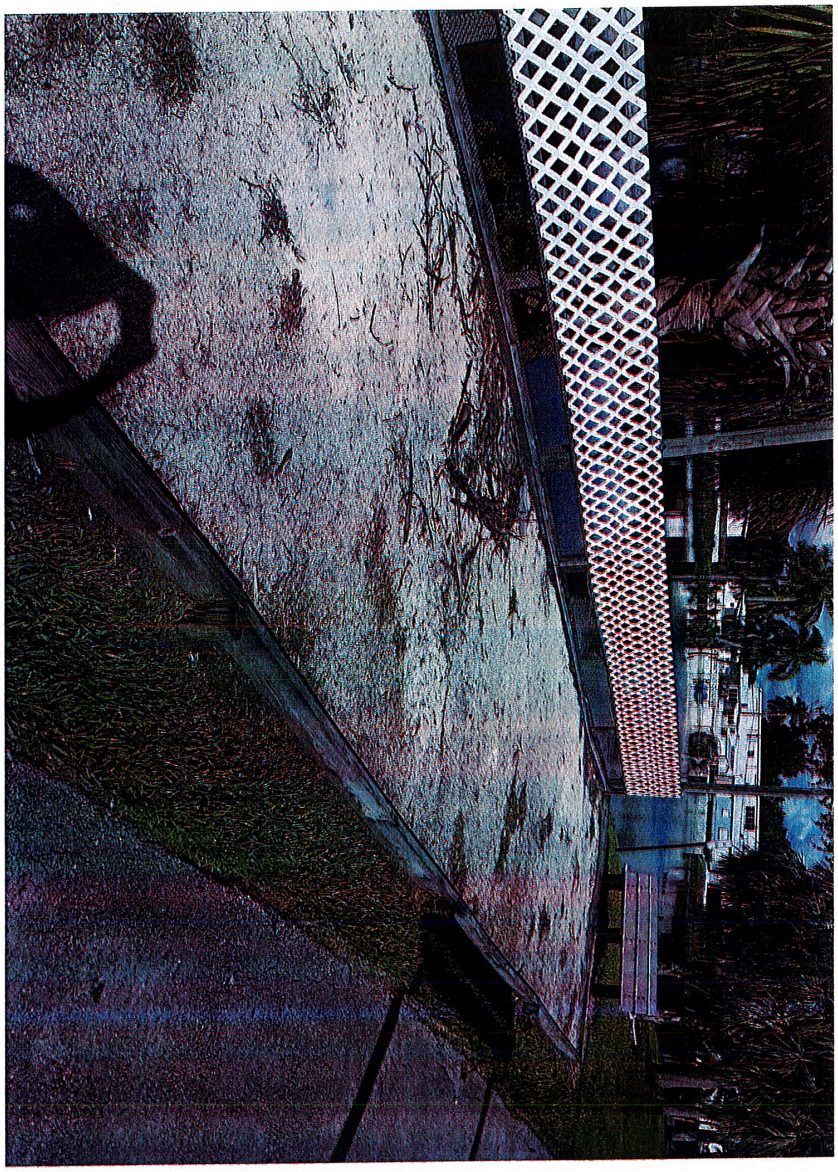
Commissioner Georgina Cohen











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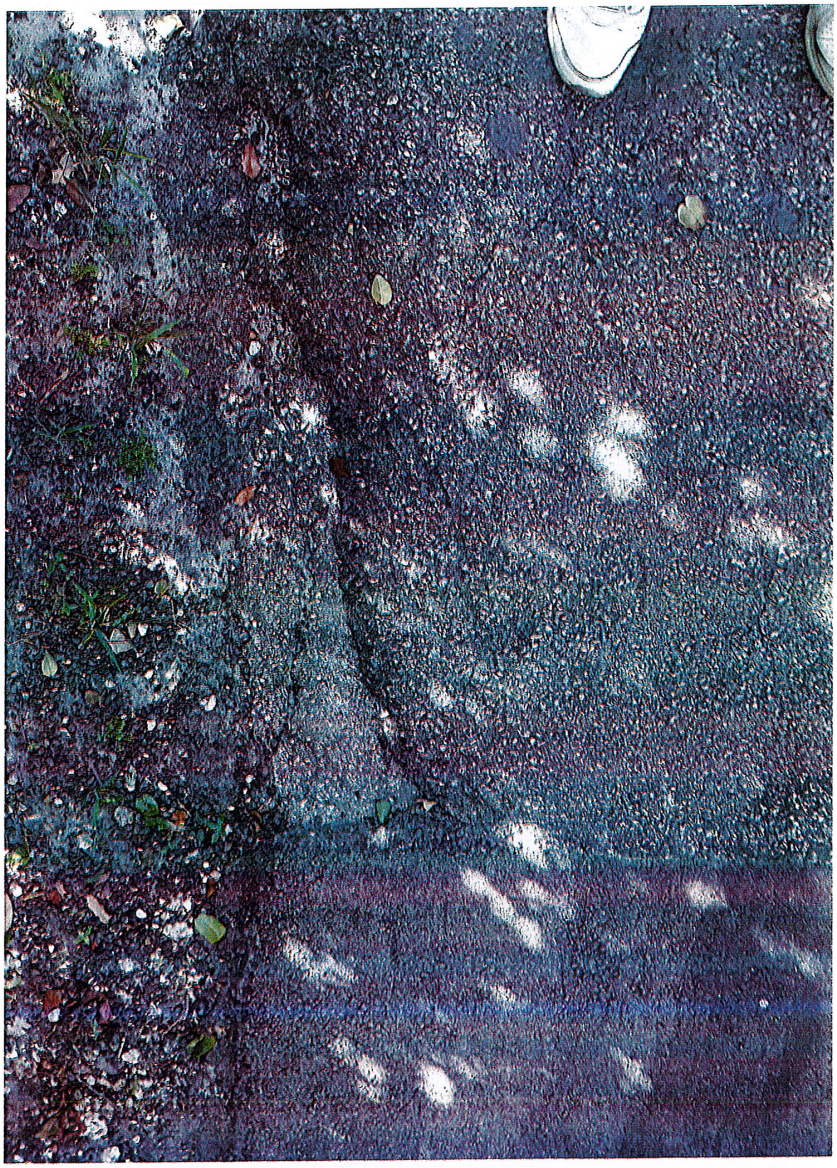

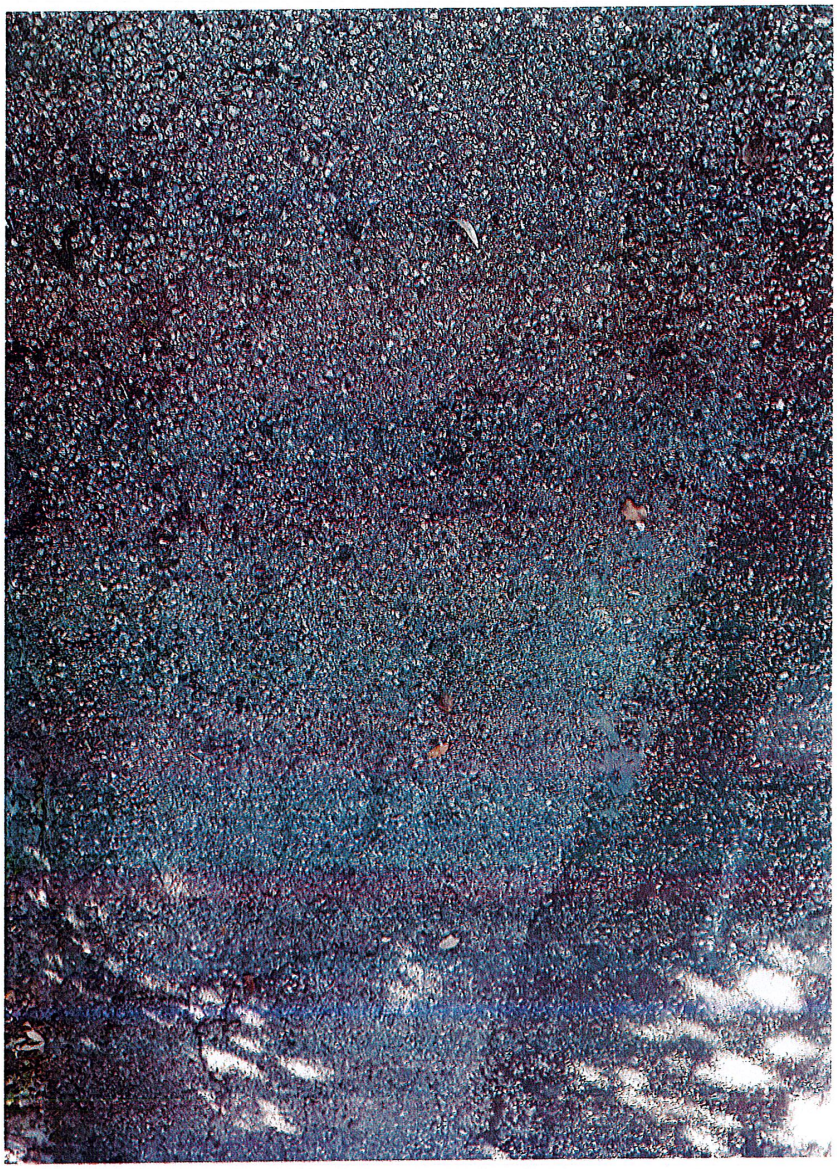

Town of Pembroke Park
3150 SW 52nd Avenue
Pembroke Park, FL 33023

Agenda Request

Meeting Date:	04/08/2020
Subject:	Transfer of grey vehicle from Building Department
Initiated by:	☑ City Commission ☐ City Attorney ☐ City Manager / Staff
Prepared by:	Name & Title: Clerk Commissioner Jacobs
Reviewed by:	Name & Title:
Approved by Town Manager:	Signature:
Approved by Town Attorney:	Signature:
Attachments:	
Fiscal Impact:	None
Policy Question(s) for Commission Considerations:	
Summary:	Currently, the Building Department has a vehicle that the title needs to be transfered to general fund.
Background:	
Discussion/Analysis:	
Options:	N/A
Advantages:	N/A
Disadvantages:	N/A
Possible action:	Transfer of title
Advantages:	N/A
Disadvantages:	N/A
Staff Recommendations:	N/A
Additional Action Needed:	N/A

IMPORTANT_INFORMATION

SECTION 320.0605, Florida Statutes, requires this registration certificate or an official copy or a true copy of a rental or lease agreement issued for the motor vehicle described be in possession of the operator or carried in the vehicle while the vehicle is being used or operated on the highways or streets of this state.

SECTION 316.613, Florida Statutes, requires every operator of a motor vehicle while transporting a child in a passenger car, van or pickup truck registered in this state and operated on the highways of this state, shall, if the child is 5 years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device. For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat, for children aged 4 through 5 years, a separate carrier or seat belt may be used.

SECTION 627.733, Florida Statutes, requires mandatory Florida No-Fault Insurance to be maintained continuously throughout the entire registration period; failure to maintain the required coverage could result in suspension of your driver license and registration.

Mail To:
TOWN OF PEMBROKE PARK
3510 SW 52 AVE
PEMBROKE PARK, FL 33023

Important note: If you cancel the insurance for this vehicle, immediately return the license plate from this registration to a Florida driver license or tax collector office or mail it to: Dept. of Highway Safety, Return Tags, 2900 Apalachee Parkway, Tallahassee, FL 32399. Surrendering the plate will prevent your driving privilege from being suspended.

CO/AGY 10 / 6 T# 770997200
B# 1546199

FLORIDA VEHICLE REGISTRATION

PLATE **XD4499** DECAL Expires **NO EXPIRATION**

YR/MK	**2014/FORD**	BODY	**4D**	COLOR	**GRY**	Reg. Tax	48.85	Class Code	97
VIN	**1FAHP2E86EG102951**			TITLE	**112897218**	Init. Reg.		Tax Months	12
Plate Type	**CVR**	NET WT	**3852**			County Fee	3.00	Back Tax Mos	
						Mail Fee		Credit Class	
DL/FEID	**590968454-01**					Sales Tax		Credit Months	
Date Issued	**9/20/2013**	Plate Issued	**9/20/2013**			Voluntary Fees			
						Grand Total	51.85		

TOWN OF PEMBROKE PARK
3510 SW 52 AVE
PEMBROKE PARK, FL 33023

IMPORTANT INFORMATION

1. The Florida license plate must remain with the registrant upon sale of vehicle.
2. The registration must be delivered to a Tax Collector or Tag Agent for transfer to a replacement vehicle.
3. Your registration must be updated to your new address within 20 days of moving.
4. Registration renewals are the responsibility of the registrant and shall occur during the 30-day period prior to the expiration date shown on this registration. Renewal notices are provided as a courtesy and are not required for renewal purposes.

CVR - CITY VEHICLES PLATE ISSUED X

Town of Pembroke Park
3150 SW 52nd Avenue
Pembroke Park, FL 33023

Agenda Request

Meeting Date:	04/08/2020
Subject:	Professional Services for Police Department
Initiated by:	☑ City Commission ☐ City Attorney ☐ City Manager / Staff
Prepared by:	Name & Title: Clerk Commissioner Jacobs
Reviewed by:	Name & Title:
Approved by Town Manager:	Signature:
Approved by Town Attorney:	Signature:
Attachments:	
Fiscal Impact:	Short term $24,000.00 for professional service consultant. Long-term cost savings for the town.
Policy Question(s) for Commission Considerations:	
Summary:	The currently contract is excessive and is causing a negative impact on the budget.
Background:	
Discussion/Analysis:	
Options:	N/A
Advantages:	N/A
Disadvantages:	N/A
Possible action:	N/A
Advantages:	N/A
Disadvantages:	N/A
Staff Recommendations:	N/A
Additional Action Needed:	N/A

DAVID A. HOWARD
12690 150TH Court N
Jupiter Florida 33478
(561)236-3115

Problem

The City of Pembroke Park has contracted with the Broward Sheriff's Office (BSO) since 1980. In 1987 an effort was undertaken to re-establish police services within the City. This effort was based on the lack of traffic enforcement and other services being provided by BSO at that time. Fast forward to 2020. Populations in the surrounding jurisdictions have increased in population densities. Likewise, Uniform Crime Statistics (UCR) data within these jurisdictions has also increased.

This increase in population and UCR data suggest that BSO, coincidentally the fifth largest Sheriff's Office in the United States, is struggling with manpower issues like so many agencies today. I would suggest that Deputies assigned to Pembroke Park are being utilized in other areas to cover critical shortfalls or respond to life-threatening incidents. Only returning to Pembroke Park to in response to a call for service or when not being utilized in other, busier, zones.

Solution

I believe, based upon population and geography, Pembroke Park would benefit greatly by establishing its on police service department. Building from established Florida State Accreditation standards the facilities, policies, and practices could be established immediately. Dispatch Operations could be contracted either through the BSO, Hollywood, Hallandale Police Department or Pembroke Park Police. Specialized functions such as SWAT, BOMB, etc. could also be handled through the use of local and County wide Memorandums of Understanding that are typically updated periodically. My ideal would be a 16-member agency in total with additional officers added in order to supplement local, State, and Federal task force opportunities where salaries are reimbursed. Additionally, a dive team could be established based upon need due to the large amounts of water within the City. Day shift officers could be utilized to supplement School Crossing Guards; while providing a presence at the school, they would also be interacting with the kids, parents and community.

Based upon previous discussion and in reviewing previous UCR data I feel that I can offer an exhaustive cost proposal within 90 days of start. This will include officer salaries, cost of individual equipment, Records Management System (RMS), radio costs, vehicle and other costs associated with fielding a 24-hour, 7-day police services. What I will require is unfettered access to other city managers; Fiscal, IT, Building, etc., in order to provide as detailed a proposal as possible and begin hiring sworn and non-sworn staff based on factual and relevant data while simultaneously beginning law enforcement functions.

As a Law Enforcement leader with more then 27 years of experience at the largest municipal agency in Palm Beach County; I have amassed more than 10 years in expanding leadership roles. I have accumulated more than 10 years of experience as a Staff Inspector and Accreditation professional and supervisor. As both an assessor at the National and State levels I have inspected more then 100 agencies for accreditation compliance in ten years. I also have experience in building relationships with surrounding agencies to better share information and limited resources. I would also like to lead the agency as Chief Of Police once my proposal is approved and would request a Police Executive Research Forum (PERF) study be contracted as soon as the Department stands up for an evaluation as to our progress.

I have a Masters degree from Nova University in Public Administration with a Bachelor's in Human Resource Management. My cost for preparing the City for this endeavor will require a laptop computer with City access, an email address, an ID card to enter facilities, a work space, and a vehicle. With an estimated cost of $24,000 to prepare this proposal, the City will have all of the information required in order to establish a viable, responsive agency.

Very Respectfully;

David A. Howard

Proposal to provide consulting services for establishing a police department

Town of Pembroke Park

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Project Work Plan	9
Cost of Proposal.	10

Adam L. Burden II
14630 SW 33rd Ct.
Miramar, FL. 33027
305-216-5925
adamburdenii@gmail.com

April 19, 2020

Dear Ms. Yolanda Menegazzo,

I am pleased to present my qualifications to provide consulting services for the Town of Pembroke Park. My proposal is based on my conversation with you and my more than 30 years of Law Enforcement, Private Security and Consulting Experience, as well as analyzing several police departments ranging in sizes from a 30 person police department to a department of over 1500 personnel.

I am a self-motivated and highly organized individual. I have good team building and leadership skills. I take pride in my reputation as an extremely positive and reliable person. I have strong communication skills, both written and verbal. I am eager to put my skills to work for the benefit of this community.

As my enclosed resume indicates, my background includes more than 30 years of experience in Law Enforcement, Management, Leadership and Supervision.

Should you have any questions, I can be reached at the number given above or by e-mail.

Sincerely,

Adam L. Burden II

Qualifications

I have extensive experience as a Law Enforcement and Security Professional, I have served as a Special Assistant to the City Manager of North Miami since 2016. In this position, I provided advice on critical issues faced by the department and devised strategies to mitigate criminal activity.

Prior to this role, I served with Allied Universal Private Security as the Director of Operations. Among many responsibilities, I supervised a staff of over 500 and managed a security portfolio of 36,000 Security Professional-hours per week.

Earlier in my career, I worked as the Assistant Chief of Police with the City of Miami Police Department, heading the department's Administration Division and leading the development of the department's own police academy. I've also served as a Criminal Justice Professor at CCI Everest University and as the Deputy Chief of Police at the Opa Locka Police Department.

Throughout my career, I've received over 40 departmental commendations and honors. I was also presented with the Outstanding Community Service Award from retired US Congresswoman Carrie P. Meek and other Outstanding Contributions to Community Awards.

I hold a Master of Science in Management from Miami, Florida's St. Thomas University, and have studied Executive Strategic Management at the Senior Management Institute for Police at Boston University.

Adam L. Burden II
14630 SW 33rd Court, Miramar, FL 33027
Tel: (954) 433-5656, Cell: (305) 216-5925
Email: adamburdenii@gmail.com

Education

St. Thomas University, Miami, FL — December 2006
Masters of Science in Management

Boston University, Boston, MA. — July 2005
Senior Management Institute for Police
Executive Strategic Management
(Certificate)

Southern Police Institution, Louisville, KY — May 1996
Administrative Officers Course
(Certificate)

Barry University, Miami, FL — August 1997
Bachelor's degree

Florida International University, Miami, FL — September 1995
Academy for Strategic Management
(Certificate)

Professional Experience

Assistant to City Manager — October 2016-April 2020
North Miami Police Department

- Special Aide to the City Manager regarding police affairs
- Conducting complete policy and practice evaluations
- Working with Police Executive Command Staff
- Accreditation
- Internal Affairs/Professional Compliance

District Manager/Director of Operations — January 2016-October 2016
Allied Universal (Private Security/Consulting)

- Oversaw the district portfolio, which included Miami-Dade County, City of Miami Beach, Perez Art Museum, Miami International Airport, Adrienne Art Center and Florida Power and Lights Accounts.
- Oversaw over 500 employees
- Managed client relationships and developed new business

Project Manager-Government Services
Allied Universal — March 2015- January 2016

- Responsible for the day-to-day operations.

Director of Student Services
ASA College August 2014-February 2015

- Monitor and resolve student conflict, discipline, student activities and academic advisement
- Investigate issues of concern, provide written reports and recommendations, provide training to faculty, staff and students on disciplinary protocol.
- Manage sponsors of campus-approved organizations such as Student Government, Cultural Clubs, and possible fraternities and sororities, organize and implement recognition programs and assemblies for students/ faculty/staff.

Business/ Criminal Justice Professor
CCI Everest University January 2012-July 2014

- Management, Investigations, Strategic Management, Project Management, Criminal Justice, Private and Homeland Security. Responsible for providing guided instruction in the sphere of Business
- Responsible for evaluating and reporting the progress of all students.

Self-Employed
3M Security and Consultant May 2011-October 2013

- Responsible for the day to day operations of security firm
- Prepared logistical proposals for possible contracts
- Prepared presentations to potential clients

Deputy Chief of Police
Opa Locka Police Department, Opa Locka, FL February 2010-March 2011

- Responsible for the day-to-day operation of the police department.
- Prepared and managed departmental budget.
- Liaison for the department to city administration.

Assistant Chief of Police
City of Miami Police Department, Miami, FL July 2004-February 2010
Commanded the administration division of the City of Miami Police Department Administration division is subdivided into 5 sections:

- Business Management Section: prepared and managed a budget and grants totaling 165 million dollars.
- Information and Technology Section: managed the information systems for police department.
- Support Services Section: managed the court liaison unit, which was responsible for court related appearances, records department, and maintaining national accreditation.
- Human Resource Section: responsible for hiring and retention of employees, training, and compensation.
- Property Section: responsible for the storage and warehousing of all property and evidence for the City of Miami Police Department.

Police Major
City of Miami Police Department, Miami, FL. November 1998-July 2004

- Support Services Section: which included city wide narcotic intervention, SWAT Team, Traffic/Motor Units, K9 Unit, Mounting Unit, Marine Patrol, Special Events and Off Duty Employment
- Commanded all Patrol functions for the North District; including the neighborhoods of Model City, Little Haiti, Upper Eastside, General Investigation, and Street Level Narcotics.
- Oversaw the implementation of the Prostitution Mapping Program. This program drastically decreased prostitution in the North District.
- Developed and implemented the Environmental Detail. This detail since inception has been responsible for attacking illegal dumpers (residential and commercial) and related code violations citywide.
- Chair of committee to develop a policy for tenure limitations for high profile units such as S.W.A.T., Gang Units, and all Units or Details that investigate narcotics.
- Oversaw all major parades, demonstrations, and celebrations citywide.

Police Lieutenant
City of Miami Police Department, Miami, FL. July 1995-November 1998

- Commanded the General Investigations Unit in the Internal Affairs Section
- Handled all walk-in complaints/proactive investigations
- Investigated all discharges of firearms.
- Investigated all allegations of impropriety throughout the police department and citywide.

Police Sergeant
City of Miami Police Department, Miami, FL. January 1991-July 1995

- Assigned to Special Investigation Unit
- Conducted various high profile investigations
- Supervised Street Narcotic Unit.
- Investigated all street level narcotics.
- Performed reverse sting operations and buy-bust operations.
- Performed various prostitution and john details.
- Work with D.E.A, F.B.I., and other Federal Agencies.
- Supervised Robbery and Burglary Details citywide.
- Coordinated joint operations with neighboring law enforcement agencies.
- Patrol Sergeant assigned to Overtown Neighborhood in Miami

Police Officer
City of Miami Police Department, Miami, FL. April 1987- January 1991

- Performed various undercover task including reverse sting operations and buy-bust operations.
- Undercover detective in street narcotics.
- Performed various prostitution and john details.
- Work with D.E.A, F.B.I., and other Federal Agencies.
- Worked joint operations with neighboring law enforcement agencies.

- Investigated all street level narcotics.
- Patrol Officer.
- Patrolled the North District on the Midnight Shift.

Continuing Training and Education

2019 PERF Training
Suicide Among Members of Law Enforcement
New York, NY

2018 PERF National Conference
Changing Dynamics of Policing in the Workforce
Washington DC

2005 Boston University
Senior Management Institute for Police Executive Strategic Management sponsored by the Police Executive Research Forum
Boston, Massachusetts

2006 United States Secret Service
Dignity Protection Seminar
Washington DC

1999 Florida International University
Academy for Strategic Management
Miami, Florida

1996 School of Justice and Safety Administration Assessment Center Promotional Assessor – 16.0 hours
Miami, Florida

1996 Southern Police Institute, University of Louisville
Administrative Officers Course – 3 months
Louisville, Kentucky

1995 Greater of Miami Chamber of Commerce
Leadership Seminar
Miami, Florida

1995 Institute of Police Technology and Management Advanced Investigative Interview – 40.0 hours
Miami, Florida

1995 John E. Reid and Associates
Advanced Interview and Interrogation – 16.0 hours
Miami, Florida

1995 John E. Reid and Associates
Interview and Interrogation – 24.0 hours
Miami, Florida

1995 Miami Police Department
Effective Supervision of Public Sector WorkForce – 8.0 hours
Miami, Florida

1994 Criminal Justice Institute
Intercept of Secure Communication – 40.0 hours
St. Petersburg, Florida

1992 Institute for Liability Management
Supervisory Responsibility and Liability Management – 16.0 hours
Miami, Florida

1991 Miami Police Training Center
Line Supervision – 80.0 hours
Miami, Florida

1989 Drug Enforcement Administration
Law Enforcement Training School – 80.0 hours
Miami, Florida

1989 Institute of Police Technology and Management Tactical Techniques for Drug Enforcement – 40.0 hours
Jacksonville, Florida

Awards

- Outstanding Community Service: U.S. Congresswoman Carrie P. Meek
- Outstanding Contributions to Community: Dade County Mayor Alex Penelas
- Over 40 departmental commendations and honors

Certifications

- Florida Department of Law Enforcement Certification License
- Security Agency Manager License

References

Available upon request

Project Work Plan and Approach

The Town of Pembroke Park is seeking a comprehensive plan to establish a police department. As a result key issues to address in a project like this are:

- Town's, missions, goals and values
- Determine the Town's desired capacity of the department
- Input from key stakeholders in the community
- Collecting and analyzing various data streams

Proposed Work Approach

- Develop initial start up requirement and cost
- Develop policy and procedures
  - A. Rules and Regulations
  - B. Initial Patrol Procedures
- Develop Staffing Model
  - A. Determine staffing needs
    - a. Sworn Officers
    - b. Civilian Staff

B. Develop work schedules

There can be deviations and additions as plans are developed.

Cost of Proposal

The cost of the project is $150.00 per hour not to exceed $25,000.00.

CONSULTING SERVICES PROPOSAL

March 20, 2020

Town of Pembroke Park
Commissioner Geoffrey Jacobs
3150 SW 52nd Avenue
Pembroke Park, Florida 33023

Roman Martinez
Law Enforcement Consultant
3251 SW 130 Ave.
Miami, FL 33175

SUMMARY

I, Roman Martinez (Hereinafter "Vendor"), will provide guidance and assistance to the Town of Pembroke Park Commission (Hereinafter "Town") in establishing a Town Police Department. This will be accomplished by providing the Town with essential information which will allow them to make an informed decision on whether to move forward with the plans of establishing a police department.

PROJECT SCOPE & TIMELINE

The Vendor will conduct a Needs Assessment to make a recommendation to the Town Commission. The Town Commission can then make a best interest determination in proceeding with establishing a Town Police Department. The Needs Assessment will include an evaluation of the cost for services of the current outsourced police operations, a canvassing of the community, including residents and business owners, and gaining an understanding of the community's policing needs. The anticipated completion time for the Needs Assessment is approximately 180 days. The Vendor will provide the Town with a report containing the details of what is needed for the new Police Department (see "Goals" section below and attached Project Timeline). The anticipated completion time for the Final Report is approximately one year. Although some or all of the information needed to complete this project may be gathered in less time, accordingly, the completion of the entire project may take between 12 and 18 months after acceptance of the Proposal. Please refer to the attached Project Timeline for additional information.

PROJECT OBJECTIVE

The Project Objective of this Proposal is to provide the Town with the necessary information and recommendation(s) for establishing a Town Police Department. By having the necessary data, the Town's legislative body will be able to make an informed decision on this matter.

GOALS

Goal #1:

To conduct a Needs Assessment for providing the Town with a recommendation for proceeding with having its own Police Department. The Assessment will evaluate the current outsourced operation pricing and services, a a canvassing of the community, including residents and business owners, and gaining an understanding of the community's policing needs. (*Estimated completion time: 180 days).*

Goal #2:
To provide the Town with the legal requirements (State Statute) for the new Police Department *(Estimated completion time: 60 days).*

Goal #3:
To provide the Town with an organizational chart for the structure of the new Police Department *(Estimated completion time:60 days).*

Goal #4:
To provide the Town with recommendations for the recruitment of the new Chief of Police, including recommended qualifications *(Estimated completion time: 90 days).*

Goal #5:
To provide the Town with requirements and recommendations for the hiring of officers *(Estimated completion time: 90 days).*

Goal #6:
To provide the Town with requirements and recommendations for officer training *(Estimated completion time: 90 days).*

Goal #7:
To provide the Town with recommendations for officer accountability, community policing strategies, and disciplinary penalty schedules *(Estimated completion time: 90 days).*

Goal #8:
To provide the Town with recommendations on how citizens may contact the new Police Department. *(Estimated completion time: 180 days).*

Goal #9:
To provide the Town with a review of the new Police Department's Departmental Orders (DO's). This Proposal does not include the preparation, creation, or writing of any Departmental Order(s). The new DO's are to be prepared by another vendor to be contracted by the Town. The Vendor recommends that the DO's also be reviewed and approved by the Town's Attorney. *(Estimated completion time: 120 days after submission to the Vendor by the other vendor).*

Goal #10:
To provide the Town with a review of the new Police Department's Standard Operating Procedures (SOPs). This Proposal does not include the preparation, creation, or writing of any Standard Operating Procedure(s). The new SOP's are to be prepared by another vendor contracted by the Town. The Vendor recommends that the SOP's also be reviewed and approved by the Town's Attorney. *(Estimated completion time: 120 days after submission to the Vendor by the other vendor).*

Goal #11:
To provide the Town with projected start-up costs for the new Police Department *(Estimated completion time: 180 days).*

Goal #12:
To provide the Town with projections for the annual operating costs/budget of the new Police Department *(Estimated completion time: 180 days).*

Goal #13:
To provide the Town with assistance in identifying Town property and/or facilities that may be used by the new Police Department in an effort to reduce expenses *(Estimated completion time: 180 days).*

Goal #14:
To provide the Town with the requirements of the Florida Department of Law Enforcement for operating the Police Department. *(Estimated completion time: 180 days).*

Goal #15:
To provide the Town with recommendation(s) of possible vendors for specialty equipment *(Estimated completion time: 12-18 months-included in the Final Report).*

Goal #16:
To provide the Town with a Final Report with applicable attachments *(Estimated completion time: 12-18 months).*

PROFESSIONAL EXPERIENCE AND CREDENTIALS

Please refer to attached Resume.

PROPOSAL COST

The total cost of this proposal is $24,650.00 (twenty-four thousand six hundred fifty dollars).

Thank you for the opportunity to provide the Town of Pembroke Park with a proposal for establishing an-house Police Department.

Roman Martinez
Law Enforcement Consultant
Roman.martinez1@outlook.com
Telephone: 305.970.6710

ROMAN MARTINEZ

(305) 970-6710
Roman.martinez1@outlook.com

Executive Profile

- Self-motivated, results driven, high energy, dependable, innovative, approachable individual with excellent organizational, managerial and interpersonal skills.
- Experienced in dealing with multicultural organizations and communities, skillful at communicating complex ideas and information in multiple languages.
- Experienced at creating, revising, and reviewing law enforcement policies.
- Highly skilled manager of people and situations with the mental aptitude and flexibility to motivate people and encourage collaboration and productive behavior.
- Excellent ethical decision-maker, highly skilled at project management, and operational and strategic planning, able to handle sensitive information confidentially.
- A fair and equitable leader with exceptional people skills.
- An effective communicator with excellent oral and written communication skills.

Areas of Expertise

- Decision making and problem solving
- Turnaround and crisis management
- Relationship and team building
- Writing, revising, and reviewing policies
- Community/customer relations
- Creating new organizational elements

Professional Experience

City of Miami Police Department - Miami, Florida **- 1980 – 2020**

Supervised, managed, and trained subordinates on current law enforcement best practices. Oversaw over 250 patrol officers, supervisors, managers, and civilian employees through day-to-day operations and protracted community projects. Attended numerous community meetings. Attended and conducted presentations during executive meetings. Ability to handle information confidentially. Oversaw the Professional Compliance Section. Prepared and revised policies, assisted unit commanders with creating or revising policies. Ensured compliance with required standards for the Department's national accreditation. Created, oversaw, and chaired the High Liability Review Board. Managed and directed staff inspections. Coordinated, planned, directed, and managed all elements and activities required for a large conference of national and international law enforcement executives. Prepared employee evaluations and conducted performance and counseling meetings with subordinates. Attended extensive supervisory, management, leadership and team building training courses. Oversaw building maintenance operations and personnel, and preliminary design of forensic lab.

2016 – 2020 **Reserve Officer –** Perform volunteer law enforcement tasks as directed by the Department.

2012 – 2016 **Major – Professional Compliance Section**

- Created and commanded a new section to develop effective organizational policies and training procedures to ensure adherence to recognized modern law enforcement practices.
- Developed, implemented and oversaw a new function to review high liability events to improve the effectiveness and efficiency of departmental policies and training procedures.

- Critically evaluated sensitive administrative, statistical, financial, and internal investigative reports to serve the needs of the organization.
- Review existing Departmental Orders, revise and rewrite policies, as needed.
- Review existing Standard Operating Procedures, revise and rewrite policies, as needed.
- Assisted Section and Unit Commanders in writing or revising new or existing policies.
- Developed new Departmental Orders as needed or as requested by the Chief of Police.

2011 – 2012 **Major – South District Substation**

- Managed and directed the operations of the Patrol Division's largest area, the South District.
- Managed over 250 sworn and civilian employees to serve over 180,000 residents, visitors and business owners in a diverse socio-economic and multicultural community.
- Reviewed existing Departmental Orders, revise and rewrite policies, as needed.
- Reviewed existing Standard Operating Procedures, revise and rewrite policies, as needed.
- Implemented community Roll Calls as a method for improving workforce effectiveness and efficiency while providing high police visibility to promote community policing principles.

2009 – 2011 **Major – Special Investigations Section**

- Managed, directed, and coordinated high level narcotics, terrorism, intelligence, dignitary protection, money-laundering and bomb squad related investigations.
- Reviewed existing Departmental Orders, revise and rewrite policies, as needed.
- Reviewed existing Standard Operating Procedures, revise and rewrite policies, as needed.
- Approved and reviewed monthly expenditures and reconciliation for investigative fund.
- Oversaw administration of protracted complex investigative funds in excess of $500,000.
- Held FBI "SECRET" Clearance through two cycles.

2005 – 2009 **Captain – Deputy Commander Criminal Investigations Section**
2002 – 2005 **Captain – Deputy Commander Special Investigations Section**
2001 – 2002 **Captain – Deputy Commander Support Services Section**
1998 – 2001 **Captain – Deputy Commander South District Substation**

1996 – 1992 **Lieutenant –** Commander Investigations Unit, Juvenile Investigations Unit
Commander Community Relations Unit and Central District Patrol

1989 – 1992 **Sergeant –** Supervisor – South District Patrol

1985 – 1989 **Officer –** Training Unit
1980 – 1985 **Officer –** Patrol

Professional Licenses

- Florida State Law Enforcement Certification
- Florida State Law Enforcement General and Firearms Instructor Certification

Education

- Bachelors Liberal Studies, Barry University, 1995

Training

- FBI National Academy (Executive Management Training)
- Southern Police Institute (Executive Management Training)
- DEA Drug Unit Commanders Academy (Executive Management Training)

Memberships

- U.S. Coast Guard Auxiliary

References

- Available upon request

PEMBROKE PARK PROJECT TIMELINE	
GOALS	ANTICIPATED COMPLETION TIME
To provide the Town with the legal requirements (State Statutes) for the new Police Department. (Goal 2)	60 days
To provide the Town with an organizational chart for the structure of the new Police Department. (Goal 3)	60 days
To provide the Town with recommendations for the recruitment of the new Chief of Police, including recommended qualifications. (Goal 4)	90 days
To provide the Town with requirements and recommendations for the hiring of officers. (Goal 5)	90 days
To provide the Town with requirements and recommendations for officer training. (Goal 6)	90 days
To provide the Town with recommendations for officer accountability, community policing strategies, and disciplinary penalty schedules. (Goal 7)	90 days
To provide the Town with a review of the Departmental Orders (DO's). DO's are to be prepared by another vendor. NOTE: DO's need Town Attorney's review/approval. Please see Proposal. (Goal 9)	120 days after submission to the Vendor by the outside vendor.
To provide the Town with a review of the Standard Operating Procedures (SOP's). SOP's are to be prepared by another vendor. NOTE: SOP's need Town Attorney's review/approval. Please see Proposal. (Goal 10)	120 days after submission to the Vendor by the outside vendor.
To conduct a Needs Assessment for providing the Town with a recommendation for proceeding with having its own Police Department. The Needs Assessment will evaluate the current outsourced police operation pricing and services, a canvassing of the community, including residents and business owners, and gaining an understanding of the community's policing needs. (Goal 1)	180 days
To provide the Town with recommendations on how citizens may contact the new Police Department. (Goal 8)	180 days
To provide the Town with projected start-up costs for the new Police Department. (Goal 11)	
To provide the Town with projections for the annual operating cost/budget of the new Police Department. (Goal 12)	180 days
To provide the Town with assistance in identifying Town property and/or facilities that may be used by the new Police Department in an effort to reduce expenses. (Goal 13)	180 days
To provide the Town with the requirements of the Florida Department of Law Enforcement for operating the Police Department. (Goal 14)	180 days
To provide the Town with recommendation(s) of possible vendors for specialty equipment (included in Final Report). (Goal 15)	12-18 months
To provide the Town with a Final Report with applicable attachments. (Goal 16)	12-18 months

TOWN OF PEMBROKE PARK
Workshop Commission Meeting
Minutes of October 2, 2019

CALL TO ORDER 6:15 P.M.

PLEDGE OF ALLEGIANCE: Mayor Mohammed

ROLL CALL:

Mayor Mohammed; Vice Mayor Clark; Clerk Commissioner Jacobs; Commissioner Cohen; Commissioner Dieuveille

Attorney Ryan; Town Manager Muse – Salters; Assistant Town Manager Daughtrey; Assistant Finance Director Taubenfeld; Deputy Town Clerk Natasha Joseph; Public Services Director Larson; Chief Code Officer Louis; Fire Safety Chief Kane; Consultant Planner Miller; Lobbyist Sigerson; BSO Liaison Chief Stephanie Coker; Billing Clerk Michelle Grooms

Discussion: Legislative Update – Vice-Mayor Clark /Lobbyist Sigerson

Discussion was held.

Connie Vanassche Lobbyist spoke on record.

Mr. Larson explained that the Proposed Project list was from last year, no changes have been made to the list other than the proposed pricing.

Discussion took place regarding the Education and Motion Facility Grant for the Reserve. Mr. Larson discussed how the implementation and the documentation of the qualifying volume requirement will take place.

Action:
Mayor Mohammed requested Public Works Director Mr. Larson email the Commission an updated copy of the Proposed Project list and the Commission will email rankings back to Mr. Larson by Friday.

Town Manager and Staff were directed to look into the turnstiles at the Parks.

Public Comments:

Business Tax Issue: Carmelite Hyppolite spoke on record.

The City Manager will work with Ms. Hyppolite regarding billing and alcohol issues.

School Zone Safety: Nathaniel Nealy spoke on record.

This item was referred to Public Safety Officer Chief Coker. Mayor Mohammed suggested increasing officer presence and road units.

Mayor Mohammed requested that a Resolution passed that kids crossing MAST arms where a delay stop 4 way red to allow kids cross safety.

FRDAP Grant - Pembroke Park Preserve Improvements: Agro-Eco Food Forest Garden Linear Pathway - Vice Mayor Clark/ Public Services Director Larson

Mr. Larson reported that the FRDAP Grant application is currently being worked on. Additions have been made to add picnic tables, grills and trash cans along the walkway.

Action:
Mr. Larson will be emailing to all interested parties for additional input.

Status of Town Projects - Vice-Mayor Clark/ Public Services Director Larson. Traffic Signalization on County Line Road

Concerns on the safety issue on signalization were discussed. Mr. Larson reported that meetings with the Sheriff's Office are being held addressing the issue of Signalization on County Line Road.

City Manager reported that plans regarding hiring a Town Engineer will be discussed.

Action:
Vice Mayor Clark stated to bring this up at the next MPO Meeting.
Mayor Mohammed had discussion considering a Traffic Resolution passed from the Town regarding children cross walks.
Mayor Mohammed proposed having the Resolution ready for next month to be pushed as a legislative priority.

Approval of Bills $500.00 - Assistant Finance & Budget Director Taubenfled

Reoccurring Bills over $500.00 for FY 2019/20 - Interim Assistant Finance & Budget Director Taubenfled

This item was placed on the Consent Agenda

Finance & Budget Update - Interim Assistant Finance & Budget Director Taubenfled
Discussion: Fiscal Year 2017-18 Audit - Town Manager Muse-Salters/ Attorney Ryan

Business Tax Receipt And Billing Update - Business Tax/ Billing Clerk Grooms

Business owner Luis Tolentino is asking the Commission to waive penalty fee of $61.72

This item was placed on the Consent Agenda

Building Department Update - Interim Building Official Nunez

Ordinance needs to be amended for the flood plan and single family residences.

Code Enforcement Department Update - Chief Code Enforcement Officer Louis

Information Technology Update - IT Director Pakula

Parks Department Update - Parks' Supervisor Mckine

Public Safety-Clerk Public Safety – Clerk Commission Jacobs/ Chief Coker

Fire Safety-Commissioner Dieuveille/ Chief Kane

Safe Neighborhoods

Discussions were held

Meeting Recessed: 8:09 P.M.
Meeting Resumed: 8:27 P.M.

Update on Monitoring of Disaster Debris Removal and Disposal Services- Public Safety Director Larson / Attorney Ryan

Mayor Mohammed requested that an RFP be done for this service.

Global Positioning System - Interim Assistant Town Manager Daughtry / Public Services Director Larson

Mayor Mohammed assigned to Myriam Jacques to work on the GPS for next week.

FRDAP Grant - Pembroke Park Preserve Improvements: Agro-Eco Food Forest Garden Linear Pathway - Vice Mayor Clark/ Public Services Director Larson

Resolution is needed to state that this is part of the Capital Improvement Program. Placed on Next week's Agenda.

International Promotions, Businesses, Community Involvement - Vice Mayor Clark-Town Manager Muse-Salters/ Attorney Ryan

Placed on next week's Agenda

Human Resource Consulting Services - Clerk Commissioner Jacobs / Town Manager Muse-Salters

This item was placed on the next Commission Meeting

Town Contracts - Town Manager Muse-Salters/ Attorney Ryan

Town Managers Office Renovation - Town Manager Muse-Salters

Alcoholic Beverage Sales Extended Hours Licenses - Annual Fees - Consultant Town Planner Miller

Seneca Commerce Center (SCC) - Right-Of-Way encroachment Agreement Consultant Town Planner Miller

Sign Code Analysis- Consultant Ton Planner Miller

This item was placed on next Month's agenda.

Surplus and Salvage Equipment - Public Service Director Larson

Recommendation for Added Units- ITB 19-03 CDBG 44th Year Preserve TOT Lot Playground - Public Services Director Larson

Maryam Jacques will bring Additional paperwork for piece added to next weeks meeting.

Reimbursement of Attorney' Fees for Ashira Mohammed and Howard P. Clark - Attorney Ryan

Proclamations for Domestic Violence Month and Chinese Association of Science Education and Culture- Mayor Mohammed

Proclamations presented next week

Authorizing the Town to go Out for Bids for A Claims Adjuster - Mayor Mohammed

Item placed on next week's agenda

Assistant Town Manager Search - Mayor Mohammed/ Attorney Ryan

Tabulation of Assistant Town Manager was selected.
Item placed on Next week's agenda.

Town Manager Moving Expenses - Town Manager Muse-Salters

Ms. Salters to bring moving expenses receipts to meeting Next week. 9:07

Agreement with Maculele Miami Brazilian Arts Institute Pembroke Park Community garden- Vice Mayor Clark/ Attorney Ryan

Commission and Board meeting Minutes - Deputy Town Clerk Joseph

Clerk to provide Commission with all Meeting minutes from prototype with agenda attached A special meeting to be scheduled for approval.

Interlock Agreement with the supervisor of Elections for Candidate Campaign Finance Reporting Software - Attorney Ryan

Item placed on consent

Policy and Procedures - Town Manager Muse-Salters/ Attorney Ryan

Item to be brought in Next month

Pembroke Park Cares 501 © Update- Attorney Ryan

Attorney Ryan to place a request for the Commission Ethics opinion to verify the Pembroke Park Cares 501

Single use Plastic Bag Imitative- Clerk Commissioner Jacobs

Item to be brought up next month.

Comments:

Manger Retreat to be brought up the next meeting

Commissioner Jacobs requested an Emergency Meeting next Friday at 6:00PM

ADJOURNMENT

With no further items for discuss, meeting adjourned at 9:33 pm. Motion made by Mayor Mohammed motioned to adjourn the meeting. In a roll call vote, the motion passed unanimously.

Commission approved on 1/8/2020

Attest:

(Seal)

Ashira Mohammed, Mayor

Marlen Martell, Interim Deputy Town Clerk

AGENDA ITEM REPORT

To: Town Manager
Subject: Extension of Canopy at Ryan Park
Meeting: DRAFT WORKSHOP COMMISSION MEETING - Apr 08 2020
Department: Administrative
Staff Contact: Howard Clark, Vice Mayor

BACKGROUND INFORMATION:

The Town often holds food giveaway/distribution and cultural events under the L-shape canopy at Ryan park. It is now necessary to increase the shaded square footage area under the canopy thereby keeping staff and the food out of the sun. The project will consist of 1) extending the canopy east and square it off by closing the open portion on the south side, and 2) extending the length of the canopy by placing an additional segment on the north side by the Peninsula fence

FINANCIAL IMPACT:

No quotes yet

RECOMMENDATION:

Motion to approve getting quotes for construction to extend the canopy at Ryan Park

ALTERNATIVES:

Postpone it and continue adding tent to increase the shaded area.

	Status:
Town Clerk, Deputy Town Clerk	Approved - Apr 03 2020
Todd Larson, Public Works Service Director	Approved - Apr 03 2020
Finance director, Finance & Budget Director	Approved - Apr 03 2020
Newall J. Daughtrey, Assistant Town Manager	Pending

LARRY M. SPRING, JR., CPA

CONSULTANT

CONTACT

1717 N Bayshore Dr.
#PHD41
Miami, FL. 33132
LarryMSpring@gmail.com
786-256-1459

MAYOR ASHIRA MOHAMMED

MAYOR • TOWN OF PEMBROKE PARK • 3150 SW 52ND AVENUE • PEMBROKE PARK, FL. 33023

4/8/2020

Dear Mayor Ashira Mohammed,

Thank you for the opportunity to submit this proposal for services during this very difficult time. I applaud your forward thinking and leadership. As you may know I come with a long history of the working with municipalities throughout South Florida. I led the development and implementation of process improvements and financial turnarounds for several cities over the last 17 years, the largest of which included the City of Miami and more recently the City of North Miami.

Today your Town is faced with the need to make process changes made more complicated by the changing economic environment created by the unpredict COVID-19 crisis. I come equipped with the intimate knowledge of the details of the new federal stimulus package, emergency management reimbursement expertise and creative ideas on how to use the tools and resources available to help the Town ride through this crisis and develop strategies for jump starting your local economy once we get to our new normal.

I look forward to working with you and your team. If you have any questions on the attached proposal, I will make myself available to you and the Town staff to further discuss.

Regards,

Larry M. Spring, Jr.

Larry M. Spring, Jr., CPA

Consulting Service Agreement

The following proposal outlines the terms and conditions offered by Larry M. Spring, Jr. ("Advisor") for providing consulting services to the Town of Pembroke Park ("Client')

Services

The Town of Pembroke Park engaged the services of a management consultant to development a process improvement plan for all major functions, inclusive of new policies, procedures, and operating guidelines reflecting best practices for those functions. The consultant completed certain deliverables but was unable to complete the full scope of services in particular the implementation phase due to lack of management stability. As such Advisor is proposing to assist with the implementation phase of the plan with regards to the finance and public works functions including but not limited to the following:

1. Advisor will facilitate the implementation of the recommendations made in consultants final report with respect to finance and public works functions.
2. Work with Mayor and Town staff to develop an updated implementation project plan with new deadlines.
3. Work with Town Commission to make the appropriate legislative changes to achieve best practice internal control and process efficiencies
4. Assist Town staff with finalizing the drafting of new and modified policies, procedures, rules, forms and reports, necessary to achieve best practices, and efficient and enhanced internal control work environment within the specified functions.
5. Develop and facilitate staff training on new processes, procedures, and internal control mechanisms (including continuous monitoring and updates)
6. If applicable assist Town staff with identifying and selecting new or enhanced technology enablers and systems that support the enhanced control environment.

Additionally, in light of the looming financial recession developing as a result of the COVID-19 global crisis, Advisor also proposes to assist the Town develop and implement a financial and economic recovery plan inclusive of but not limited to the following:

1. **Work under the direction of the Acting Town Manager specifically focused on developing short and midterm financial and economic recovery strategies in response to the COVID-19 crisis.**
2. **Perform research on federal, state, and local financial mitigation and grant programs that can used to subsidize city financing and cash flow needs.**
3. **Work with City staff, attending meetings, and prepare reports as maybe necessary.**
4. **Perform any additional assignments as maybe directed by the Acting Town Manager.**

Project Cost

The project cost is based on an anticipated engagement date of April 30, 2020.

The detailed cost proposal is as follows:

STAFF	RATE	HOURS	TOTAL
Principal in Charge	$200	90	$18,000
Project Manager	$165	90	$14,850
Subject Matter Expert(s)	$135	180	$24,300

Consultant Fees

Consultant 360 hours[1]	$57,150
Advisor Administrative Fee (10%)	$ 5,700
TOTAL	**$ 62,850**

Maximum contingency expenses up to **$ 2,150**

Total contract not to exceed **$65,000**

Administrative fees include, but are not limited to reproduction, postage, shipping and other routine office support functions.

[1] The Consultant hours are estimated, and subject to change based on site conditions, record keeping, and availability of information.

Advisor will invoice the Town for up to 25% of professional fees ($16,500) at the inception of work and will progress bill for services rendered up to 90% of total fee. Final invoice for remaining professional fees for services rendered will be issued to the Town upon completion of work. Advisor's payment terms are net 20 days.

In the event that additional meetings or additional hours are required to complete the scope of work, they shall be deemed additional consulting services and must be approved by the Town in writing. Additional time will be billed at the rates shown above.

SCHEDULE

1. Planning and preparation (off site work) will commence immediately upon the Client's approval and signature of the Advisor's proposal, unless another date no later than April 30th, 2020 is designated in writing by the Client, as the commencement date.

2. Work is anticipated to last for a period of 8 weeks, subject to change based on availability of Town Staff.

Time for Performance of Duties

Notwithstanding any other term or condition of this Agreement, Client specifically acknowledges that Advisor has other clients and/or outside employment. Advisor shall have control over the time and manner of performing its duties described in the "Services" Section and shall make available such time as it, in its sole discretion, shall deem appropriate for the performance of its duties under this agreement.

Term and Termination

This agreement shall become effective upon execution of this document and shall remain in full force and effect until terminated by either party. Either party may terminate this agreement with ten (10) days written notice delivered to the address provided herein. As a part of termination process, Client commits to delivering payment to Advisor for all outstanding invoices and cost.

Relationship

Advisor shall perform its services hereunder as an independent contractor and not as an employee of the Client or an affiliate thereof. It is expressly understood and agreed to by the parties hereto that the Advisor shall have no authority to act or, represent or bind the Client or any affiliate thereof in any manner, except as may be agreed to expressly by the Client in writing from time to time.

Amendment and Entire Agreement

The terms of this agreement may only be amended through written authorization by both parties. The terms included herein represent the entire agreement between the parties. They further replace and supersede any consulting service agreement or understanding that has previously existed between the parties.

Confidentiality with Client Matters

In the course of this Agreement, Client will share confidential information with Advisor. Advisor shall maintain any such information in the strictest of confidence. Confidential information shall only be used for the purposes of performing services on behalf of Client. Advisor shall limit its sharing of information to only those employees, directors and advisors who have a specific need to know for the purpose of delivering services to Client. The restrictions on confidential information shall not apply to information that (1) is or becomes a part of the public domain through no fault of Advisor or (2) was disclosed to Advisor by a party whom to Advisor's reasonable knowledge is not bound by any form of confidentiality restriction.

Indemnification

Except as to the sole negligence or willful misconduct of Advisor, Client shall defend, indemnify, and hold harmless Advisor, its officers, employees, agents, and volunteers, from any loss, damage, claim for damage, liability, expense or costs, including attorney's fees, which arise out of, or are in any way connected with performance of the Services or any other work by Advisor pursuant to the terms of this Agreement. This provision applies to Services and work provided by Advisor, Advisor's employees, agents or sub-consultant. This section shall survive termination of this Agreement.

No Guaranteed Result

Client acknowledges and agrees that Advisor does not have control over third party decision makers, and therefore Advisor makes no representations, warranties or guarantees that it can achieve any particular results. Advisor, however, shall act in good faith toward the performance of its duties described above.

Governing Law
This Agreement shall be deemed to be a contract made under the laws of the State of Florida and for all purposes shall be construed in accordance with the laws of said State.

Authorization
The undersigned signatories are fully authorized by each respective organization to bind the party to the terms of this agreement.

Assignment
Written authorization from the non-assigning party is required prior to assignment of this agreement. Such authorization cannot be unreasonable conditioned, delayed or withheld.

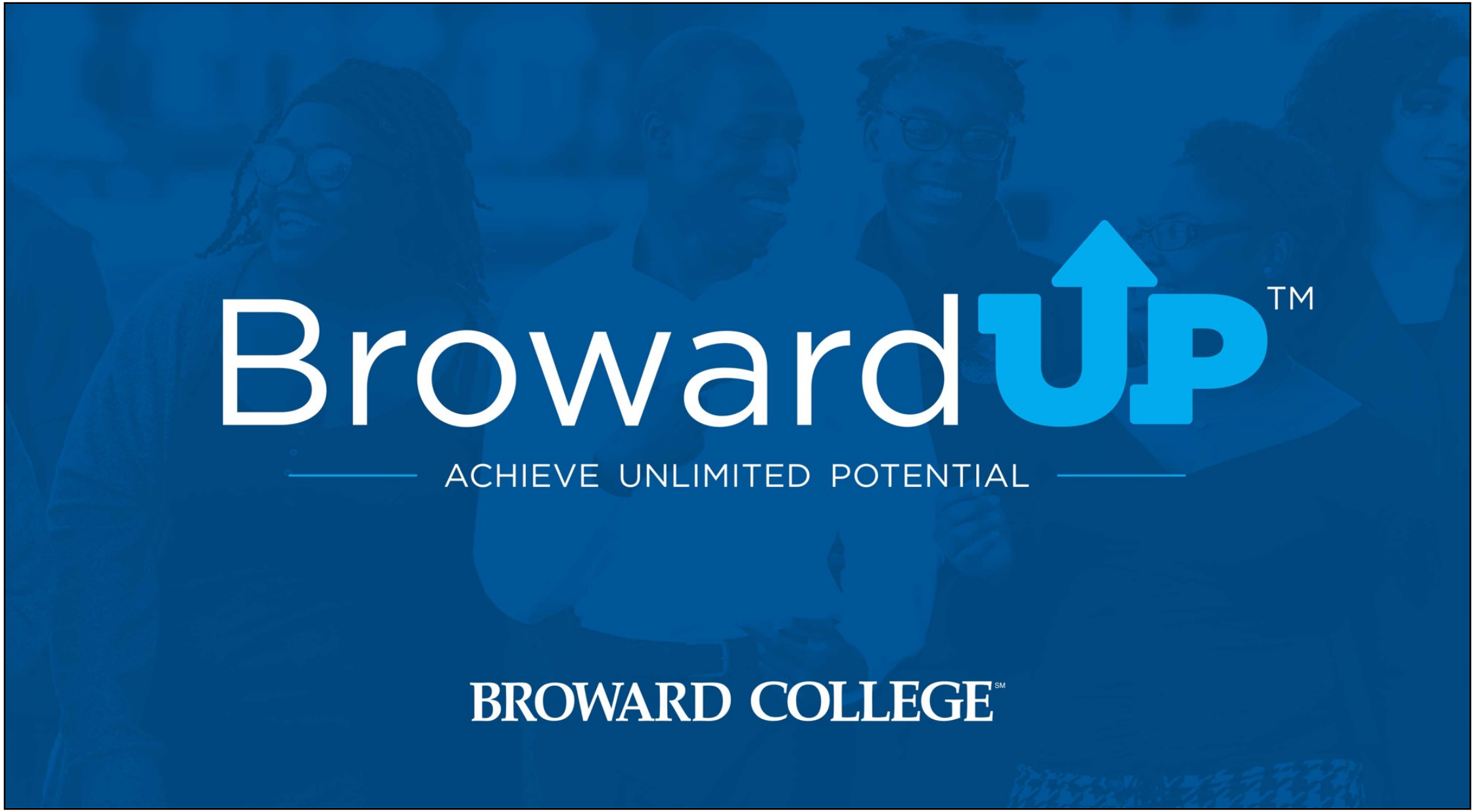
Delivery of Notice
All notices will be sent via certified mail or overnight courier such as Federal Express, to

Advisor:
Larry Spring
1717 N Bayshore Dr
#PHD41
Miami, FL 33132

Client:
Newall Daughtrey
Assistant Town Manager
Town of Pembroke Park
3150 SW 52nd Ave.
Pembroke Park, FL 33023

IN WITNESS THEREOF, this Agreement is executed on the dates below and effective on the dates set forth above.

"CLIENT"	"ADVISOR"
Newall Daughtrey Acting Town Manager	Larry M. Spring, Jr.
By _____ Signature	By_____ Signature
_____ Title	_____ Title
_____ Date	_____ Date


BrowardUP™
ACHIEVE UNLIMITED POTENTIAL
BROWARD COLLEGE℠

BrowardUP™

ACHIEVE UNLIMITED POTENTIAL

Broward College OVERVIEW

63,667

STUDENTS ENROLLED

5,167

FULL-TIME AND PART-TIME FACULTY AND STAFF

African American students | 16,803

Hispanic students | 19,962

150

COUNTRIES REPRESENTED

50

LANGUAGES SPOKEN

The 2019 Top 100 Degree Producers Survey ranks Broward College *SEVENTH* in America in awarding degrees to Hispanic students, *SECOND* in awarding degrees to minority students, and *FIRST* in awarding degrees to African-American students from over 2,000 colleges and universities.

Cost for an
IN-STATE ASSOCIATE DEGREE

$117.90
per credit

$7,074/Degree

Cost for an
IN-STATE BACHELOR'S DEGREE

$130.89
per credit

$7,853/Degree

Percent of students eligible for **PELL GRANT**

52%

Over the Last 50 Years . . .

Top 25% of Income Earners

40% 77%

Bottom 25% of Income Earners

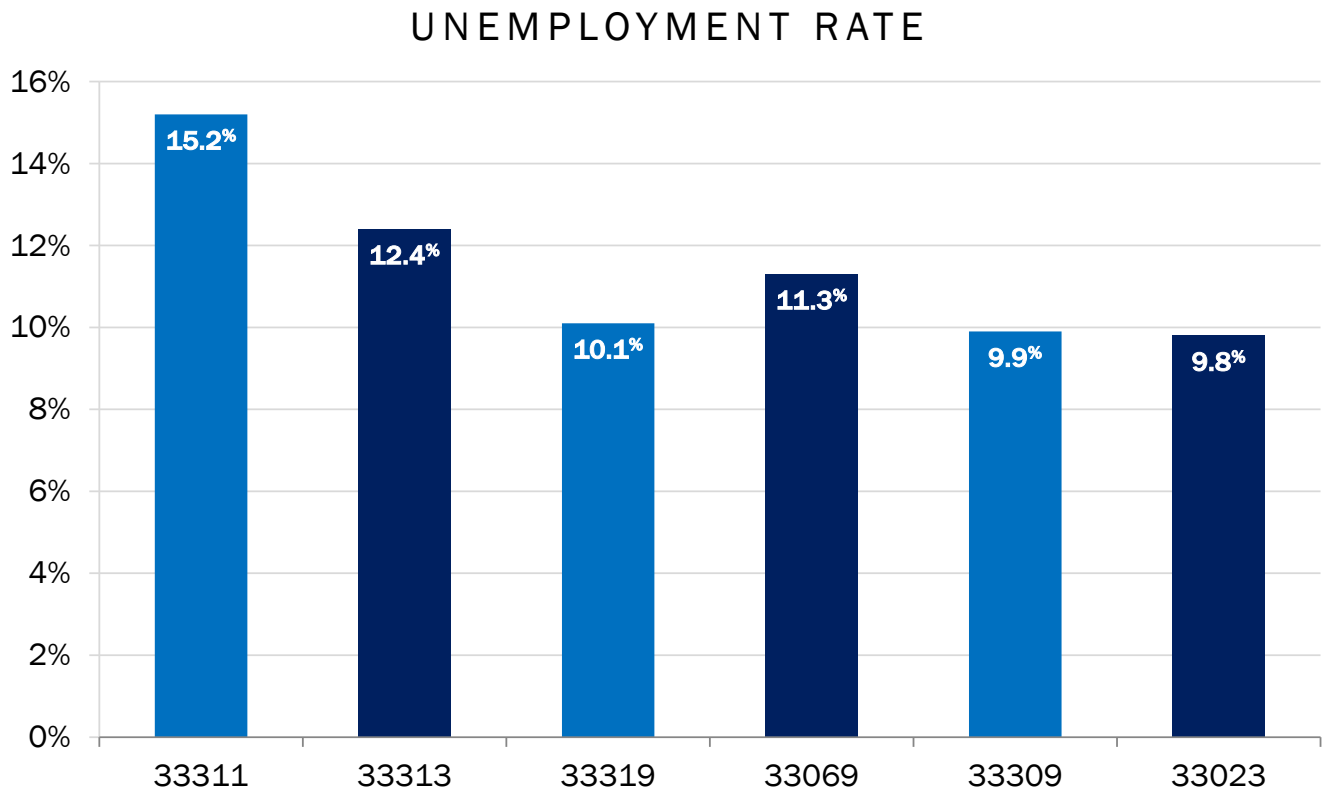
6% 9%

Source: University of Pennsylvania's Alliance for Higher Education and Democracy, Pell Institute for the Study of Opportunity in Higher Education

2.9%

BROWARD COUNTY UNEMPLOYMENT

BrowardUP™



Unemployment Rate

11.6%

Unemployment Count

18,620

Not in Labor Force

92,154

Employment Count

142,496

Civilian Labor Force

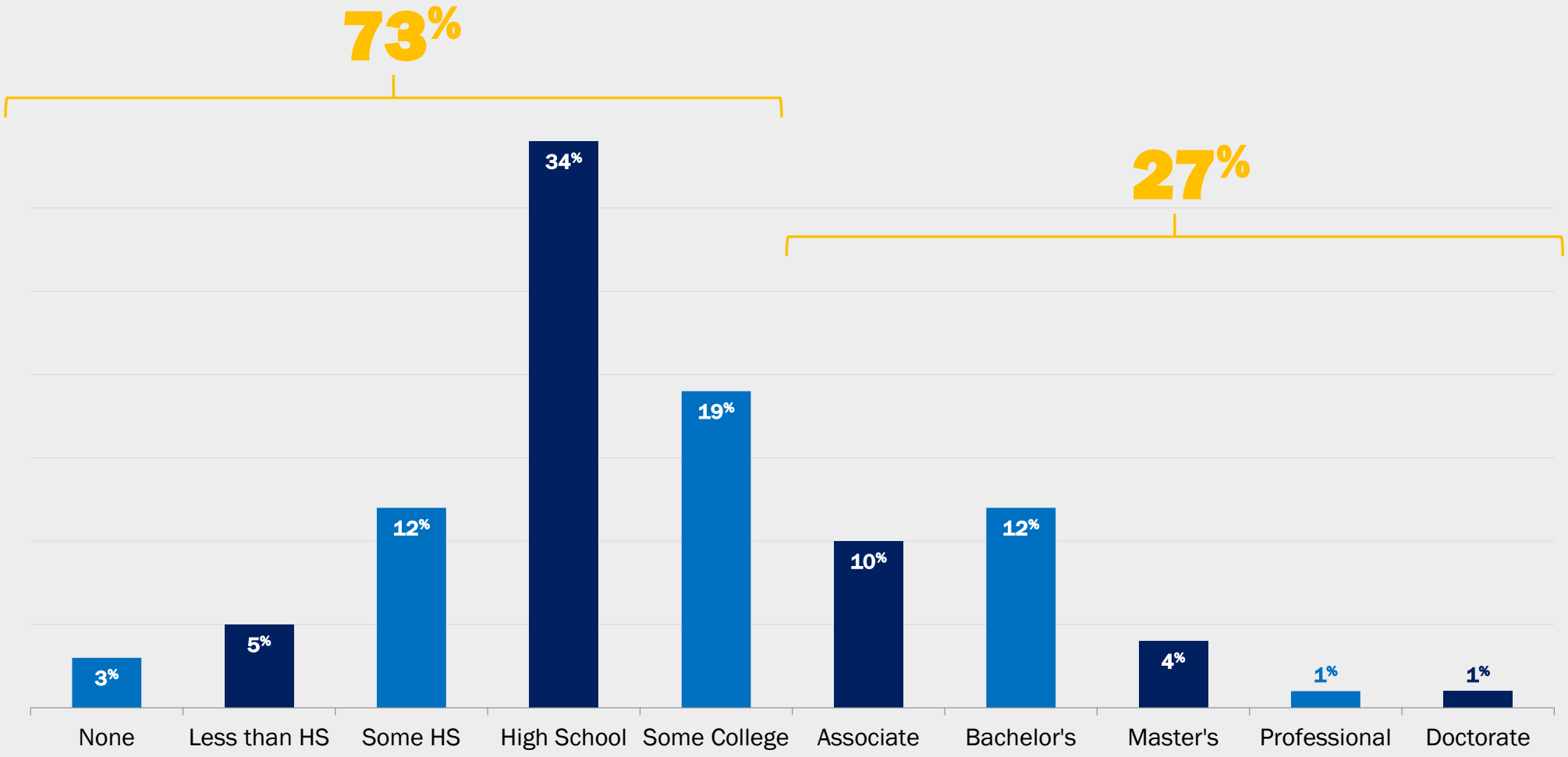
161,116

Population 16+

253,332

EDUCATION ATTAINMENT: ASSOCIATE DEGREE OR HIGHER

Six zip code total: 214,898



Source: https://censusreporter.org/data/table/?table=B15002&geo_ids=05000US12011,04000US12,01000US,860|05000US12011&primary_geo_id=05000US12011#valueType|percentage

EDUCATION ATTAINMENT

Associate Degree or Higher

Age 25-64

USA	Florida	Broward
42.4%	41.3%	43.9%

BrowardUP™
ACHIEVE UNLIMITED POTENTIAL

COMMUNITIES

27%

Source: Georgetown Public Policy Institute Center on Education and the Workforce, 2018

65% of jobs today require education beyond high school

Goals for **Broward UP Communities**

1 Increase college access and attendance

from **3,000+**

2 Improve degree and certificate attainment

from **27%**

(and **43.9%**) + certificates

3 Holistically raise social and economic mobility

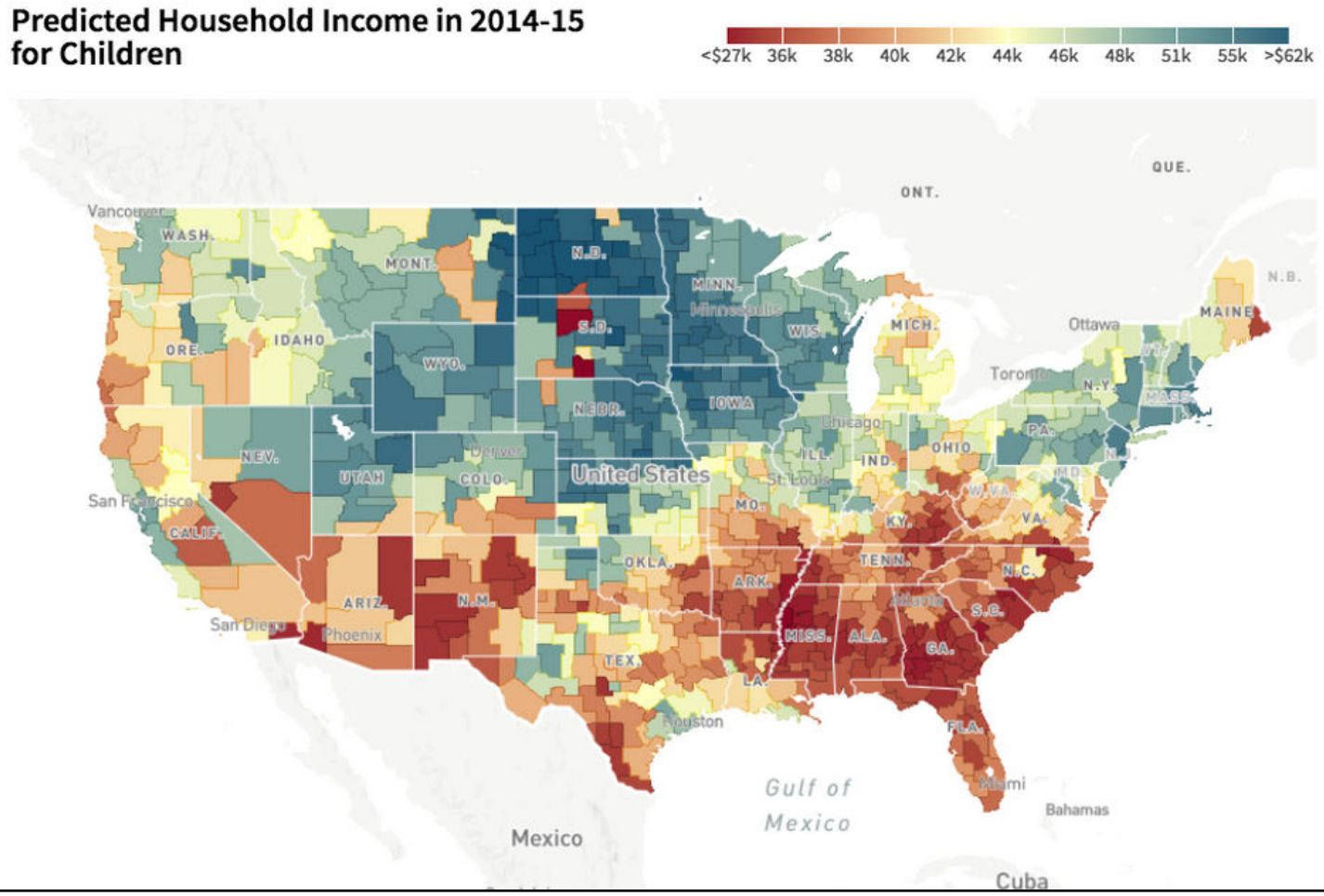
2+ quintiles

from bottom **20%**

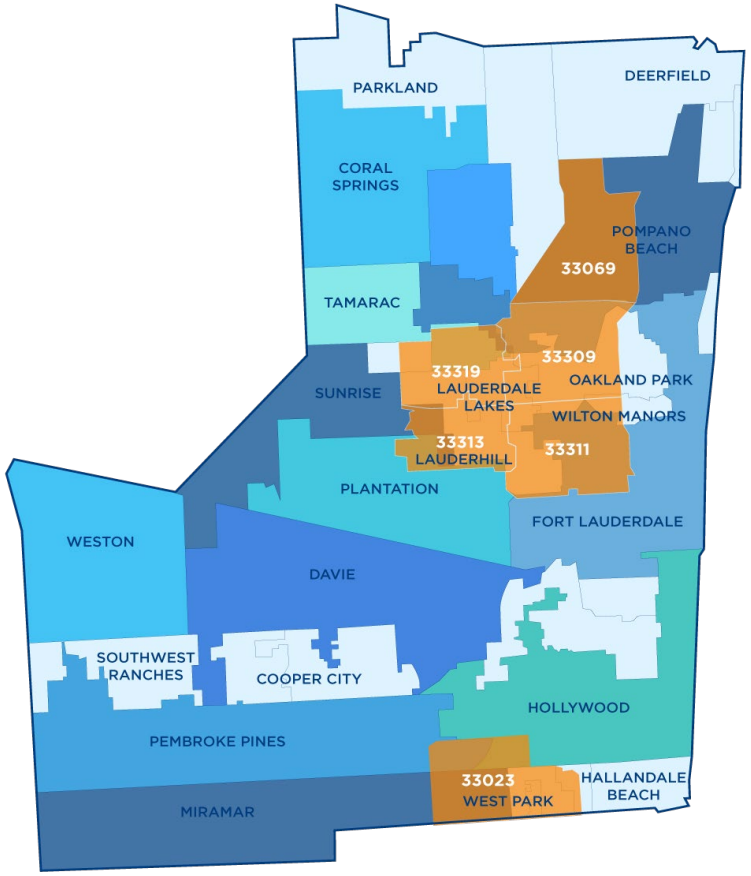
OPPORTUNITY INSIGHTS

Dr. Raj Chetty, Professor,
Harvard University

OPPORTUNITY ATLAS

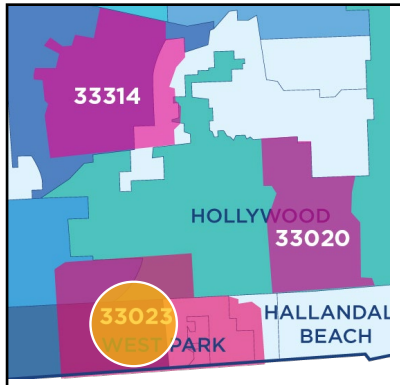


Broward UP Communities



BY THE NUMBERS . . .

- 11.5% Unemployment
- 18,620 People Unemployed
- >92,000 People NOT in the Labor Force
- $30,000 Median Household Income
- 27% Average Attainment Rate of Associate Degree or Higher

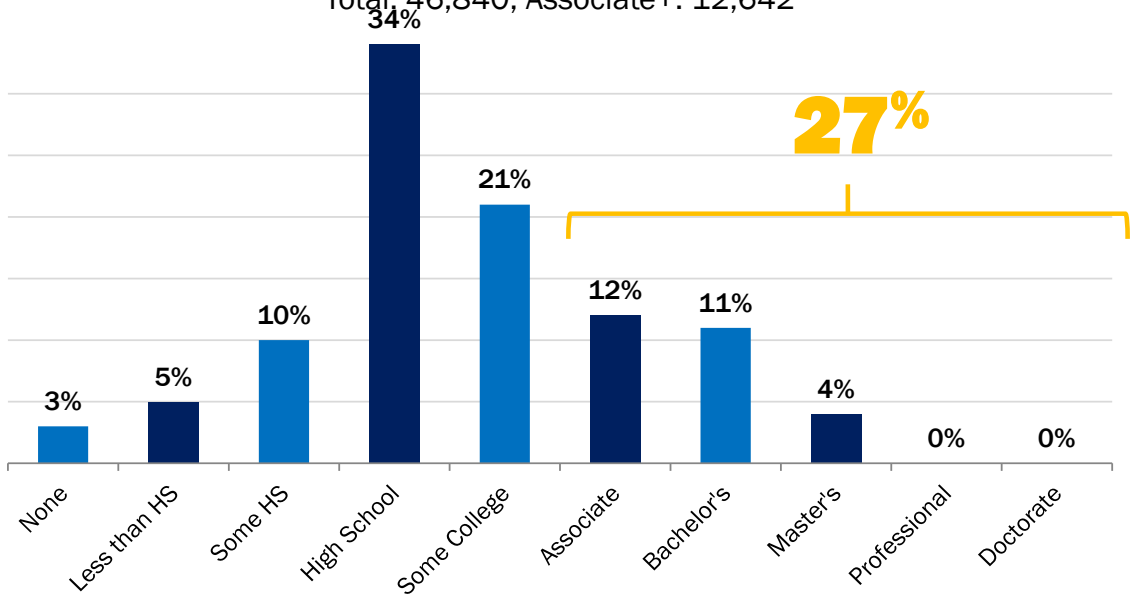


ZIP CODE

33023

EDUCATION ATTAINMENT

Total: 46,840, Associate+: 12,642



Sources: Unemployment | Education Attainment

Unemployment Rate

9.8%

Unemployment Count

3,763

Not in Labor Force

17,976

Median Household Income

$47,284

BROWARD COLLEGE

Students

708

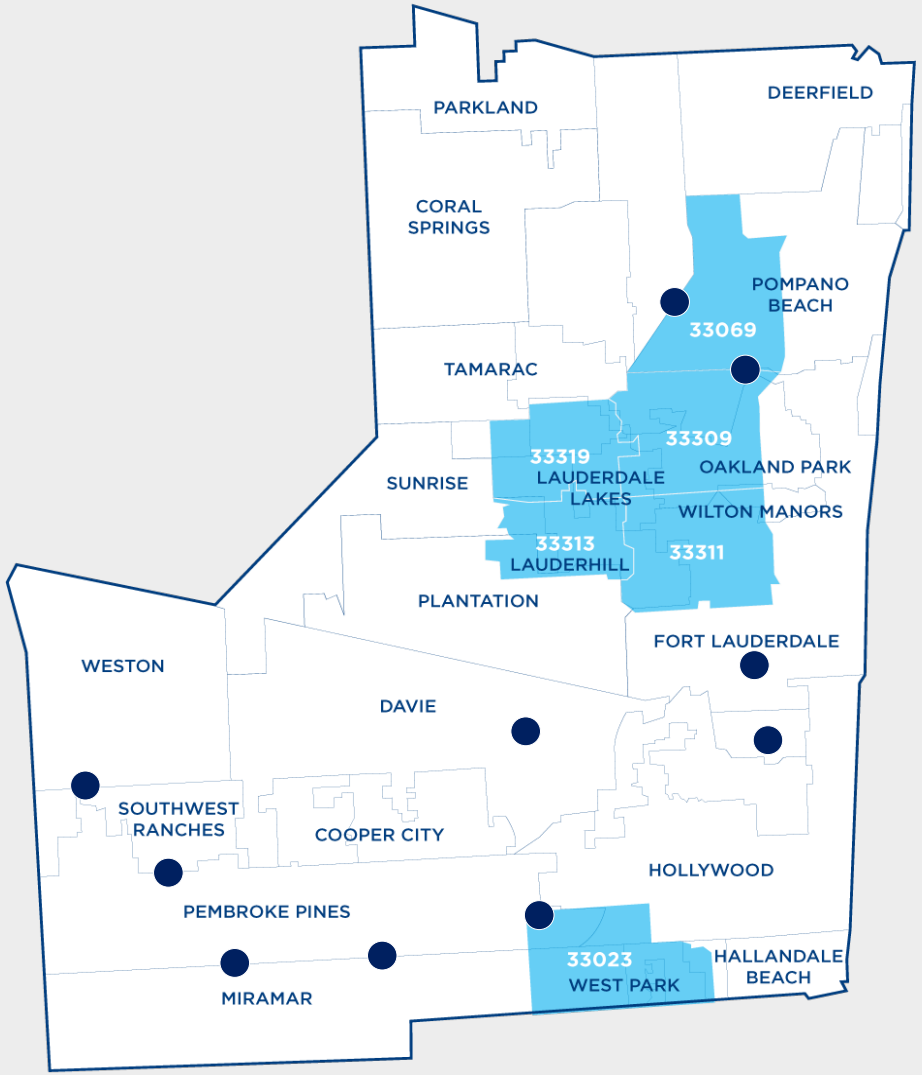
Credit and Non-Credit
FTEB

Employees

111

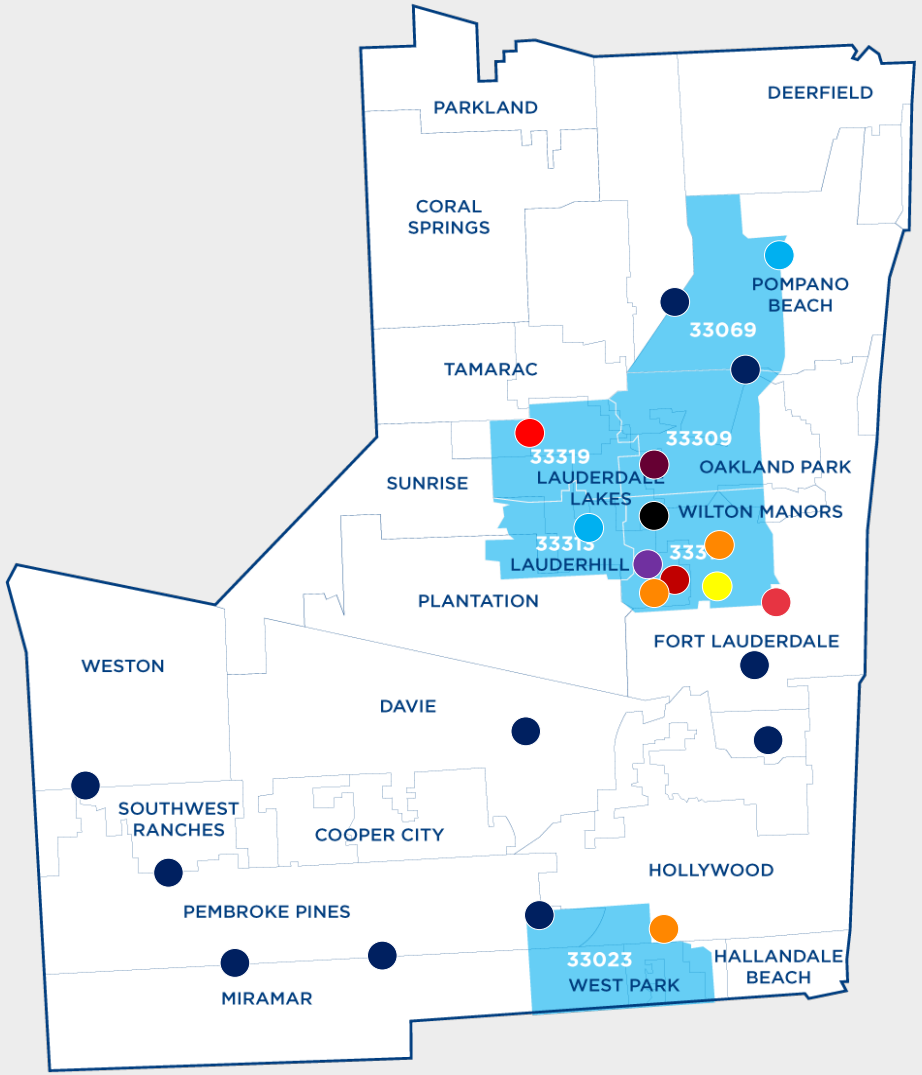
BROWARD COLLEGE℠

LOCATIONS



COMMUNITY & AGENCY MEMBERS

- BROWARD COLLEGE
- Urban League of Broward County
- BOYS & GIRLS CLUBS OF AMERICA
- Jack & Jill Children's Center
- BROWARD COUNTY FLORIDA LIBRARY
- BROWARD county · housing authority
- the YMCA
- HANDY
- FLITE CENTER
- pace Center for Girls



MUNICIPALITIES

Lauderhill
All-America City

LAUDERDALE LAKES
"We Care"
Est. 1961

CITY OF Hollywood FLORIDA

CITY OF WEST PARK
The City of Positive Progression

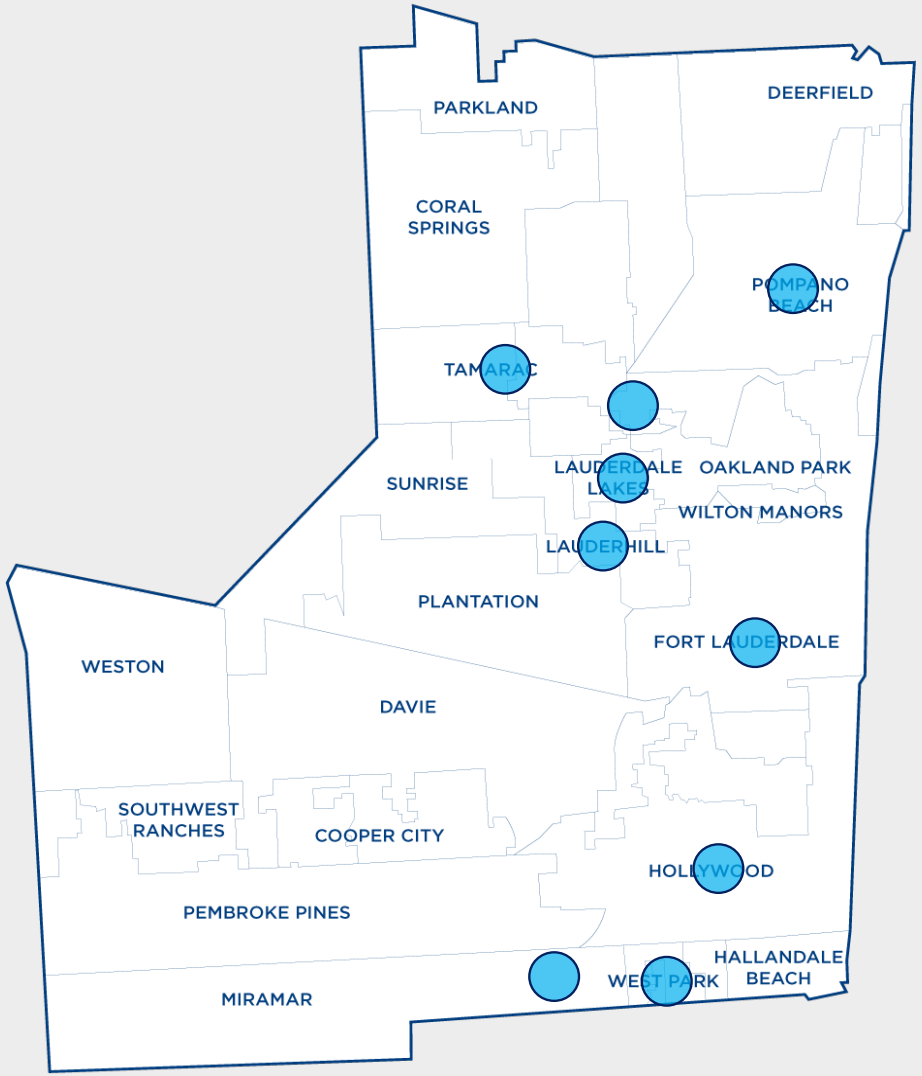
TAMARAC
The City For Your Life

pompano beach
Florida's Warmest Welcome

NLAUDERDALE
A Fun City In The Heart Of Broward

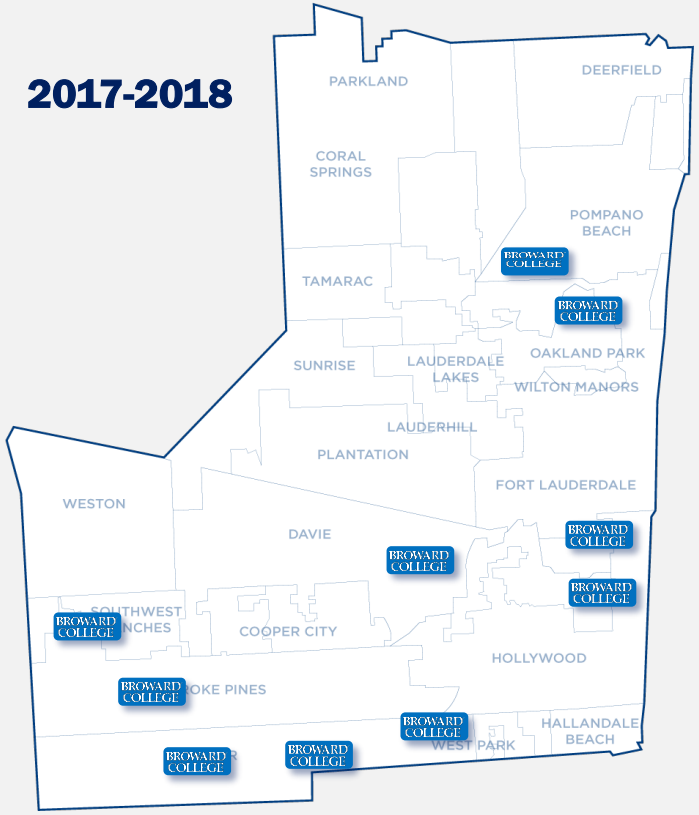
* CITY OF FORT LAUDERDALE

* MIRAMAR
BEAUTY AND PROGRESS
EST 1955



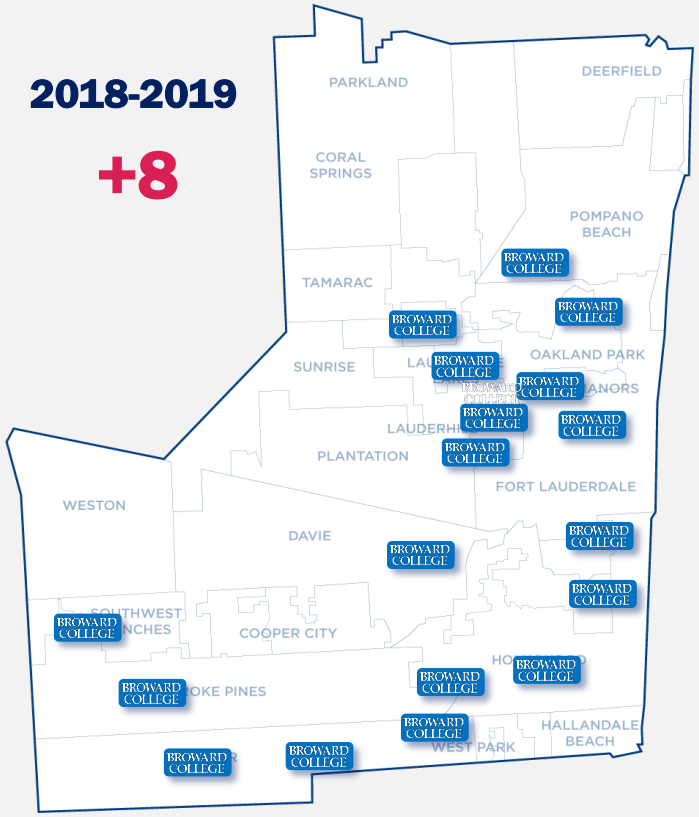
BROWARD UP PENETRATION

2017-2018



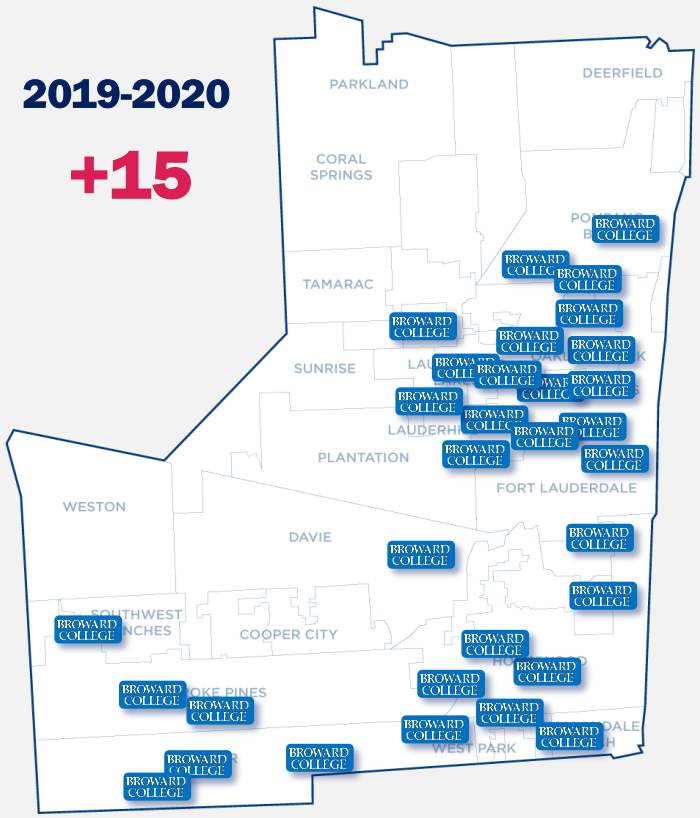
2018-2019

+8



2019-2020

+15



1,088

RESIDENTS IMPACTED SINCE LAUNCH OF BROWARD UP!

BrowardUP™

ACHIEVE UNLIMITED POTENTIAL

Within a year and a half, **over 1,000** students have completed FREE courses in Broward UP Communities, earning certificates and industry certifications

IN-PERSON COURSES

With support from the College's Critical Outreach Response through Education (CORE) grant and the Broward UP Program Fund, the first phase of Broward UP programming consists of noncredit courses leading to Broward College certificate of completion and industry certifications in multiple high-demand areas.

BrowardUP™
ACHIEVE UNLIMITED POTENTIAL

BROWARD COLLEGE℠

In-Person Course Options

- Lean Six Sigma White Belt
- Lean Six Sigma Yellow Belt
- Microsoft Excel Certificate
- Microsoft Excel Certificate Data Analysis Introduction
- Project Management Introduction
- QuickBooks
- Supply Chain Management Principles
- Supply Chain Management Customer Service Operations
- CompTIA A+ Beginner Information Technology Course

ONLINE HEALTH SCIENCE COURSES

The first phase of Broward UP programming consists of noncredit courses leading to certificates and industry certifications in multiple high-demand areas paid from various college grants.

BrowardUP™

ACHIEVE UNLIMITED POTENTIAL

BROWARD COLLEGE℠

Online Health Science Course Options

- Medical Billing & Coding
- Phlebotomy Technician
- Pharmacy Technician
- Personal Care Assistant
- Assisted Living Technician
- EKG Technician
- Dialysis Technician
- Clinical Medical Assistant
- Medical Administrative Assistant
- Dental Assistant Technician

ONLINE COURSES

The first phase of Broward UP programming consists of noncredit courses leading to certificates and industry certifications in multiple high-demand areas paid from various college grants.

BrowardUP™
ACHIEVE UNLIMITED POTENTIAL

BROWARD COLLEGE℠

Online Course Options

- Six Sigma
- Microsoft Excel
- Microsoft Excel (Advanced)
- Microsoft Word
- Microsoft PowerPoint
- Supply Chain Management Principles
- Supply Chain Management Customer Service Operations
- Essential Job Skills Training
- Find that Job & Mastering an Interview
- Study Skills & Everyday Math

WORKSHOPS

Broward UP participants will also have the opportunity to earn a certificate of completion for engaging in a series of "I CAN" college and career readiness workshops.

BrowardUP™
ACHIEVE UNLIMITED POTENTIAL

Workshops

- Myth Busters Information Session: What It Takes To Start, Succeed, and Soar At Broward College
- Land That Job! Cover Letter, Resume, and Interview Preparation
- Earn More: Money Management, Financial Literacy, and Resourcing My Life
- Entrepreneurship: Be Your Own Boss
- Soft Skills

BrowardUP

PARTICIPANT SPOTLIGHT

Denise

Broward UP student seeking a credential to save her job

- Enrolled in Supply Chain Management (SCM) Principles course at the Urban League
- Her company, Atlas, created a new position Export and Billing Compliance Administrator for her
- Now making $50,000/year

MOU CONNECTING THE TOWN OF PEMBROKE PARK & BROWARD COLLEGE

- Identify a **computer lab space** in the Town of Pembroke Park to deliver Broward College programming
- Identify a City **point of contact** for programming
- Design and deliver Broward College **on-site workshops**, courses, and training programs for Pembroke Park residents
- Develop **access strategy** for Pembroke Park residents for Broward College degrees
- Build a college and career readiness **campaign**
- Create **entrepreneurial programming** for Pembroke Park residents
- Skill building and degree attainment for **employees**
- **Employer partnerships** with local businesses

BrowardUP™

ACHIEVE UNLIMITED POTENTIAL

Let's join forces to improve social and economic mobility in Broward!

Contact Broward UP Project Manager
Jennifer Saint Louis at jconstan@broward.edu

Get social with us at

/groups/browardup

@upbroward

@broward_up

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of 2019, between The District Board of Trustees of Broward College, Florida ("College") and The Town of Pembroke Park ("Municipality") (collectively, the "Parties")

I. BACKGROUND

The Town of Pembroke Park faces the future with a confidence born of strategic planning and careful financial management. Town leaders have established a Planning Consultant along with the Planning and Zoning Board that insures building conditions and quality of life will remain as the residents all know and have come to enjoy. The Mayor and the Town Commission along with the Town Manager and other staff of development professionals are working to help make the future of Pembroke Park one of vitality and beauty in the South Broward community. Improved human and social services are objectives the Town will continue to meet.

The College provides higher education and technical and occupational training for the residents of Broward County. As the first public higher education institution in the county, the College functions as the principal provider of undergraduate higher education for the residents of Broward County. Where appropriate, these programs are articulated with the public school system, area vocational schools, and upper-level institutions to ensure that students can move smoothly from one system to another.

Serving as the principal entry level institution for higher education in its district, the College is also a source of cultural enrichment; a resource for community development, business, and industry; and an avenue for continued skill upgrading and enhancement, and retraining. As a public comprehensive state college, the College serves as a significant leader of America's effort to enhance higher education.

II. PURPOSE

The College and the Municipality enter into this MOU for the purpose of establishing a framework for a relationship under which the College and the Municipality will cooperate in the areas mutually beneficial to both Parties.

III. GENERAL TERMS

This MOU does not obligate the College or the Municipality to any expenditure of funds. The duration of this MOU is two years from the date of signing. It may be renewed for an additional two years by written mutual consent by the Parties. Each Party may withdraw from this agreement by providing 60 days written notice.

The Parties shall be considered independent contractors and nothing contained herein shall be interpreted to establish any relationship other than that of an independent contractor between the Parties and their respective employees, agents, subcontractors or assigns, during or after the term of the MOU. Both Parties are free to enter into agreements with other Parties for similar services.

The Parties to this MOU shall not discriminate against any employee or participant regarding responsibilities and obligations under this MOU because of race, age, religion, color, gender, national origin, marital status,

disability, sexual orientation or any other basis prohibited by law. Nor shall the Parties deny participation in or benefits arising out of this MOU to any student, employee or participant or otherwise subject anyone to discrimination in any activity hereunder. The Parties shall take all measures necessary to effectuate these assurances.

Each Party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this MOU.

IV. SCOPE

The goal of this MOU is to connect municipal and community agency services to education. Areas of cooperation may include, but will not be limited to the following:

1. Design and deliver Broward College on-site workshops, courses and programs for Pembroke Park citizens as outlined in Appendix A
2. Deliver certification training on identified Town locations aligned to employment within the area
3. Develop access strategy for Town employees and citizens for Broward College degrees and certifications
   as outlined in Appendix A
4. Build a college and career readiness campaign for Town of Pembroke Park residents and employees
5. Create entrepreneurial programming for Town of Pembroke Park residents as outlined in Appendix A
6. Collaboratively work with the Town of Pembroke Park and proximate employers to create an employee pipeline for job placement.

V. THE COLLEGE'S RESPONSIBILITIES

Provide a single point of contact for connecting the Town of Pembroke Park to the capabilities outlined above and in Appendix A.

VI. THE MUNICIPALITY'S RESPONSIBILITIES

Provide a single point of contact for connecting the Broward College to the capabilities outlined above and in Appendix A

College	Municipality
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

MEMORANDUM OF UNDERSTANDING

Appendix A

Broward College and Town of Pembroke Park

IV. Purpose and Scope

To connect Town of Pembroke Park residents and employees to educational opportunities, Broward College and the Town of Pembroke Park have outlined areas of cooperation that may include, but not be limited to the following:

1. Design and deliver Town of Pembroke Park workshops on college and careers for residents including but not limited to the following areas:
    a. Funding for College
        i. FAFSA Workshops
        ii. Scholarship Search
        iii. Work/School/Life Balance
    b. Career Exploration and Development
        i. Careers for the New Economy
        ii. Picking a Major to Meet your Needs
    c. College Readiness
        i. On-Line Student Strategies
        ii. Academic (math, reading, writing) refresher workshops
        iii. Study skills and time management workshops
        iv. Accelerate your Degree with Credit for Prior Learning

2. Develop programs and certifications for on-site delivery for residents of the Town of Pembroke Park, this may also include the use of locations in surrounding Cities
    a. Conduct community focus groups on education and training needs of residents
    b. Analyze business climate and local employer needs
    c. Deliver credit and non-credit training options that lead to employment, including but not limited to
        i. MS Excel Certificate
        ii. CAPM (Certified Assoc Project Management)
        iii. Lean Six Sigma Yellow and Green Belt Certification
        iv. Substitute Teacher Training
        v. Accounting
        vi. Insurance 4:40 to 2:20 (Reg. Customer Service)
        vii. Mini MBA (Mastery Business Applications)
        viii. IT Programs
        ix. Bookkeeping (AIPB Certification)

3. Deliver training to Town of Pembroke Park employees including but not limited to:
    a. Technology: Microsoft Office i.e. Excel, Power Point
    b. Language Acquisition
    c. Lean Six Sigma Certification
    d. Project Management

4. Develop access strategy for Town of Pembroke Park employees for Broward College degrees
    a. Maximizing the City tuition reimbursement for tuition at Broward College, conduct college readiness workshop, career development and juggling college and work
    b. Gap funding and access to resources, ie. CareerSource Broward training accounts, American Dream and other scholarships
    c. Schedule TRIO College Access Bus visits when applicable
    d. Outreach to residents for Broward College information sessions and selected workshops
        i. Accelerate your Degree with Credit for Prior Learning Workshops
    e. Provide Broward College information on degrees to Town employees and parents
    f. On-site courses for credit or certification
    g. Establish a positive presence for Town employees and community members

5. Create entrepreneurial programming for Town of Pembroke Park residents
    a. Provide opportunities for Town of Pembroke Park residents to access the Innovation Hub at Broward College
    b. Deliver a Start Up Now Accelerator in the Town of Pembroke Park for a cohort of residents
    c. Offer Entrepreneur readiness workshops for residents

6. In partnership with the Town of Pembroke Park, work to establish a training and employee pipeline between Coca Cola and residents in Broward UP Communities

FOOD FOREST NEWLETTER ARICLE

Something very special is happening in Pembroke Park. Something that sets us apart from every other municipality in Broward County, indeed in the entire State of Florida. In fact, it puts our little Town in a very exclusive group of communities in the entire United States. One of only about a half dozen.

What am I talking about?

We in Pembroke Park have established a "Food Forest" within the Town.

So what is a Food Forest and why is it important. Well, let me explain.

US Dept. of Agriculture has designated an area in Pembroke Park around 52nd avenue as a "Food Desert." Some areas of Hallandale Bch Blvd and 48th Avenue.

A Food Desert is an area where the nearest grocery store is a mile or more away, that is not in walking distance and the area is a low income area.

To deal with this problem, I, along with the rest of the Commission, staff and local volunteers have worked to establish a Food Forest to mitigate the ill effects of having a portion of our Town designed a "Food Desert." Some common ill effects found in a Food Desert: diabetes, obesity and malnutrition, to name a few. We are trying to help establish "food stability" and "food security." Especially in light of the new USDA rules affecting the SNAP program.

We are doing this by establishing a Food Forest to provide fruits and vegetables such as, Papayas, star fruit, collard greens, okra, tomatoes, beans, various leafy greens, and lots of other varieties of fruits and vegetables as they come into season.

As the Lead Commissioner for the Food Forest and Community Garden, this project has become so much more than a job/work for me – it is my passion work in the garden and watch these things grow knowing that they will be able to provide so many of our needy residents, such as low income, the mentally challenged, children, veterans, to name a few, with nutritious food that might not otherwise has access to.

I am honored to have this project supported by the Major and Commission.

I am also fortunate to be joined by a growing number of incredibly enthusiastic volunteers from our community! Both individual members of the Agro-Eco Gardens and Educational Center and groups such as the Firefighters of South Florida, Capoeira Maculele, Hands On Broward.

Since August, we have given out over 3000 lbs. of papayas. We have also given out a great quality of okra, star fruit and leafy greens.

Located on 52rd avenue, the Community Garden and Food Forest, sits on 10 acres of green space that the Town acquired through a grant from the Broward County Parks Acquisition Bond. It was designated as Ryan Park and lies next to the Oglesby Preserve which now offers a scenic trail and exercise path. I encourage residents to come out and see the Community Garden – lush and beautiful and now bursting with fruits, vegetables and herbs.

The goals and objectives of our project are multi-purpose: besides providing nutritious fruits and vegetables, the garden and food forest were established to honor the Town's origins as an agricultural community, and further to provide a real hands on educational experience, as well as a unique agri-tourism destination that one can simply walk around and enjoy.

The community garden is currently producing carrots, tomatoes, Chinese Bok Choy (a leafy green), Marigolds, green onions, Malabar Spinach, sweet potatoes, basil, purslane, green pepper, peppermint, spearmint, and chocolate mint, thyme, chives, chard, Everglades Cherry Tomatoes, Purple Collards and Purple Passion Fruit – to name some of the wonderful plants growing in the garden.

As we leave the Community Garden, we first come the Circle of Honor where individuals and groups that have contributed to the garden or supported the Town in a significant way have a palm tree planted in their honor complete with commemorative plaque: County Commissioner Barbara Sharif, South Florida Firefighters, the 2018 Lake Forest Elementary School 5th Grade Class, Capoeira Maculele (the originator of the Community Garden to name a few.

The Food Forest has over 100 exotic fruit trees: various varieties of Papaya trees, Coconut Palms, Star Fruit, Banana, Avocado, Japanese Plum, Jack Fruit, and mango to name just a few.

Structurally, a Food Forest consists of various levels: the Over Canopy which consists of pine and oak trees; the Under Story consisting of some of the taller fruit trees such as the Papaya and Bananas and Palms; the Herbaceous Level which has bush like plants, the Ground Cover – Peanut Grass; Root Zone – Sweet Potatoes; and, Vines.

What further sets us apart is the presence in our orchard of a Burrowing Owl family which is an endangered species. We are truly blessed by the arrival of burrowing owl family. They joined the Pembroke Park family at our invitation. We have created habitat for this endangered species. These owls were in the way of development of a vacant lot in our neighboring city of West Park. We invited Audubon Society to come out and help us build a nesting home for the owls. The funny part is that the Owls came to the Orchard and Food Forest and despite a perfectly pre-prepared home, they picked their own spot!

We now have a staff member who has been approved by the Commission to take classes to receive a designation as a Master Gardener – She will be taking the classes on her own time.

And, at my own expense, I have signed up for further education – taking online courses in permaculture design with the goal of obtaining a Permaculture Design Certificate.

I have invited the Mayor and Commissioners to join me in this project.

No one in Pembroke Park will go hungry. Although, fruit and vegetables will be available to any resident of the Town, one of our main goals is to provide temporary assistance to “food security” challenged residents to help them through a difficult time.

It is always useful to find out what others are doing, so, in the course of developing the Food Forest, we traveled to the Brown’s Mill Food Forest in Atlanta Ga., to see how another city handles establishing a Food Forest. It was a tremendously rewarding experience where we shared experiences and exchanged information with them to our mutual benefit. The Food Forest concept is a very new concept – which puts the little Town of Pembroke Park on the forefront of nutritional urban sustainability.

And finally, success: we are not just talking about eliminating the “Food Desert,” we are doing it! For example, on Saturday, March 22, 2020, (spearheaded by our Mayor) the Town hosted (another in a series of) a Food Giveaway/distribution at the Ryan Preserve. Over 1600 residents from our Town and from the surrounding communities came by to receive fresh fruits and vegetables being distributed to them by the Mayor, Commissioners and Town staff. If that wasn’t enough, the next Saturday, March 28, 2020, again during the continuing Covid19 virus emergency situation – which required National safety measures of following CDC social distancing guidelines as best as we could, we gave out food to over 3000 residents.

The fresh food came from leafy greens and fruit grown in our developing “Food Forest:” the Community Garden and Fruit Tree Orchard plus contribution from “Feeding South Florida,” Farm Share. Food Bank of Broward County and others. One of the things that we learned from our Atlanta experience – which I have told you about previously – is that a Community Garden can’t do it all by itself, to eliminate a “Food Desert,” you have to bring together/marshal resources from various different elements: grocery chains, local markets, the various groups that have organized to eliminate hunger and male-nutrition (that I have mentioned). It is a blueprint for success!

RESOLUTION NO. 2020-045

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA, APPOINTING TONEA NICOLLS-CARY TO THE TOWN OF PEMBROKE PARK CODE ENFORCEMENT BOARD; PROVIDING FOR SEVERABILITY; SUPERSEDING CONFLICTING RESOLUTIONS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the TOWN OF PEMBROKE PARK has heretofore, pursuant to the provisions of Ordinance No. 81-1-1, as amended, created the Town of Pembroke Park Code Enforcement Board; and

WHEREAS, there is currently a vacancy on the Code Enforcement Board; and

WHEREAS, the Town Commission desires to appoint Tonea Nicolls-Cary to the Town of Pembroke Park Code Enforcement Board.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA:

Section 1: That Tonea Nicolls-Cary is hereby appointed as a member of the Town of Pembroke Park Code Enforcement Board, and her term of office will expire on September 30, 2023.

Section 2: That if any clause, section, other part or application of this Resolution is held by any Court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 3: That all Resolutions or parts of Resolutions in conflict herewith be and the same are hereby superseded to the extent of such conflict.

Section 4: That this Resolution shall be in force and take effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 22nd day of April, 2020.

ATTEST:

_____
ASHIRA A. MOHAMMED
Mayor-Commissioner

_____
GEOFFREY JACOBS
Clerk-Commissioner

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RESOLUTION NO. 2020-046

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA, AUTHORIZING THE TOWN TO MAKE AND ENTER INTO AN AGREEMENT REGARDING THE 2020 LOCAL OPTION GAS TAX; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT FOR AND ON BEHALF OF THE TOWN; PROVIDING FOR SEVERABILITY; SUPERSEDING CONFLICTING RESOLUTIONS, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Broward County, Florida enacted an Ordinance pursuant to Section 336.025(1)(b)(2), Florida Statutes, which increased the authority of Broward County to levy a six (6) cents local option gas tax on motor fuel to be used only for transportation expenditures necessary to meet requirements of the capital improvements element of the adopted comprehensive plan; and

WHEREAS, the Town of Pembroke Park is eligible to receive a portion of this local option gas tax when imposed and collected by Broward County; and

WHEREAS, the Town of Pembroke Park has heretofore entered into an Interlocal Agreement with Broward County, and Addendum thereto, relating to the division and distribution of the proceeds of the additional local option gas tax on motor fuel ordinance; and

WHEREAS, the parties hereto desire to further amend said Interlocal Agreement to reflect the change in population of the municipalities in Broward County, with the resulting change in the division of proceeds among the municipalities, and to provide for the further distribution of said local option gas tax pursuant to the formula contained therein.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA:

Section 1: That the Town of Pembroke Park is authorized to make and enter into the

2020 Amendment to the Interlocal Agreement between Broward County and the Town of Pembroke Park, Providing for the Division and Distribution of the Proceeds from the Broward County Additional Local Option Gas Tax on Motor Fuel Ordinance, a copy of the 2020 Amendment to Interlocal Agreement is on file with the Town Clerk, and by reference made a part hereof.

Section 2: That the Mayor is hereby authorized and directed to execute and deliver said 2020 Amendment to the Interlocal Agreement for and on behalf of the Town of Pembroke Park.

Section 3: If any clause, section, other part or application of this Resolution is held by any Court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 4: That all Resolutions or parts of Resolutions in conflict herewith be and the same are hereby superseded to the extent of such conflict.

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

PASSED AND ADOPTED this 22nd day of April, 2020.

ATTEST:

_____
ASHIRA A. MOHAMMED
Mayor-Commissioner

_____
GEOFFREY JACOBS
Clerk-Commissioner

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RESOLUTION NO. 2020-047

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA, AUTHORIZING THE TOWN TO MAKE AND ENTER INTO THE 2020 AMENDMENT TO THE INTERLOCAL AGREEMENT WITH BROWARD COUNTY, FLORIDA, PROVIDING FOR DIVISION AND DISTRIBUTION OF THE PROCEEDS FROM THE BROWARD COUNTY FIFTH CENT ADDITIONAL LOCAL OPTION GAS TAX ON MOTOR FUEL FOR TRANSIT; AUTHORIZING THE MAYOR TO EXECUTE AND DELIVER SAID 2020 AMENDMENT FOR AND ON BEHALF OF THE TOWN OF PEMBROKE PARK; PROVIDING FOR SEVERABILITY; SUPERSEDING CONFLICTING RESOLUTIONS, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 336.025(1)(b), Florida Statutes, authorizes the governing bodies of Florida counties to extend the levy of a five (5) cent local option gas tax upon every gallon of motor fuel and diesel fuel sold in Broward County for a period not to exceed thirty (30) years on a majority vote of the governing body of the county; and

WHEREAS, on June 13, 2000, the Board of County Commissioners enacted Ordinance No. 2000-25, effective January 1, 2001, through December 31, 2031, pursuant to Section 336.025(1)(b), Florida Statutes, extending the levy of the five (5) cent local option gas tax for thirty years and providing for a method of distribution of the proceeds of the tax; and

WHEREAS, Broward County and the Town of Pembroke Park have heretofore entered into an Interlocal Agreement relating to the distribution of the five (5) cent additional local option gas tax; and

WHEREAS, the Interlocal Agreement requires annual adjustment of the population of the individual municipalities and unincorporated Broward County, and the 2020 Amendment is being entered into for said purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE

TOWN OF PEMBROKE PARK, FLORIDA:

Section 1: That the Town of Pembroke Park is authorized to make and enter into the 2020 Amendment to the Interlocal Agreement between Broward County and the Town of Pembroke Park, Providing for the Division and Distribution of the Proceeds from the Broward County Fifth-Cent Additional Local Option Gas Tax on Motor Fuel for Transit Ordinance, a copy of the 2020 Amendment to Interlocal Agreement is on file with the Town Clerk, and by reference made a part hereof.

Section 2: That the Mayor is hereby authorized and directed to execute and deliver said 2020 Amendment to the Interlocal Agreement for and on behalf of the Town of Pembroke Park.

Section 3: If any clause, section, other part or application of this Resolution is held by any Court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 4: That all Resolutions or parts of Resolutions in conflict herewith be and the same are hereby superseded to the extent of such conflict.

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

PASSED AND ADOPTED this 22nd day of April, 2020.

ATTEST:

_____
ASHIRA A. MOHAMMED
Mayor-Commissioner

_____
GEOFFREY JACOBS
Clerk-Commissioner

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RESOLUTION NO. 2020-048

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA, AUTHORIZING THE TOWN TO MAKE AND ENTER INTO THE 2020 AMENDMENT TO THE INTERLOCAL AGREEMENT WITH BROWARD COUNTY, FLORIDA, PROVIDING FOR DIVISION AND DISTRIBUTION OF THE PROCEEDS FROM THE BROWARD COUNTY ADDITIONAL LOCAL OPTION GAS TAX ON MOTOR FUEL ORDINANCE; AUTHORIZING THE MAYOR TO EXECUTE AND DELIVER SAID 2020 AMENDMENT FOR AND ON BEHALF OF THE TOWN OF PEMBROKE PARK; PROVIDING FOR SEVERABILITY; SUPERSEDING CONFLICTING RESOLUTIONS, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Broward County, Florida enacted an Ordinance pursuant to Section 336.025(1)(b)(2), Florida Statutes, which granted Broward County the authority to levy a three (3) cents local option gas tax on motor fuel to be used only for transportation expenditures necessary to meet requirements of the capital improvements element of the adopted comprehensive plan; and

WHEREAS, the Town of Pembroke Park is eligible to receive a portion of this local option gas tax when imposed and collected by Broward County; and

WHEREAS, the Town of Pembroke Park has heretofore entered into an Interlocal Agreement with Broward County, and Addendum thereto, relating to the division and distribution of the proceeds of the local option gas tax on motor fuel ordinance; and

WHEREAS, the parties hereto desire to further amend said Interlocal Agreement to reflect the change in population of the municipalities and Broward County, with the resulting change in the division of proceeds among the municipalities and Broward County, and to provide for the further distribution of said local option gas tax pursuant to the formula contained therein.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE

TOWN OF PEMBROKE PARK, FLORIDA:

Section 1: That the Town of Pembroke Park is authorized to make and enter into the 2020 Amendment to the Interlocal Agreement between Broward County and the Town of Pembroke Park, Providing for the Division and Distribution of the Proceeds from the Broward County Additional Local Option Gas Tax on Motor Fuel Ordinance, a copy of the 2020 Amendment to Interlocal Agreement is on file with the Town Clerk, and by reference made a part hereof.

Section 2: That the Mayor is hereby authorized and directed to execute and deliver said 2020 Amendment to the Interlocal Agreement for and on behalf of the Town of Pembroke Park.

Section 3: If any clause, section, other part or application of this Resolution is held by any Court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 4: That all Resolutions or parts of Resolutions in conflict herewith be and the same are hereby superseded to the extent of such conflict.

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

PASSED AND ADOPTED this _____ day of _____, 2020.

ATTEST:

_____
ASHIRA A. MOHAMMED
Mayor-Commissioner

_____
GEOFFREY JACOBS
Clerk-Commissioner

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2020 Calendar

○ - Regular Commission Meetings

□ - Workshop Commission Meetings

January						
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December						
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