

**CITY COUNCIL WORKSHOP
PLANTATION, FLORIDA**

May 18, 2011

The meeting was called to order by Councilwoman Uria, President of the City Council.

1. Roll Call by City Clerk:

Councilmember:	Ron Jacobs (Phone)
	Robert A. Levy
	Lynn Stoner
	Peter S. Tingom
	Sharon Moody Uria
Mayor:	Diane Veltri Bendekovic
City Attorney:	Donald Lunny, Jr.

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ITEMS SUBMITTED BY THE MAYOR

Mayor Bendekovic commented that the Grand Re-Opening was held for the Farmer's Market; there were at least 22 vendors.

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Mayor Bendekovic indicated that if anyone has any questions after the Workshop please feel free to contact any of our Directors; they will be more than happy to provide any information you need.

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2. **DISCUSSION CONCERNING STORM WATER UTILITY FEE**

Mayor Bendekovic advised that she needs some type of direction regarding this item, as it is part of the budget process and she does not want to create a budget including the storm water utility fee if it is not going to be approved.

Brett Butler, City Engineer, provided an update regarding the storm water utility fee. The Council has had the opportunity, on more than one occasion, to hear from staff over the past months about storm water in the City of Plantation. He suggested that the primary emphasis has been the fact that the State of Florida is being impacted by Federal Legislation that will dictate certain water quality mandates in the State of Florida. These water quality mandates are commonly referred to as TMDL's, Total Maximum Daily Loads, and they talk about nutrient levels in our storm water runoff. The Federal Government would like for the State of Florida to control these nutrient levels and are imposing certain thresholds to be mandated in the State, which will affect the City.

All of the Local, County and State agencies, through DEP, are working with EPA and having to defend their position, which is somewhat contrary to the Federal Government's approach as to how Florida should manage its storm water runoff. The State believes that they know how to manage Florida's waters best; the Federal Government seems to think otherwise and there is some controversy taking place. He feels relatively sure that we will be facing a mandated TMDL threshold of some sort in the very near future. That could mean virtually nothing and it might mean that our water quality today, if compared to whatever those thresholds are, might imply that we are all right. To be more realistic, because the threshold levels that the Federal Government would like to impose upon us are somewhat unrealistic for Florida, the more realistic expectation is that we are going to find ourselves having to deal with this new law and we will have to implement some form of programs to demonstrate an effort to reduce some of the nutrients they are concerned about in our City of Plantation waterways. This is anticipated to happen within the next year or so. The second thing is that we do participate, by a mandatory requirement of the Federal Government, in the National Pollutant Discharge Elimination System, that essentially mandates certain program functions that we must demonstrate to the State and the Federal Government every year that we perform to show that we have a responsible storm water program and that we are meeting all of their expectations. Those expectations will eventually include the TMDL's. Our MPS program to date does not necessarily talk about that but it will once they have been cast in stone for Florida. With this program that we must participate in and report on every year, it is going to put a significant burden on the City to prove that we are doing what we are expected to do. There will be some accountability that we are not going to be able to avoid. The third factor is that at this point we have not had any opportunity for reasonable funding to perform certain storm water improvements, which we have talked about several times before throughout the City in an effort to keep pace with what the Federal and State expectations will be of the City, we have a funding issue. We have requested Council consider the idea of implementing a storm water utility. That would be a very independent funding source expressly designated and can only be used for storm water activities in the City of Plantation. A brief presentation was provided by a consultant and backup was provided. The same presentation is being provided at this time with additional backup that was provided during the process of talking to a stakeholder group and getting their input from the perspective of citizens and businesses of this City as to what they believe this City should ultimately do for storm water. During the course of that process it was learned that we had much support from the citizens of this City on storm water. Once it was explained the citizens understood it and the necessity of us to fund it. The citizens were asked to make their own decision as to whether or not there should be some level of funding and information was given on a basis of making that decision.

Mr. Butler reviewed the backup as follows:

- The Focus Group was put together and had five meetings last year. The participation level averaged between 10 and 15 citizens across a broad spectrum of our community, residential based, commercial based, institutional based and religious based.
- The first meeting was an introductory meeting to get these individuals to understand what we wanted them to do for us, which was to be honest about the information that was going to be shared. Information was shown very transparently, fact based and they were asked what they would recommend, if anything, for storm water activities in this City.
- The topics discussed basically gave a storm water 101; a basic understanding of storm water in this City.
- Also discussed were levels of storm water service. Without having an understanding of a level of service, which is how we do business, there is no way to determine if a program should be funded. The concept of grades were used; A through F. The Focus Group was requested to understand this concept and apply this concept to our program and tell us what grade they would give based upon what they were told.

They took the City of Plantation, through its corporate boundaries, and split it up in order to understand the areas we were interested in. One area was immediately excluded from discussion, the Plantation Acres Improvement District. That District is an independent functioning authority; it performs its own storm water activities completely independent of the City. The graphic representation of the City refers to two areas; the first area is known as the Old Plantation Water Control District service area. This area has a local governing authority other than the City that functions as a Water Management District and that portion takes up the larger portion of the City of Plantation. The remaining portions are to the far east and far west that are called the Plantation Service area. The differences between the two are that the Old Plantation Water Control District area delivers service for all of the secondary waterways. They take care of these canals that they own, operate and perform independently of the City of Plantation and they receive funding through millage. The City of Plantation provides service for the tertiary system, which is everything that is down stream of that. The Plantation Service area does not have a designated Water Management District; the City of Plantation not only does the tertiary systems in the two areas, they also provide service for the secondary part of the system. The primary part of the system is handled by the South Florida Water Management District. They are excluded because they are the ultimate receiving water bodies; they receive all of the runoff either from the Old Plantation Water Control District or from the City of Plantation.

- After a number of meetings and providing a host of information on funding levels and talking about levels of service, a graphical representation was provided. After the individuals heard all of the facts they told us to function at a level C+ and that we should fund it at a level of service C+. A total of 12 votes were received; the vast preponderance agreed; there was one outstanding voter who had a difference of opinion. It does point out that our current level of funding is 30% General Fund and 70% Road and Traffic Control Fund.
- Once the level of service was decided a conversation was held about funding. Through a discussion of various types of funding opportunities, the General Fund being one of the more obvious ones, loans and grants.
- The concept of a storm water utility was introduced, which is essentially the same function as an Enterprise Fund; our Utilities Department operates on the same basis. A storm water utility would be structured following certain statutory requirements and designated revenues would be generated through a mechanism that could only be used for the storm water program. It is important to emphasize that our storm water program today is necessarily void of any funding for capital improvements and there are some impending areas that desperately need assistance, particularly in the eastern part of the City.
- Ultimately the group agreed that a storm water utility would be the most practical way to fund a program if it were going to be funded at a level they suggested. This is an easy to operate mechanism, it is completely dedicated and does not complicate the matter by getting involved with the General Fund or relying upon unreliable sources such as grants, etc., which are virtually not available today for some of the things we need to do. A storm water utility is the most appropriate mechanism to implement in order to raise the necessary revenue in order to do the things that need to be done in this City.
- Next, the structure of a storm water utility was discussed. The common way to charge someone is what is called an equivalent residential use of unit, which is a mechanism currently employed throughout the State; most governments that have a storm water utility use this basis of revenue generation. It looks at impervious area, which is the area of a piece of land that is improved in such a way that it prevents storm water from percolating into the soil. When that happens, water is restrained, detained and can do some harmful things. We know how to control it but we need to be able to fund those necessary ways so we do not introduce things into the waterways that the State and Federal Government do not want us to introduce. We also need to do this in a responsible way in order to avoid a flooding situation in our City. Impervious area along with the equivalent residential use of unit concept are the mechanisms that we showed would define a user fee. A user fee would be a fee that a resident or a business would be charged

for the services that the City of Plantation would deliver for storm water program activities. Those services would include operation and maintenance, implementation of improvements to the system, program operation and maintenance, the other program we do today that provides a reduction on flood insurance, the Community Rating System Program, and other things to enforce our local ordinances against private development activity so they are complying with the same regulations we are complying with.

- The idea of considering certain groups or agencies that might be exempted was discussed. There are agencies in the State who have chosen to exempt Governments, religious institutions, etc. The vast preponderance of the agencies that have storm water utilities have not exempted those particular entities, they are included and are charged a fee. This was discussed in November 2010 and an ordinance was proposed that excluded certain agencies within the City. This would need to be taken into consideration in order to establish a necessary revenue user fee so that we would still be providing revenue to meet our expectations of whatever level of service we decide to fund.
- The other thing we would do that would be responsible would be to talk about credits. Credits are different than exemptions. Credits would be something that we could provide to a user if they can adequately demonstrate to the City that they are performing certain storm water functions above and beyond a certain base line that would prove that they are actually doing what we would have done for them otherwise.
- A funding ballot was done after all of the discussion. There were 11 participants and almost a unanimous decision that a storm water utility would be the mechanism to use.
- General examples were provided based upon level of service C in the Old Plantation Water Control District and it was figured that approximately \$2.50 per month, per ERU, would be the suggested fee charged to a typical residential property and it would be adjusted based upon the square footage of the impervious area on the property. Commercial property in the Old Plantation Water Control District would have a fee of approximately \$41 and change per month. Similar mathematics were used for the Plantation Service area; however, the fee goes up because we are providing additional service, above and beyond what we would do in the Old Plantation Water Control District; it would be approximately \$2.90 per month, per ERU, with a small increase to the commercial property of \$48 and change per month. This was an assessment based upon funding a storm water program for the City of Plantation at a level of service C, which would equate to funding all of the existing monies that we currently need plus an additional half a million dollars per year for the capital improvements.

Mr. Butler stated that even at a half a million dollars at a level of service C, we would probably still be playing a little catch up for needs to be done. He respectfully requested that Council discuss a level of service B because that would be a level of service that would make a significant impact up front in a program and get some things done sooner than what is proposed at a level of service C, which would take a number of years to accomplish. If we did that we might have the opportunity of revisiting a fee and implementing a sunset rule in the future.

Councilwoman Uria mentioned the Federal Clean Water Act and the EPA. We pay Tallahassee and DC Lobbyists and she wonders whether the Lobbyists are talking to these people. They could put a moratorium on things like this until the economy turns around or until municipalities are in better shape. There is no certain date that we have to have something in place.

Mr. Butler strongly suggested that based upon the direction this is going we should be prepared to receive some form of unfunded mandated TMBL within the next couple of years; this is going to be very short term. The EPA has been moving in a direction irrespective of our overall economy in the country. They are doing a job that they think is the right thing to do and they are moving forward at a hard and rapid pace to implement something

in the State of Florida. We are effectively a guinea pig for the entire country. It is not a matter of if; it is a matter of when, which will be in the very near future.

Councilwoman Uria questioned whether we should talk to our Lobbyists and communicate how difficult these mandates are. They need to start listening because the people are getting tired of having to be taxed. People are struggling and having a tough time and she cannot be insensitive to these people. This is a tough time to try to enact this.

Mayor Bendekovic advised that we have open communication with the Lobbyists and they have sent us letters. We can also let them have the message and send the same message to the State of Florida.

Mr. Butler stated that it is very important to understand and notwithstanding the very difficult times we are all going through, we know the level of service this City needs. We live in an area that is prone to tropical storm events and have a need to manage our water quality so we can sustain a good viable economy and a tourist base. Storm water management reaches out and affects our economy in ways people do not often think about. If we continue to neglect our program it will come back and bite us if we are not careful. We need to fund this program; we need to do these improvements; we have areas on the east side of town that have old archaic systems that are very inefficient and if we have the storm of storms those neighborhoods are going to suffer and we cannot run the risk of allowing that to happen. Mr. Butler and Mr. DeCelles, Public Works Director, are trying to show a responsible, affordable way to fund some reasonable level of service for this City so we do not run the risk of properties harmed even worse than they may be today by property taxes and real estate values. What we do today provides a 15% discount on flood insurance and if we can get additional funding we can get our rating, ratchet it down a notch or two and possibly get another 5% or 10% for our citizens.

In response to Councilman Levy, Mr. Butler estimated that the dollar amount would go up 50 cents to \$1 if we went to Level B.

Councilman Levy believes this will be a hard sale. He empathizes and understands the need and questioned whether any other funding can start this program without going to the residents.

Mayor Bendekovic indicated that we do not have any funds to start this program without going to the residents. There is the current \$750,000; however, there is no additional money. That would be taking 70% from the Road and Traffic Fund, which compromises repaving the roads.

In response to Councilman Levy, Mr. Butler commented that there are no funds to work with. Inasmuch as 70% comes out of the Road and Traffic Control Fund, that funds primary use, was to take care of the roadways. As Mayor Bendekovic properly stated, we are not able to perform paving activities because we have to keep using that \$750,000 for storm water.

In response to Mayor Bendekovic, Mr. DeCelles advised that the paving project in Country Club Estates cost \$1.4 million.

Councilwoman Stoner stated that she was extremely surprised that we were at a level of non-compliance.

Mr. Butler indicated that we are not in non-compliance with the Federal Government in the program; what we are doing today is still in compliance. What will happen is that in the very near future we will run the risk of being non-compliant because we will not have the funding to do what we anticipate we will have to do.

In response to Councilwoman Stoner, Mr. DeCelles stated that the kind of dollars that have been involved in continual repairs and breakage depends on what is found. Unless we uncover certain areas we will not know the damage. Last year we probably spent between \$40,000 and \$50,000 for repairs. If we had the \$500,000 for capital improvements just realigning a certain section of the City would be \$400,000. Depending on the restoration, we would start in the oldest part of the City, which is the east side, and work our way towards the west. The newer homes put in newer systems and materials.

In response to Councilwoman Stoner, Mr. Butler advised that the safety issues that would be a consequence of having the system could be not being able to navigate down a road during a storm event, which would affect emergency service personnel and Public Works personnel while attempting to do clean up operations. If it were as severe as some storms could create it might migrate up into private property and provide an adverse impact on private property building structures.

Mr. DeCelles commented that some of our systems are called unprotected infrastructures, such as in the east side of the City. They are unprotected because they are ditches.

In response to Councilman Tingom, Mr. Butler indicated that we already have system failures, which are actually created by human beings. In some parts of town the system is completely operational based upon an open conveyance mechanism.

Councilman Tingom commented that the Focus Group felt that a Level C would be adequate to begin this program. He does not know that it is a wise decision to do nothing. Often times if nothing is done you pay with more dollars than if some procedure or funding was available. He tends to think that the citizens who attended said we should proceed to a Level C and he believes we should consider their recommendation.

Councilman Jacobs stated that he attended the Focus Group and knows the importance of the storm water project. He believes we should go forward with Level B. If the financial people and staff could figure out a way to make this neutral to the typical taxpayer by possibly giving a slight reduction in the millage rate then it would not be an increase in taxes.

Councilwoman Stoner noted that there are some issues she has with the ordinance.

Mr. Butler advised that this is a conceptual ordinance. If you choose to go forward they will work with Council and their consultant to address everything on an item by item basis.

Mr. Lunny indicated that the ordinance was a draft; it is not ready for Council to review.

Councilwoman Stoner commented that as someone in the construction field she knows too well what happens when there is deferred maintenance. Deferred maintenance can cost so much more in the long run; therefore, she would like to go forward.

Councilman Tingom recommended that we go forward with Level C.

Councilman Levy would like to go forward; however, he would like to make it revenue neutral.

The consensus was to go forward with the storm water program.

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3. DISCUSSION CONCERNING EMPLOYEE PENSION PLAN.

Mayor Bendekovic advised that a Workshop was held a few years ago at which time the Defined Benefit, Florida FRS, Defined Contribution and Tier 2 were presented. During that discussion Council elected to move forward with the Tier 2 and this will be the first year that we see any relief, about \$15,000. Another request was made to Workshop this item.

In response to Councilman Levy, Mr. Keefe stated that Mr. Palmquist would provide an update as to what was passed in Tallahassee.

In response to Councilwoman Uria, Councilman Tingom believed that Police benefits should also be discussed because there will be drastic changes in Tallahassee this year. Police and Firefighters hired after July 1, 2011 will have a retirement of 30 years of service and 62 years of age. He feels that the pension reform includes everyone.

Mr. Lunny advised that Council can discuss whatever they choose.

Councilwoman Uria believes the discussion should relate to new hire general employees.

Mr. Keefe and Ms. Moale provided a brief presentation.

Mr. Keefe indicated that a discussion was held two years ago involving our current pension plans, both for Police and General Employees. At that time various options were considered such as FRS, 401A, and a tiered program. A decision was made to go to a Tier 2 for various reasons. The Tier 2 was enacted for FOP in the last contract as of October 2009 and was enacted for General Employees for new employees as of October 2010. We also went through a program to offer current General Employees in Tier 1 a one-time opportunity to move to Tier 2 and four employees elected to do so as of April 1, 2011. One of the reasons those employees might have changed was because the plan went to an employee contribution of 4% instead of 8.5%. Based on Council comments, background information was provided from the Workshop in July two years ago along with some information from Mr. Palmquist regarding the creation of the Tier 2 and the history of contributions in the General Fund, a letter to Mr. Keefe from Willis regarding our retirement benefit strategy and information presented by Sageview as a comparison of the Tier 1 and Tier 2. Mr. Keefe and Ms. Moale have had two meetings; one with Sageview, our consultant who helped establish the new 457 Plan, which is a deferred retirement plan for any employee; it is totally optional. Bullet points were provided as far as strategies if Council would like to review in establishing a 401A Plan. Mr. Keefe and Ms. Moale had a telephone conversation with Mr. Palmquist last week and brief information was provided that was gained from that call. Mr. Palmquist is here to address that; this would be closing our Defined Benefit Plan and establishing a 401A Plan.

Mr. Palmquist commented that his main function is to address what would happen to the current pension plans if it was decided to put all new hires into a Defined Contribution Plan. Regarding the State Legislation, Senate Bill 1128, which the Governor has not yet signed, would have a very minor affect on our retirement systems. The one item that was a major benefit issue in Senate Bill 1128 had to do with pension plans, unlike ours, that allow people to include the lump sum pay out of unused leave to be included in their pension calculation. FRS allows that and perhaps a quarter of the pension plans around the State. A Task Force will be set up on the issue of disability presumptions for Police Officers; that part of the law took up most of the space because they had to spell out who is going to be on the Task Force. The disability presumptions says, "If a Police Officer or Firefighter suffers from certain named conditions that are considered to be a line of duty disability unless there is

competent evidence to disprove that.” The Department of Management Services has to come up with two different studies; one is a rating system for each plan. Supposedly they would take a number of aspects of each plan and come up with some kind of rating system so that all of the Florida plus public Plans around the State could be rated on this basis.

There is also supposed to be a further gathering of information about public Plans around the State that will be available and disseminated to anyone who wants that information. There is already a huge amount of data that is collected by the State; every year they issue a report that has information on every public Plan in the State. There is an additional requirement for actuaries to show the plan termination liability of the pension funds using the assumed rate of investment return that FRS uses. We already calculate the plan termination liability every year in the annual reports based on our assumed rate of investment return. In order to have a more common method of making this comparison with other funds around the State, another calculation has to be done with the FRS assumed rate of return, which is currently 7.75%. The Department of Management Services has their legal staff reviewing the language to decipher what the Legislature meant. This language says that it may have a plan sponsor, i.e. the City of Plantation, pay less than the “normal cost of the pension plan”. The annual cost of a Plan has two pieces; the payment on the unfunded liability and the larger part of the cost is for service accruing in the current year, which is called the normal cost. In the late 90’s there were many situations where the unfunded liability was negative. If you have a negative unfunded liability the employer ends up paying less than the normal cost in that year. If this provision had been in effect in the 90’s the cities would not have had “Pension holidays”, they would have had to pay something which would have been better than nothing and that would have helped today.

Mr. Palmquist’s opinion is that the Legislature was trying to say that at least the normal cost has to be paid; however, the Department of Management Services are still focusing on that. There is an issue of \$300 of overtime; our Police Officers already have that; it falls in with the Statute. While speaking with the Department of Services staff last week they said they did not know what the language meant in several of the items. Mr. Palmquist believes the major items will have very little affect on our retirement systems.

Councilman Tingom questioned whether all pension plans would be compared using the 7.75% rate of return and whether the unfunded liability would be listed for each plan.

Mr. Palmquist advised that information is already gathered. It is referred to as one measurement and that is what he calls a Plan termination liability. The question is, “Are there enough assets in the fund?” if the Plan is shut down. It is only for one measure, not for an ongoing Plan unfunded liability.

Councilman Tingom questioned whether the 175 or 185 funds could be used to supplant the basic benefits.

Mr. Palmquist indicated that right up until the last few days there were proposals to be able to use all of the Chapter 175 and 185 revenue as a credit against the City’s contribution; however, that fell through at the last minute. Chapter 175 and 185 funds are to be used for new benefits. The main issue is the way payments are calculated on the unfunded liabilities, which would have to change. Currently the unfunded liability payment is calculated on a level percent of future payroll assuming that payroll is going to go up by 4% per year. If there are no new hires coming into the Plan after three or four years, typically what happens is that the covered payroll of the people in the Pension Plan gets smaller and smaller. It does not make any sense to anticipate a rise in covered payroll when it is known that the payroll is going to peak and then start going down. By changing the one assumption from a 4% covered payroll growth to 0%, the required contributions would be raised in the first year by between \$500,000 and \$600,000. The other thing that would eventually occur as the Plan dwindles in the number of members is that the investment horizon of the Pension Fund will get shorter and shorter. Another

thing that would occur is that the cost of the Plan for the remaining employees would fluctuate more from year to year. Currently the payroll for the General Employees' Pension Fund is about \$25 million. If the Plan were closed today, 15 years from now the covered payroll might be \$15 million. If there was a \$1 million experience gain or loss and it was compared to a \$25 million payroll, there would be a smaller relative affect than if there were a \$1 million gain or loss compared to a \$15 million payroll. We have to change the way the unfunded liability is paid off, which will have an immediate cost increase. This does not have to happen for a number of years but eventually we will have to cut back further the assumed rate of investment return.

In response to Councilman Tingom, Mr. Palmquist advised that if the rate of assumption is lowered the contribution from the City will increase. For each 1/10 of a point the assumed rate of return is changed; the cost varies roughly by 1% of payroll. If the point was reduced by .5% the cost would go up roughly 5% of payroll.

Mr. Lunny mentioned that some time ago the Council adopted a resolution that said that changes to actuarial assumptions that result in City contributions being increased would not be affected until they were approved by the Council. If the Board are changing their assumptions there would be some reasonable adjustment that should be made if the market conditions are no longer square with the assumption but it is not intended to be an unqualified right of change. To some extent the employer and employee have a partnership in these Pension programs. If the assumptions are being changed and it is felt the change is too liberal perhaps it should come before Council for review. Anytime an assumption is changed there is a range of reasonableness in terms of what can be done; the Board should not be given the discretion to make a change that results in a significant financial and non-budgeted change that the Council would have to fund. Any assumption that materially increases an expected contribution should be reviewed by the City.

Councilwoman Uria noted that Council wants the changes to come at budget time.

Mayor Bendekovic questioned if you went from a Defined Benefit Plan to a Defined Contribution Plan with the General Employees whether a contribution still had to be made in the Defined Benefit Plan. It was her understanding that the Defined Benefits with the General Employees would cost close to \$1 million for 20 years to fund but it would also cost a certain amount, depending on the percentage, contributed to the Defined Contribution.

Mr. Palmquist stated that the required funding is there for the Defined Benefit Plan and as people are hired into the Defined Contribution Plan there would also be a cost that is agreed to be contributed on their behalf.

In response to Mayor Bendekovic, Mr. Palmquist advised that the City of Plantation General Employees' Pension Fund compares to other funds at about 80% or better, which represents a very healthy program. The average is in the mid or low 70's.

Mayor Bendekovic expressed concern with segregating pensions. She wants to be cautious with the message sent that one unit might have a bargaining unit and somebody else does not.

Mr. Palmquist indicated that quite a few Cities around the State have put in a second lower tier of benefits for new hires. His experience has been that when there is one group of employees with a better set of benefits than another group that are both doing the same job, eventually that lower benefit group tends to get what the higher benefit group has.

Councilwoman Uria commented that ten years ago we were 90% funded and we are slowly decreasing the funding.

In response to Councilwoman Stoner, Mr. Palmquist advised that the 20% unfunded liability for the General Employees' Plan translates into \$25 million. The unfunded liability for the Police is just under \$42 million.

In response to Councilman Jacobs, Mr. Palmquist stated that if the City terminated one of the Defined Benefit Plans and moved everyone into a Defined Contribution Plan every persons accrued pension would be calculated, then calculate that number with today's present value of those accrued benefits and compare that number to the Plan assets. The difference would have to be paid off by the City over time. He referenced a Florida Supreme Court case about three years ago and that case settled that even if a plan terminates whatever benefits had been accrued still have to be funded. We would look at the plan termination liability, compare that to assets and the City would have to pick a time period to pay that off. If the General Employees' Pension Fund were changed it would be about \$21 million, which would have to be paid by the City over a plan that would be established.

In response to Councilwoman Uria, Mr. Palmquist indicated that the City contribution for General Employees' next fiscal year is about \$4.2 million. If the \$4.2 million is replaced with whatever the paying is on the \$21 million it could be paid off in five years but in addition the City would be paying contributions for the employees to their Defined Contribution Plan; however much that would be.

Councilman Jacobs noted there would not be a problem with people being on different plans.

Mr. Palmquist advised that there is no specific guidance from the State on how many years the City would have to pay off the \$21 million or what the criteria would be. One plan did that last year and benefits were frozen for everyone in the plan except those who were within five years of retirement. In their case they chose 15 or 20 years to pay off their unfunded plan termination liability.

Councilwoman Uria commented since there are no guidelines to pay that off we could basically choose.

Mr. Palmquist stated that they would find out what the City would prefer to do and then run that by the State to see if they have any issues with it.

Councilman Tingom indicated that the State of Florida did about three things with their plan this year; they increased the age which normal retirement occurs; they increased the number of years of service; and they maintained the 5% per year for early retirement after being vested. They increased the number of years of vesting from six to eight years and basically kept the two plans intact and eliminated the COLA in the future. It is his understanding that when initially making the switch from a Defined Benefit Plan to a Defined Contribution Plan generally the first three to five years cost the City more money than if the current Defined Benefit Plans are maintained.

Mr. Palmquist advised that a number of projections they have done for different Cities have shown that, not just three to five years; it varies.

Councilman Tingom stated that it actually costs the City more to change to a Defined Contribution Plan than to maintain the Defined Benefit Plan. He believes that Council needs to consistently review this but be aware of the consequences.

Councilwoman Stoner requested that some numbers be prepared as to what it would cost to move all of the Pension Plans over.

In response to Mayor Bendekovic, Councilwoman Stoner stated that she was suggesting moving the entire plan to a Defined Contribution Plan.

Councilwoman Uria commented that she would like to review it and have it on the record. She suggested whenever the money managers come into town that all of the Council members need to get that information, not just the ones serving on the Pension Boards.

Councilman Jacobs stated that he would like to look at the numbers.

It was the consensus to move forward.

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4. DISCUSSION CONCERNING PROPOSED ORDINANCE PERTAINING TO JOB DESCRIPTION COMMITTEE.

Mr. Lunny advised that this proposed Ordinance resulted from a continuing effort on the part of the Administration to become more streamlined. The Code has had a Job Description Committee that, as far as he is aware, has only met a few times, and the City could do the Committee's ordained functions more effectively. He proposed that the Job Description Committee not review job descriptions; instead, when the Council reviews the budget annually, the job descriptions can be made available so they can be reviewed as part of the Council's overall financial oversight of the City. Another part of the ordinance has been changed so that instead of all employees being able to have a disciplinary matter reviewed by the Job Description Committee, a better approach would be that only Department Heads could do so, and only for discharge or significant demotions and the proposed Ordinance also removes invalid voting provisions, which have been present for many years. If the City wishes to hire an employee for a position and description that has been approved by the Council as part of the overall budget, the Mayor can do so, but if it is not a position and description that is approved, it would have to come before Council. The current practice is that the hiring of all exempt employees comes before Council. There is no reason to have an ordinance on General Employee Disciplinary Procedures; those are in the policies because those are in the City's employment policies. The overall purpose of this is to try to take out of the Code outdated Human Resources provisions that no one has focused on in many years that is not functioning as written and try to come up with something that is more consistent with current practice and even takes it a step further in terms of achieving cost savings.

Councilman Levy commented that in most Cities, the City Manager, or in our case the Strong Mayor, is responsible for all personnel matters other than usually the City Clerk and the City Attorney. He questioned whether that has ever been explored.

Mr. Lunny indicated that Plantation Charter says that the Mayor has an appointment privilege for the City Clerk, Police Chief and the City Attorney, and then it also says the Mayor is the Chief Executive Officer and has the overall supervision and control of employees. Then there is another section of the Charter that says that the Council shall provide for departments, staffing, and compensation of employees. These functions are evidenced by ordinances or resolutions. Currently, there is nothing in the Code at all that requires Council approval of hirings, but there is other law (such as the Florida Building Code) that would require an appointment of certain staff by resolution. Currently it is the City's practice over time to bring the exempt employees forward to Council to have their employment approved. Mr. Lunny believed that Council would like to continue having some input on the key professional staff of the City in terms of who is selected for those positions.

Councilman Levy questioned what the positives would be of the Mayor making the personnel decision? The Mayor has to pick the staff that she feels most comfortable with; it seems cumbersome the way we do it.

Mr. Lunny advised that the positives would be more streamlining; the negative would be less Council oversight on a particular person. The way they are proposing is that for Department Heads only, the process will be that a position will be advertised, the Mayor will screen candidates, and when she gets a few that she is satisfied with she will suggest them to Council.

Councilman Levy commented that this is unusual even for a Strong Mayor form of government. He wants everyone to think what a Strong Mayor does and what a Strong Mayor does in regards to personnel and the people she is going to be working with and how she gets the team she is looking for.

Mr. Lunny explained when you are trying to propose something you do not want to make such a big change because there is a certain history and rhythm that the City has had and for the most part it has worked. We look at this and say we cannot continue to expend the same resources doing what we are doing; therefore, he is attempting to streamline appropriately without making anyone feel uncomfortable.

Mr. Keefe responded to Councilman Levy's questions. As Mr. Lunny said, we would hear the positions within the organizational chart during the budget process and hear the job descriptions. As those vacancies occur during the year the Mayor and the Department Heads would make selections of employees other than Department Heads.

Councilwoman Stoner stated that she has mixed feelings about this. Because we have a Strong form of Mayor, checks and balances are important to have in place and she believes that is what this Council serves as. She feels that if a job freeze had been in place circumstances that happened over the last few weeks would not have been an issue. She still believes that a job freeze is appropriate. As far as the City Attorney and his comment using whatever screening process the Mayor determines appropriate, it is too vague and a City Attorney is not an employee. A City Attorney is supposed to be selected by CCNA and the reality is that the Mayor is supposed to advertise, bring back three people to the table for Council to interview and consider. She takes exception to the City Attorney being lumped in with Department Heads; she does not feel that is appropriate. While the Mayor does have to have people who are qualified, the Council still needs to serve as a checks and balance.

Mr. Lunny responded to Councilwoman Stoner and stated that the problem with the job description ordinance as applied to the Police Chief, City Clerk, and City Attorney is that the Charter's distribution of powers cannot be changed without a referendum. While the current ordinance says a City Attorney selection would require such an advertising and selection process, this is not a Charter requirement and will not be valid because there was never a referendum saying that is the required procedure the Mayor must follow in making those appointments. Until there is a referendum, that piece of the ordinance and the other part of the ordinance about voting, is not valid. This is why these provisions are being recommended for change.

Councilwoman Stoner reiterated that the Attorney selection needs to be brought before Council for approval so it is not just an arbitrary appointment.

Mr. Lunny advised that the City Attorney position is not an arbitrary appointment. In order to serve as City Attorney, the Charter requires an appointment by a Mayor and a ratification of the appointment by a Council. He clarified that the Statutory Competitive Consultants Negotiations Act does not apply to legal counsel. The ordinance references that and creates a process that is similar to that for the attorney selection. Ultimately,

whatever the appointment is for the Clerk, the Chief and the City Attorney, it is absolutely subject to ratification by the Council and that has always occurred.

Councilwoman Uria questioned why change the title of Assistant to the Mayor to Chief Administrative Officer.

Mr. Lunny stated that the reason the Assistant to the Mayor is being changed is because the words "Assistant to Mayor", in a legal sense, do not mean anything and the words "Chief Administrative Officer" mean something. They are attempting to have a Code provision that clarifies what this person does.

In response to Councilman Levy, Mr. Lunny indicated that he is recommending that the title of Assistant to Mayor be changed to Chief Administrative Officer.

There was a consensus to move forward only with the portion of the proposed Ordinance that changed the title of the Assistant to mayor position and outlined the responsibilities of this position.

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5. DISCUSSION CONCERNING PROPOSED BROWARD COUNTY ETHICS ORDINANCE.

Mayor Bendekovic provided a background on this item. Prior to being elected to this position the former Mayor, Mayor Armstrong, was on the Ethics Committee and Mr. Lunny attended most of those meetings. Mayor Bendekovic attended the last meeting and the Broward League of Cities Ethics Taskforce is accepting suggestions.

In response to Councilman Tingom, Councilman Levy advised that the County can impose these ethics even if objections are registered to some of the provisions.

Councilwoman Stoner indicated that the Board members of the Small Business Advisory Board are concerned because as members, they took the time to visit all of the Commissioners and they were adamant that it extended to the Advisory Boards. The County will not make any exceptions.

Mayor Bendekovic questioned whether Councilwoman Stoner would be required to follow the County Ethics ordinance rather than the Broward County League of Cities Ethics Taskforce ordinance.

Mr. Lunny advised that citizens of the County spoke and there was a referendum. As to Cities, the referendum was that municipal elected officials could be made subject to a County Ethics Law. Since we are a Charter County the citizens can give the County Commission, in a Charter Referendum, that authority. He has offered suggestions that would be helpful to everyone. The first suggestion was that elected officials and others could obtain protective legal opinions as long as they acted in accordance with them. There are still issues of uncertainty and his concern is that he cannot give a protected opinion like the Ethics Commission can for State Law. He would think that the County would be as interested in adopting that strategy so that its personnel and the Commissioners can ask someone about a fact pattern and not get investigated later as long as they act in accordance with the advice. With regard to suggestion #2, Mr. Lunny has stated that the ordinance should punish knowing violations of the law only, but it has not been in a draft. There should not be laws that become traps for the unwary. The third suggestion concerns the strong Mayor being on selection committees. While Mayor Bendekovic may not necessarily sit in on all procurements, she does direct staff in terms of how to manage those. He believes that a County Ethics provision preventing a Mayor from doing so simply because she is an Elected Official does not recognize the difference in our form of government and the County. This is one that he

was looking strictly at Plantation's interest and offering that change. That was one the League came up with and he thought it was a great idea. The fourth suggestion is to not create redundant Federal, State, and Local laws. This is recommended for government efficiency. There are some aspects of this proposed County law that are unnecessary because they are already treated elsewhere. This comment will be difficult for politicians to accept because the citizens are suspicious and want to make sure that every level of government is watching everybody for the same violations. Now we are going to spend County money, City money, State money and Federal money all looking at the same conduct and it is not, in his judgment, efficient.

Councilman Levy stated that we all predicted this when the County said they were getting out of municipal services which they provided throughout Broward. They expanded the County Commission but reduced their responsibilities greatly and are now imposing their laws on top of the Cities. In his opinion, they should be streamlining County Government and getting rid of the bloated bureaucracy rather than imposing their values. It bothers him that the County feels that they are going to now impose a strict Ethics Law on top of us when we have not been found in any way to have a problem with our own ethics and then not accept our input. He referred to the Honest Services Act and requested whether Mr. Lunny could advise what we do and do not do in regards to the Honest Services Act.

Mr. Lunny recommended that he provide a legal outline that is fairly easy to read. He referenced the Skilling case, which involved Enron's Chief Executive Officer. This was the case last year in front of the United States Supreme Court where the Court, from an academic standpoint, pared down the case law and decided that Honest Services would apply only to bribes and kickbacks as opposed to undisclosed conflicts. Undisclosed conflicts still present ethics issues but not Federal criminal issues. There is no certain statement of what is an Honest Services violation but the outline gives many cases and many fact patterns. Once Council members have a chance to review the legal outline he would be happy to answer any questions.

Mayor Bendekovic advised that the fact with education is four hours of ethics and eight hours of continuing education. In speaking with Mayor Cooper she indicated that the Florida League of Cities would be providing courses that would not be an expense to the City. Mayor Bendekovic indicated that if Council wanted to move forward with the Ethics part, accommodations could be made. She questioned whether Advisory Board members should also be trained.

Mr. Lunny recommended that the course be broke into two sessions, as there may be questions that Elected Officials would ask, that they may not want to ask in front of Advisory Boards. He believes it is important that Advisory Board members be trained.

There was a consensus to support the League of Cities' position and Mr. Lunny's recommendations and send them to the Broward League of Cities.

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6. DISCUSSION CONCERNING MAYOR AND CITY COUNCIL TERM LIMITS.

In response to Councilman Levy, Mayor Bendekovic advised that the topic of moving the date of the elections to November will be brought back for a Workshop.

Ms. Slattery indicated that the numbers were not in for the cost of the March election. Another email was sent today to ask when they would be ready and no response has been received.

Mayor Bendekovic explained that it is an unfunded mandate by the State that says if you serve consecutively for 20 years you are eligible for a pension which is not funded by the State, it must come out of the municipality's General Fund and it has to be budgeted. She noted that because there is no City pension system for the Elected Officials; if you serve on the Council for 20 years you would get 50% of your salary and that would have to be budgeted.

Councilwoman Uria questioned that instead of having term limits, not the City, by Home Rule, say there is no pension plan for elected officials?

Mr. Lunny advised the State law says, "Where there is no such plan it is a 20-years plan". When the former elected officials' pension system was repealed, the City retained the ordinance provision that says, "If you qualify under the Statute, the benefit is the greater of the statutory benefit or whatever right you would have to a benefit under the City plan".

Councilman Tingom supported bringing this forward. He believes that a certain degree of turnover is good and that this would be a process by which we would rejuvenate ourselves with new numbers on the Council. By having turnover on the Council is positive and will allow more people to enter the political process.

Councilwoman Stoner questioned whether it was possible to get copies of the ordinances and copies of the minutes of the Workshops regarding the elected officials dating back to 1982. She was curious to know how many officials have served eight years or more and did not receive a pension versus those that are receiving a pension. She also questioned if there is a list with the liabilities of people who are receiving that for their life insurance, annuities and medical.

Mr. Lunny stated there is a list and he believes the minutes are also available. He knows the names of the persons entitled to the benefits.

Councilwoman Uria questioned whether that information would be accounted for in a separate account.

Mr. Lunny indicated that the question asked was whether the City knows what it is spending on each and he does not know whether it is broken down.

In response to Mayor Bendekovic, Mr. Herriman advised that there is health insurance, life and dental that is budgeted separately and they are known depending on what type of plan the retiree has. Retirement benefits are known relative to the individuals receiving it. Currently there are three former Council members plus the former Mayor receiving the benefits.

Mayor Bendekovic provided the Council members names as follows: former Councilman Merritt, former Councilman Freilich, and former Councilman Dishowitz. She was not sure whether former Councilman Ed Weiner was receiving the benefits; he may be getting a marginal sum, no health insurance, only the retirement.

Mr. Herriman agreed that former Councilman Weiner may be receiving benefits but it is a very small amount.

In response to Councilwoman Stoner, Mayor Bendekovic advised that former Mayor Armstrong was here for 28 years.

Mr. Lunny stated that former Mayor Armstrong falls under the Statute. The statutory pension benefit was greater than former Mayor Armstrong's preserved right to an accrued pension benefit, which was done when the

City plans were terminated; therefore, she qualified for, and is entitled to receive the statutory pension benefit. In addition to a pension benefit, the ordinances of the City had an insurance benefit that was never treated as a pension benefit in terms of being actuarially funded; none of the insurance benefits are treated that way. When that was repealed the advice to the Mayor and Council members was that they could have a Declaratory Judgment Action as to these rights and obligations or they could resolve that through a contract, which is what they did. There is a contracted continuing right to health insurance for those individuals.

In response to Councilwoman Stoner, Mr. Lunny advised that a formal opinion was not received from the Attorney General. He was asked to render an opinion by the former Mayor as to the obligations of the City with respect to her retirement. It was in the context of an upcoming budget. When the opinion was rendered it was circulated to everyone. No one asked for any further review of the opinion.

Councilwoman Stoner's point was that it would not have cost anything to get an opinion from the State versus Mr. Lunny's fees.

Councilwoman Uria believed that Mr. Lunny, as the attorney, should have said to the former Mayor, "I'm going to send this to Tallahassee" so there would be no question.

Mr. Lunny stated that he was asked to render his opinion and did so. This was an issue of statutory construction and this was an issue of ordinance construction and our ordinances were clear that those affected elected officials would have the greater of those benefits. The opinion itself says that even today if somebody serves 20 years they are entitled to the State benefit.

In response to Councilwoman Stoner, Mr. Lunny advised that he would get her a copy of the opinion letter.

Mayor Bendekovic stated that the ordinance copies would come from the City Clerk's office. She indicated that the Mayor does not receive vacation or sick time. She is aware that she is an Elected Official not an employee even though she is employed full time. Mayor Bendekovic questioned whether the Council wanted to move forward with this.

Councilman Levy stated that if we are reviewing term limits he would like to exclude the Mayor's position because for the Mayor to learn the job takes quite a bit of a learning curve and there is something to be said for stability and for long term planning. He feels that long term stability is needed in the position of a Strong Mayor in order to guide the City over the course of time.

Councilwoman Uria believed if anything was going to be term limited it should be the Mayor's position because she feels that the Council members learn the City. She is not for term limits and thinks there is another way around this.

Councilman Levy believes that the Mayor's job is 24/7 and she has to wear many hats for both staff and the public. He feels that there should be no term limit on that. If term limits are considered, he would like to exclude the Mayor.

Councilwoman Uria thinks that the system works and she is not for term limits.

Mayor Bendekovic questioned whether it is permissible or legal that anyone who would serve in the City of Plantation would have to waive that and sign a waiver to say they would not accept a pension.

Mr. Lunny indicated that there are complications to that. The question is, "What can we do to prevent this from happening"? The most defensible option is that the public policy of the State is expressed in the Statute and states that municipalities should provide some benefit for their Elected Officials. This City did that for a while, before the benefits were viewed as inappropriate by the public. He did not want to propose that a pension be created for the Elected Officials; meaning create a system so that the Statute would not apply but this would be an option. Another option is to try to get the Statute changed so that it is no longer there. Even if you have a Charter Amendment that imposes term limits, the Statute might change and then there would be term limits and you could be operating in a different legal environment. He always views term limits as a four-year deal because every four years the seats are up. These are election issues. Should you wish to stop this from happening there are two bullet proof options; one is put in the term limit and the other is restore a pension plan for all Elected Officials. If you get into waivers there will be issues about whether it was a knowing waiver, is it an enforceable waiver, and can it be retracted. This City has had all of those issues in the past.

Councilman Tingom understood that the only way to enforce this is to put in the less than 20-year limit, which he is in favor of doing.

In response to Mayor Bendekovic, Mr. Lunny advised that it would be consecutive.

Councilman Levy stated that two things are possible; what Councilman Tingom said as cutting the limit before 20 years. He questioned whether a pension plan could be developed of \$1 per year. He feels that as public servants, we are not entitled to any compensation. He does not feel that the residents should be paying a Council pension or a Mayor's pension.

Mayor Bendekovic commented that Councilman Jacobs is an example, as he served an amount of time, left and came back; therefore, he has to start over with the 20 years.

Councilman Jacobs did not see 20 years as a problem; most Elected Officials do not serve 20 years. He does not believe that type of problem should be solved with term limits; he does not like term limits.

Councilwoman Uria and Councilman Jacobs were not in favor of term limits.

Councilperson Stoner was in favor of term limits but separately; she agrees there should be no elected official pension.

Councilman Tingom was in favor of term limits.

Councilman Levy clarified that he did not support the concept of proposing term limits, but believed if the City was going to impose them it should be a referendum of the voters.

Councilman Levy questioned whether there is a policy regarding meeting with developers ahead of time before they come before Council in light of the new ethics laws.

In response to Councilman Levy, Mr. Lunny advised that the City does not have a policy regarding whether a Council person can meet with developers ahead of time prior to them coming before Council; it is up to the individual Council person.

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Meeting adjourned at 10:30 p.m.

Sharon Uria, President
City Council

ATTEST:

Susan Slattery
City Clerk

RECORD ENTRY:

I HEREBY CERTIFY that the Original of the foregoing signed Minutes was received by the Office of the City Clerk and entered into the Public Record this _____ day of _____, 2012.

Susan Slattery, City Clerk