

**MEETING OF THE CITY COUNCIL  
PLANTATION, FLORIDA**

**May 25, 2011**

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

1. Roll Call by City Clerk:

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

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2. The invocation was offered by Councilwoman Uria.

The Pledge of Allegiance followed.

3. Approval of Minutes of Meeting – February 9, 2011

The minutes of the City Council meeting for February 9, 2011 were approved as printed.

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**ITEMS SUBMITTED BY THE MAYOR**

Mayor Bendekovic read a Proclamation designating May 21-27, 2011 as *National Safe Boating Week* in the City of Plantation.

Jim Pinkston, Andy Anderson, Floatilla Commander, Glen Wilshire, Public Education Officer, Charlie Baggott (sic), Communications Officer, and Dan Hess, Vice Division Commander accepted the proclamation.

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Mayor Bendekovic read a Proclamation designating May 2011 as *Civility Month* in the City of Plantation.

This proclamation will be sent to the Florida Bar.

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**Resolution No. 11254**

4. **RESOLUTION** of Appreciation to Frosene Canning for 15 years of dedicated service to the City of Plantation.

*Motion by Councilman Tingom, seconded by Councilman Levy, to approve Resolution No. 11254. Motion carried on the following roll call vote:*

Ayes: Jacobs, Levy, Stoner, Tingom, Uria  
Nays: None

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Jayne Flanigan, with the Plantation Acres Womans' Club, introduced Linda Buchanan, President. Ms. Flanigan made the following presentation:

- \$1,500 to Jim Romano, Parks and Recreation Director, to go towards Summer Camp scholarships.

Felina Singh (sic), with the Plantation Womans' Club, presented the following scholarships to:

- Abigail Bermudez with Plantation High School and Rachel Bach with South Plantation High School.

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Denise Horland, Co-Chair for Relay for Life, announced that this was one of the most successful events in the City of Plantation; over \$162,000 was raised. It was also successful in the way the communities came together and our schools were a huge part. Plantation Public Schools raised over \$25,000 of the \$162,000. The team captains were recognized.

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Mayor Bendekovic recognized two of four Plantation principals, Dr. David Basile, Principal of South Plantation High School, and Eric Anderson, Principal of Tropical Elementary School, who received the ACCLAIM's award presented by the Broward County School Board. She announced that Erik Anderson, Principal of Tropical Elementary School also was elected as "Principal of the Year".

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Mayor Bendekovic presented Service Awards to the following employees.

Sgt. Alfred Butler	Police	25
Frosene Canning	Utilities	15
Theresa Curbelo	Fire/Rescue	15
Victor Delarosa	Fire/Rescue	15
Juan Jara	Landscape	15
Scott Reed	Fire/Rescue	15
*Colleen Sager	Police	10
Cassie Bucci	Human Resources	5
*Tarra Hernandez	Police	5

*Mei Li	Information Tech	5
*Luciana Ramos	Police	5
*Paul Smith	Information Tech	5

\* Unable to attend

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Mayor Bendekovic made the following announcements:

- Memorial Day services will be held at Veterans Park on Monday, May 30, 2011 at 9:30 a.m.
- The “Then and Now Exhibit” at the Plantation Historical Museum has been extended until September 2011.
- The Farmers Market at Volunteer Park has 25 vendors.

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**CONSENT AGENDA**

As a Commissioner of the CRA, Mayor Bendekovic has a voting privilege on Item No. 14.

Mr. Lunny read the Consent Agenda by title.

5. Request for authorization to continue participating in the Southeast Florida Co-Operative Bid (City of Fort Lauderdale, lead agency) to supply water meter boxes and parts from HD Supply Waterworks LTD, and A & B Pipe and Supply, Inc., from August 17, 2011 through August 16, 2012. (Budgeted – Utilities)
6. Request for purchase of a replacement blower for the Holloway Canal emergency outfall at the Regional WWTP in the amount of \$20,776 from Gardner Denver Industrial Products Group. (Budgeted – Utilities)

**Resolution No. 11255**

7. **RESOLUTION** of the City of Plantation pertaining to the subject of a municipal assessment; reinstating a delinquent Westgate Lake Manors Special Assessment as evidenced by and levied pursuant to prior Resolution Nos. 9321, 9322, 9382 and 10090 (the “Assessment Resolutions”) on property legally described in this Resolution and having an Ad Valorem Folio Number of 5041 01 02 1540; changing the terms of the municipal special assessment’s repayment (for such described real property only) as part of such reinstatement; making other finding and provision appropriate for such reinstatement; providing a savings clause; and providing an effective date therefor.

**Resolution No. 11256**

8. **RESOLUTION** approving that certain agreement for Disaster Response & Recovery Services between the City of Plantation and O’Brien’s Response Management Inc. and Science Application International Corporation; directing the Mayor to execute same; giving the Administration and Legal Departments the ability to make minor changes; and providing an effective date therefore.

**Resolution No. 11257**

9. **RESOLUTION** to apply for the COPS Hiring Program.

**Resolution No. 11258**

11. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period May 5 – May 18, 2011 for the Plantation Gateway Development District.

**Resolution No. 11259**

12. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period May 5 – May 18, 2011 for the Plantation Midtown Development District.

**Resolution No. 11260**

13. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period May 5 – May 18, 2011.

**Resolution No. 11261**

14. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period May 5 – May 18, 2011 for the City of Plantation's Community Redevelopment Agency.

*Motion by Councilman Tingom, seconded by Councilwoman Uria, to approve tonight's Consent Agenda as read. Motion carried on the following roll call vote:*

Ayes: Jacobs, Levy, Stoner, Tingom, Uria

Nays: None

**NOTE:** Mayor Bendekovic voted affirmatively on Item No. 14.

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Mr. Lunny read Resolution No. 11261.

**Resolution No. 11262**

10. **RESOLUTION** approving that certain Twelfth Amendment to that certain Interlocal Agreement for solid waste disposal service between the City of Plantation and Broward County; having the appropriate City Officials execute same and authorizing the City Administration or City Attorney to make minor revisions thereto; and providing an effective date therefor.

A Report and Recommendation dated May 25, 2011 to the Mayor and Members of City Council from Daniel W. Keefe, Assistant to the Mayor, follows:

**Request:** Approve the Resolution to allow the City to amend the "Interlocal Agreement".

**Analysis:** Attached is the proposed Twelfth Amendment to the Interlocal Agreement (ILA) with Broward County for Solid Waste Disposal Services, of which Plantation is a Contract Community.

This amendment provides that the Resource Recovery Board will set tipping fees, rates and service charges sufficient to fund the operation of the Resource Recovery System, including all bonded indebtedness and service agreements, beginning October 1, 2011. The tipping fees for processable waste would no longer be based on an automatic escalation related the CPI (as provided for in the current ILA).

The Resource Recovery Board approved the Twelfth Amendment at its February 17, 2011 meeting. Approval from the County and at least 51% of the population of all Contract Communities is required in order for this amendment to become effective.

The current tipping fee is \$99.20 per ton. The proposed rate is not currently available. If the rate is known I will provide it to you at the Council meeting.

Recommendation: Approve the Resolution to allow the City to amend the "Interlocal Agreement"

Councilperson Stoner pulled this item. She noted that recently the Resource Recovery Board was going to have a study done and the results should be available by early June 2011. She questioned whether this should be voted on or whether we should wait for their results and recommendations.

Mr. Keefe advised that the County has looked at a study. This simply extends the current agreement that the City has with the Resource Recovery Board and the Interlocal Agreement. The Interlocal Agreement expires in July 2013. This would provide an interim rate. The Resource Recovery Board approved a rate from \$99.20 per ton to \$72.57 per ton; about a 27% decrease. That still has to be approved by the County Commission. This item approves the amendment to the Interlocal Agreement and if it is approved that would be the interim rate. There was also some discussion between the Resource Recovery Board and the County as far as negotiating an even lower rate; however, this is the current rate recommended or approved by the Resource Recovery Board. In parallel with that, the City of Miramar is doing an RFP to determine if there are other sources to do the deposit of solid waste in Broward County. That bid was due in on May 16, 2011; however, it was extended until May 30, 2011. Several Cities are looking at that to see if there are any alternatives that might be better than using Wheelabrator. Those are the options. He does not see any harm in going ahead with this at this point. If the County does a study to see if there are other locations this is just an interim rate agreement until July 2013, when the Interlocal Agreement expires. Between now and then other things may happen; the County may renegotiate the agreement with Wheelabrator and we could possibly get a lower rate or if the RFP with Miramar provides another option that is something to review.

***Motion by Councilperson Stoner, seconded by Councilman Tingom, to approve Resolution No. 11262.  
Motion carried on the following roll call vote:***

Ayes: Jacobs, Levy, Stoner, Tingom, Uria  
Nays: None

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**ADMINISTRATIVE ITEMS - None.**

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## LEGISLATIVE ITEMS

Mr. Lunny read Item No. 15 by title.

15. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE PERTAINING TO THE SUBJECT OF HUMAN RESOURCES; AMENDING THE DUTIES AND RESPONSIBILITIES OF THE JOB DESCRIPTION COMMITTEE; AMENDING PROCEDURES FOR CHANGING JOB DESCRIPTIONS OF DEPARTMENT HEADS AND EMPLOYEES; AMENDING PROCEDURES FOR APPOINTING, HIRING AND COMPENSATING EMPLOYEES AND DEPARTMENT HEADS SO AS TO STREAMLINE SAME OR CONFIRM TO CURRENT PRACTICE OR REQUIREMENTS; AMENDING THE DISCIPLINARY PROCEDURES FOR DEPARTMENT HEADS AND EMPLOYEES; UPDATING THE LIST OF DEPARTMENTS AND DEPARTMENT HEAD TITLES; CODIFYING THE TITLE AND AUTHORITY INHERENT IN THE CHIEF ADMINISTRATIVE OFFICER POSITION; CREATING SUPPLEMENTAL PROCEDURE FOR FILLING VACANCIES IN DEPARTMENT HEAD POSITIONS; PROVIDING A SAVINGS CLAUSE AND PROVIDING AN EFFECTIVE DATE THEREFOR.

A memorandum dated April 21, 2011 to the Mayor and Members of the City Council from Donald J. Lunny, Jr., City Attorney, follows:

RE: Ordinance Pertaining to the Subject of Human Resources

This Ordinance is principally designed to amend the City's law pertaining to Human Resource so as to conform with current practice, conform with legal requirements, or be otherwise streamlined.

The Ordinance's highpoints are as follows:

1. Deleted Job Description Committee functions that are being performed by the City Council. The City Council's current practice is to review each department's organizational chart, vacant and filled positions, and compensation ranges associated with such positions during the budgetary process. In view of this current practice, the Job Description Committee has not independently reviewed the existing department functions for several years. Those portions of the City Code which require the Job Description Committee to meet for these purposes are being repealed since the entire City Council performs this function. Going forward, the Ordinance will require the Job Description Committee to review changes to department head job descriptions which are proposed at any time other than during the full Council's annual budgetary review. Any committee recommendations in this regard will become effective only after being approved by City Council resolution.
2. Deletes invalid voting provisions. The City's Charter has never been the subject of a referendum after the Municipal Home Rule Powers Act (the "Act") was enacted. While the City's governing body has broad authority to change the Charter by ordinance, this power is subject to certain limitations. One such limitation is that any ordinance which changes the distribution of Charter powers enjoyed by the elected officials prior to the Act is invalid unless approved by a referendum. Pursuant to the City's Charter and in the absence of statutory authority, the Mayor can only vote on an item in case of a tie, and enjoys a veto privilege (which veto can be overturned by a super majority vote of the Members of the City Council). Those portions of existing law which contain contrary voting provisions are proposed to be deleted.

3. Streamlines the method and procedures for changing job descriptions, hiring personnel, and changing compensation.

- a. Employees of the City who are not Department Heads have a job qualifications description and duties prepared by the respective Department Head, reviewed by the Human Resources Director and approved by the Mayor. This practice is proposed to be codified.
- b. The current practice of the entire City Council's annual budgetary review of each department's organizational chart, vacant and filled positions, and compensation ranges assigned to vacant and filled positions is proposed to be codified.
- c. When an employee is hired for a position and pay scale within the range approved by the City Council as a part of a budget, it is proposed that hiring may be approved by the Mayor; however, whenever an employee is proposed to be hired for a position not previously approved by the City Council for the budget year in question, or is proposed to be paid in excess of the pay range established by the Council for such budget year, it is proposed that a Resolution of the City Council shall be required.
- d. The Mayor retains the ability to adjust periodically the compensation of all City employees provided that the pay as adjusted remains in the pay range reviewed by the City Council for the position and budget year in question. It is proposed that any adjustments in excess of the pay range approved by the City Council will require a Resolution of the City Council.

4. Streamlines employee disciplinary procedures.

- a. Generally, the City's employee disciplinary provisions are contained in the City's written policies, or in the Collective Bargaining Agreement; therefore, having Ordinance provisions on this subject is unnecessary. Consequently, the former provisions which allowed all employees to seek review of disciplinary action in front of the Job Description Committee have been deleted.
- b. Currently, Department Heads may have all discipline reviewed by the Job Description Committee. It is proposed that Job Description Committee review only be available when the discipline involves discharge, demotion, or suspension without pay for more than five (5) working days. Department Heads may request less severe discipline to be reconsidered by the Mayor.
- c. The procedure employed by the Job Description Committee to conduct its review of discipline has been changed from a formal and expensive quasi-judicial review to a simpler, less expensive, more informal, and more flexible administrative review.
- d. The Pre-Act Charter provisions of the Mayor and Council with respect to reviewing significant Mayoral suspensions of the City Clerk, Police Chief, and City Attorney have been restored to the Code.
- e. The concept of all department heads serving at the pleasure of the City governing body has been retained, such that they may be removed at any time by resolution, and if this occurs, they are not entitled to seek any City review of this action.

5. Changes the “Assistant to Mayor” title to “Chief Administrative Officer”. This is recommended because the revised title better reflects the position’s authority. Also, provisions have been added to explicitly reference the position’s authority to sign contracts, sign releases, make concessions during various negotiations, effect orders and payments, act on behalf of the City under the Mayor’s supervision, and execute many other duties of the position. Codifying this authority will hopefully reduce the need for the Mayor or City Attorney to render confirming advice to persons dealing with the City that the position enjoys this authority.
  
6. Makes certain other procedures comport with Charter Requirements. In order to fill department head vacancies consistent with past practice and legal requirements, a new Section 2-94 has been added and Section 2-144 is repealed. These changes reflect the Mayor’s authority to appoint the Chief of Police, City Attorney and City Clerk, subject to the ratification by the City Council, using whatever screening process the Mayor determines appropriate, or using the supplemental process in the Ordinance. As to other Department Heads, in the absence of the City Council determining a procedure for the Mayor to follow in screening candidates and making recommendations to the Council for an appointment, the Ordinance authorizes the Mayor to decide whether to follow the supplemental procedures. The supplemental procedures will allow an advertisement, mayoral interviews, individual Council meetings, and a public discussion at a Council meeting prior to the appointment being made or ratified by the City Council, as the case may be.

If anyone has any questions concerning this Ordinance, please contact Ms. Moale or me.

This matter is now ready for Workshop consideration.

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Councilwoman Uria expressed concern and questioned whether the Council members would like to review the April 21, 2011 memo, as there are a lot of changes.

**Item #1** deletes the Job Description Committee.

Councilwoman Uria participated on the Job Description Committee and believes that it should be the Council President, the Assistant to the Mayor and the Human Resources Director. She was not in favor of getting rid of the Job Description Committee.

In response to Councilman Jacobs, Mr. Lunny explained that the only difference being proposed other than the description is that at the time of budget, in addition to being given the outline and charts of how the various departments are staffed the actual descriptions will be made available to Council members at that time. This came to our attention because of a disciplinary procedure that was handled by the Labor Relations Counsel who is involved in the drafting of this ordinance. When reviewing the Code provision for the Job Description Committee it was realized that but for the review of the actual descriptions it really has not functioned as ordained for many years. As part of an effort to reduce expenses and try to have a Code that more accurately reflects what is being done it was proposed that the Job Description Committee be deleted. The Job Description Committee will now hear disciplinary measures with Department Heads who face a severe discipline in the form of demotion, loss of pay, or more than a five-day suspension. If that is imposed by the Mayor the Department Head can seek a Job Description review of that matter. If there is a change to a job description that is proposed that is outside of the budget cycle that will go the Job Description Committee and after the Committee it would go to Council for approval of a Resolution. The title of the Job Description Committee should probably be changed. The Job Description Committee came from an old ordinance.

Councilwoman Uria stated that currently the three members are the Mayor, Council President and Council Pro Tem. Whenever the Committee meets it has to be Sunshined and minutes must be done and that is why she feels the membership should be changed. She thought the Council President, Assistant to the Mayor and the Human Resources Director could be on the Committee.

Mayor Bendekovic indicated if one of the functions is for discipline she should not be serving on the Committee. She liked the suggestion of the Chief Administrator, the Human Resources Director and the Council President serving as members.

Councilman Tingom concurred. He believed that Mr. Lunny should be directed to find a better name for the Committee.

Mr. Keefe stated as far as the make up of the Committee, he believed that would put the Human Resources Director and the Chief Administrator in an awkward position. If the Mayor were to discipline a Department Head and the Committee overturned the decision that would be problematic. He thought that the Department Head should be given the opportunity to go to Council, which would be more independent of the Mayor rather than the Chief Administrator or the Human Resources Director.

In response to Councilwoman Uria, Mr. Lunny advised that the ordinance indicates that for disciplinary matters the Mayor would be off of the Committee and the Council would have to appoint a substitute.

In response to Councilman Jacobs, Mr. Lunny referenced Page 7, III, which says the Mayor's position on the Job Description Committee will be filled by another Elected Official, to be selected by lot. Mr. Lunny clarified that the intent is for a City Elected Official.

Councilperson Stoner suggested saying Council President rather than by lot.

Councilwoman Uria commented that the meeting will be in the Sunshine so it has to be advertised and minutes will have to be done. Her suggestion was trying to get away from the advertisement and the minutes to save some money. Perhaps some of the job descriptions should be reviewed.

Mr. Lunny indicated that under the new ordinance all job descriptions will be available annually and they can be discussed as part of the budget. The proposal is to have the Council review all of the job descriptions annually instead of having three members charged with the task of doing it and not doing it.

In response to Mayor Bendekovic, Mr. Lunny advised that the Job Description Committee has only been used one time in recent history.

Councilman Jacobs stated there is probably no way around the Sunshine; if Council is the ultimate authority it is their place to be the appeal.

Councilwoman Uria commented that if they stay with the Council President and Council Pro-Tem a position is needed to replace the Mayor.

Mr. Lunny indicated that the review of Mayoral imposed discipline would come to the Job Description Committee and no further appeal is such to the Council; however, the Council would reserve the ability, by resolution, to remove any Department Head at any time.

Mayor Bendekovic stated that you never know when the Committee is going to meet so it is on a rotating basis. The other member will have to be selected at the time the Committee has to meet.

There was a consensus for Council President, Council Pro-Tem and one more Council member.

Mr. Lunny clarified that the Council President, Council Pro-Tem and one other will perform the discipline review and review of job descriptions.

Councilman Jacobs suggested changing the name of the Job Description Committee to the Job Description and Disciplinary Review Committee.

Mr. Keefe clarified that the Job Description Committee would only be reviewing if there were a change in a job description, as the entire Council will review all of the job descriptions at budget time.

## **Item #2**

Councilman Jacobs did not find what was being deleted that has contrary voting provisions.

Mr. Lunny referenced Page 2, Section 2-51, which requires four affirmative votes of six members of the City Council.

In response to Councilman Jacobs, Mr. Lunny stated that some view the Mayor as part of the Council for some purposes and the reason this is invalid is because since the creation of this City we have had five members of the Council and a Mayor. He believes it gives the Mayor an affirmative voting privilege on every item and the Charter indicates that she does not have that privilege; she only votes in the case of a tie and only may veto.

In response to Councilwoman Uria, Mr. Lunny advised that governing body was used because in the past there has been confusion by Code readers, citizens, as to what is the governing body of the City. The governing body of the City is the Mayor and Council. In the past, in different contexts where the Code says the City Council will do whatever, certain citizens have read that to say that is a matter for the Council and the Mayor has no vote or veto privilege. By using the word governing body, he is trying to make it clear that everyone elected to represent this City have the prerogative of making these decisions each exercising their vote, veto and override powers as established by the Charter. It was an effort not to say City Council; because he would not want anyone to read that and incorrectly conclude that the Mayor had no role in approving items that are submitted to the City Council.

Councilwoman Uria referenced Section 2-51 and believes it should read City Council and Mayor, not City governing body.

Mr. Lunny commented that there is not a separate resolution of the Mayor.

In response to Councilperson Stoner, Mr. Lunny indicated that the Mayor is included in the governing body because she is part of the governing body of the City just as Council is.

Councilperson Stoner stated that the Mayor has always been allowed to have a vote on a resolution, which is not standard.

Mr. Lunny advised the purpose of this is to repeal the voting privileges that are contrary to the Charter. The Council speaks by resolution and ordinances; the Mayor only has a vote on resolutions and ordinances if there are four Council members in a tie and she can only stop or veto what Council does, in which case Council can override the veto. He could say by resolution of the City Council and Mayor but he would not want a Code reader to conclude that in resolutions the Mayor has no impact or role in terms of how those become effective.

Councilwoman Uria thinks it is better spelled out in this sentence.

In response to Councilperson Stoner, Mr. Lunny indicated that governing body is a term that has been used for many years just to avoid confusion.

In response to Councilman Levy, Mr. Lunny clarified that people in the past have concluded that when using governing body the Mayor is included and if it says City Council they believe the Mayor is not included. It is an issue of how Council and the Mayor work together.

Councilwoman Uria referenced Section 2-129 under the Chief Administrative Officer, the second sentence says, "While the Mayor is part of the governing body of the City".

Mr. Lunny was trying to avoid confusion.

Councilman Levy commented that the City Attorney is saying if it says governing body that includes Council plus the Mayor and if it says City Council that does not include the Mayor. He questioned how this should be clarified so that the public and this body understand the term.

Mr. Lunny proposed to use City governing body when the Mayor is included. The Mayor does not have a say in Council elections, ratifications of charter officers the ratification does not require a resolution that is totally within the Council's prerogative. There are a few instances where the Council and the Mayor's position are different.

In response to Councilman Levy, Mr. Lunny indicated that he could be directed to write something and hopes this can be addressed less expensively on a case by case basis going forward.

Councilman Jacobs suggested putting the definition in the Code in the appropriate section.

Mayor Bendekovic stated that another footnote could be used clarifying the definition.

Everyone was in agreement.

Mr. Lunny questioned whether the voting provisions are being deleted.

Everyone except Councilperson Stoner agreed with #2 on the memo.

Mr. Lunny advised it is invalid and he does not believe it is relevant anymore given that the matters handled by the Job Description Committee are likely not going to be subsequently reviewed by the Mayor and Council, as envisioned.

Councilwoman Stoner indicated that a lot of the issues come back to the Charter; perhaps it is time to have a Charter Review Committee in place, which would also address the term limit issue that has been discussed.

***Motion by Councilperson Stoner to put a Charter Review Committee together.***

There was no second to the motion.

Councilman Jacobs noted that prior to doing so we would need to determine the scope of the Committee.

Councilwoman Uria suggested Workshopping this.

Mr. Lunny advised that it is clear that the Mayor does not have a voting privilege the same as Council. It would be his recommendation to delete it. It has been in the Code for over 20 years; the issue is when third parties are trying to figure out what the rules are and that is why it is better to have something that is more accurate.

Councilman Tingom believes the updating of the titles of the Officers is good and he thinks Council should move forward. If this is in conflict and invalid we should operate with what the Charter says; however, the Charter should be updated with minor revisions.

Mr. Lunny noted that is in part what #2 was designed to do. He tried to outline the high points.

Councilwoman Uria commented that there are a lot of changes and additions in #2. She suggested going section by section to understand. She referenced Section 2-532 and questioned whether the job description was being changed for employees who are not Department Heads.

Mr. Lunny stated that there are significant changes, as mentioned in the memo. This is an Administrative item; he was requested to figure out some streamlining.

Councilman Jacobs suggested Workshopping the ordinance.

Councilwoman Uria concurred.

Mayor Bendekovic would like to at least change the title of Dan Keefe.

Mr. Lunny advised that if that is all Council would like to do it can be approved at First Reading and he will delete everything else except for that.

In response to Councilman Tingom, Councilwoman Uria stated that she has a problem with Page 9, Section 21-26.

***Motion by Councilman Levy, seconded by Councilwoman Uria, to approve Section 21-29 only. Motion carried on the following roll call vote:***

Ayes: Jacobs, Levy, Stoner, Tingom, Uria

Nays: None

It was the consensus to Workshop the rest of the ordinance at a later date.

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Mr. Lunny read Item No. 16 by title.

16. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE PERTAINING TO THE SUBJECT OF ANIMAL CONTROL; AMENDING CHAPTER 4 OF THE CODE OF ORDINANCES OF THE CITY OF PLANTATION, FLORIDA IN ORDER TO AMEND AND UPDATE REGULATIONS CONCERNING DANGEROUS DOGS.

A memorandum dated May 12, 2011 to Mayor Bendekovic and Members of City Council from Melissa Zelniker-Presser, Police Legal Advisor, follows:

RE: Aggressive Dog Ordinance Revision, Chapter 4-Animals

I. Background to Revisions

Due to the recent Fourth District Court of Appeals decision in Hoesch and South Florida Siberian Husky Rescue, Inc., v. Broward County, Florida, appropriate modifications need to be made to the City's Code in order to ensure that we are in compliance with State Statute and that the code is legally enforceable. I have had an opportunity to review the above named 4<sup>th</sup> DCA decision in order to appropriately analyze the Court's decision and its effect on Chapter 4 of our Municipal Ordinances. The importance of changing this definition stems from the ultimate enforcement under this ordinance which would be the destruction of a dangerous dog. The synopsis of the Court's decision is as follows:

- A. The State of Florida through its legislature has specifically defined a "dangerous dog" in Florida Stat. 767.11. Therefore, municipalities may not alter what the definition of a "dangerous dog" is.
- B. In the above mentioned case, this became an issue when Broward County wanted to destroy a dog that had been previously declared by the County as a "dangerous dog." The problem was that the County's definition of "dangerous dog" was in direct conflict with the definition of a "dangerous dog" as outlined in Florida Statute 767.11.
- C. Due to this conflict, the Fourth District Court of Appeals declared the definition of "dangerous dog" in Broward County ordinance Section 4-2(k)(2) null and void.

In reviewing this recent Court decision together with Florida Statutes 767.10.15 (2010), I am recommending modifications to Chapter Four to ensure compliance with State Statute. These recommended substantive changes can be seen in Section 4-24 Definition and 4-30 Enforcement. I am also recommending changes to 4-20 and 4-22 and 4-30 that are solely linguistic in nature.

II. Recommended changes

Based on this recent Court decision and other related legal analysis, I am recommending the following modifications be made to Chapter 4 of the municipal code:

- a. Change any and all language in Chapter 4 that includes the term "aggressive dog" to "dangerous dog."
- b. Modify the language in Section 4-20(e) Enforcement of Violations. This modification is solely linguistic in nature and does not make any substantive changes.

- c. Modify the language in Section 4-24 Definition. These changes reflect the exact wording of the State Statute in Florida Statute 767.11 as to the definition of “dangerous dog” and “severe injury.”
- d. Modify the language in Section 2-29(2) Hearings concerning the classification of a dog as an aggressive dog/violations to include the term “preponderance of the evidence”, substitutes in for the term “the greater weight of the evidence.” Substitute the term “magistrate” for the term “master.” These changes are solely linguistic in nature and do not make any substantive changes.
- e. Modify the language in Section 4-30(b) Enforcement to substitute the term “magistrate” for the term “master.” This change is solely linguistic in nature and does not make any substantive changes.
- f. Modify the language in Section 4-30(d) Enforcement. These changes mirror the language found in Florida Statute 767.13 and 767.11.

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Mr. Lunny advised that this is viewed as a housekeeping item and he was requested to review the Mayor’s changes, which are satisfactory.

Councilperson Stoner questioned whether insurance is a standard for these dogs. If not, it creates a burden as the dogs are registered.

Mr. Lunny stated it is sometimes difficult to obtain this kind of insurance and it does create a burden upon registering the dogs.

Mayor Bendekovic commented that it also makes the owner more accountable. It had to be changed from aggressive to dangerous in order to go along with the Florida Statute.

Councilperson Stoner questioned if there is a greater fine if an individual does not have the insurance. She would think that not having the insurance is a different level of non-compliance.

Mr. Lunny indicated it could be written that way. As envisioned he believes they would not be able to have the registration without the insurance. He can find out whether there is an alternative bonding so if someone cannot get a policy they could bond the dog in some way. This ordinance was compiled as the result of an outcry by certain citizens who desired a tougher requirement than what was ultimately adopted.

Mayor Bendekovic advised that the ordinance acme about because of the fact that we had a couple of dogs attack in Country Club Estates, in the Acres and in Mirror Lake; therefore, it was decided that it would be best to have a non-specific breed. Owners need to be accountable for their dogs.

***Motion by Councilman Jacobs, seconded by Councilman Tingom, to approve the first reading of Item No. 16.  
Motion carried on the following roll call vote:***

Ayes: Jacobs, Levy, Stoner, Tingom, Uria  
Nays: None

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Mr. Lunny read Item No. 17 by title.

17. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE PERTAINING TO THE SUBJECT OF ZONING; AMENDING THE SUPPLEMENTAL REGULATIONS WITHIN SECTION 27-613.3 SO AS TO REQUIRE CONDITIONAL USE APPROVAL FOR MASSAGE PARLORS WITHIN THE SPI-2 ZONING CLASSIFICATION; AMENDING SECTION 27-743(21) TO CREATE A PARKING REQUIREMENT FOR MASSAGE AND PHYSICAL THERAPY ESTABLISHMENTS; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE THEREFOR.

A staff report dated May 25, 2011 from the Planning, Zoning and Economic Development Department follows:

Subject: Zoning Code Text Amendment: Massage Parlor and Parking

Massage parlor licensing is regulated by Ch. 480, Florida Statutes. City zoning regulates massage parlors as a “conditional use” in the OB-C, B-1P, B-2P, B-3P, and B-4P Districts as well as the SPI-3 Midtown District. However, massage parlors are regulated as a “permitted use” in SP-2, the State Road 7 Gateway Zoning District. The ordinance amends the SP-2 Zoning district to regulate massage parlors as a “conditional use” consistent with various commercial Zoning Districts throughout the City.

The ordinance also amends the parking Code so that massage parlors shall provide parking in accordance with medical and dental office requirements. In Plantation, massage parlor floor plans historically include four to eight+ small rooms where each patient can be treated by an LMT. There is also a waiting area, similar to a doctor’s office. Based on design and operational commonalities, staff recommends amending the massage parlor parking requirement (Citywide) consistent with that of a medical office.

**PLANNING AND ZONING BOARD RECOMMENDATION:**

Approval.

**STAFF RECOMMENDATION:**

Approval.

\_\_\_\_\_

Councilwoman Uria stated that in reading this ordinance she had a problem with the wording.

Mr. Leeds explained that the term “massage parlor” is already included in the Zoning Code and in most of the Zoning Districts it is a conditional use. Regardless of its size, he can require it to go through the entire Review Committee, Planning and Zoning, Council process or if it is small he can make a determination that it does not have to. The problem is that this is a permitted use in SPI-2 and all someone has to do is come in and apply for a business license and it is approved. This change, which is already in affect, under Zoning in progress, basically treats the SPI-2 like the rest of the City, which is the proper way. The reason we are doing this is because massage therapy facilities are laid out like a doctors’ office and they require more parking.

Councilwoman Uria indicated that she thinks there is too much definition. When reading this she feels that a legal and illegal massage parlor could say this is what they were doing.

Mr. Leeds advised that massage parlor is currently the term used in the Code and it is also referenced in the State Statute. One of the requirements for any facility where massage is going to be the business is that the practitioners be LMT's. We cannot distinguish between an LMT who is performing these activities and illegal activity; that is the function of the Police Department.

Mr. Lunny commented that he would discuss this with Mr. Leeds.

***Motion by Councilman Tingom, seconded by Councilman Jacobs, approve the first reading of Item No. 17.  
Motion carried on the following roll call vote:***

Ayes: Jacobs, Levy, Stoner, Tingom, Uria

Nays: None

\* \* \* \* \*

Mr. Lunny read Item No. 18 by title.

18. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE PERTAINING TO THE SUBJECT OF GROWTH MANAGEMENT; CLARIFYING THE CITY'S USE VARIANCE PROCEDURES; AMENDING THE CITY'S MINOR DEVELOPMENT APPROVAL PROCESS SO AS TO EXPEDITE VARIOUS APPROVALS AND INCREASE THE NUMBER, TYPE AND SCOPE OF APPROVALS WHICH CAN BE MADE WITHOUT THE CITY GOVERNING BODY'S ADVANCE CONSIDERATION; CLARIFYING AND REVISING THE REGULATIONS FOR ACCESSORY BUILDINGS AND STRUCTURES; AMENDING THE REGULATIONS THAT APPLY TO FENCES AND WALLS; CODIFYING THE CITY'S PROCEDURES AND REGULATIONS FOR THE ASSIGNMENT OF LOCAL ACTIVITY CENTER (LAC) RESIDENTIAL UNITS; REVISING REGULATIONS THAT APPLY TO THE REVIEW COMMITTEE; AMENDING THE SIGN CODE SO AS TO REFERENCE THE LIMITS SPECIAL EXCEPTIONS THAT MAY BE APPROVED ADMINISTRATIVELY; AMENDING THE DEFINITION OF THE WORD "LOGO" FOR PURPOSES OF THE SIGN CODE; AMENDING THE LANDSCAPE CODE TO APPROPRIATELY CROSS REFERENCE THE CHANGES MADE BY THIS ORDINANCE; INCREASING THE SETBACK REGULATIONS IN SINGLE FAMILY RESIDENTIAL DISTRICTS FOR STRUCTURES IN EXCESS OF 25 FEET IN HEIGHT; CLARIFYING AND AMENDING THE REQUIREMENTS AND PROCEDURES FOR VACATING AND RELEASING PUBLIC INTERESTS IN PUBLIC STREETS AND PUBLIC RIGHTS OF WAY; REVISING REGULATIONS THAT APPLY TO THE CLOSURE OR RELOCATION OF PRIVATE STREETS OR PRIVATE RIGHTS OF WAY AND ALLOWING AN ADMINISTRATIVE APPROVAL OF SUCH MATTERS IN CERTAIN CIRCUMSTANCES; MAKING OTHER MISCELLANEOUS AMENDMENTS TO CLARIFY HOW THE GROWTH MANAGEMENT REGULATIONS ARE ADMINISTERED AND ENFORCED; PROVIDING A SAVINGS CLAUSE, AND PROVIDING AN EFFECTIVE DATE THEREFOR.

A staff report dated May 25, 2011 from the Planning, Zoning and Economic Development Department follows:

Subject: Supplemental Memo: Growth Management Ordinance

Location: Interior Side Yard Setbacks (Very Tall Homes)  
Guest House Regulation in Plantation Acres

Maximum building height for single-family homes in Plantation is 35 feet, except for 40 feet allowed in Plantation Acres. Current interior side yard setbacks vary from 7.5 feet for the smallest lots to 10 – 12.5 feet for midsized lots, 15 feet in RS-1A (Historic Plantation), and 25 feet in Plantation Acres.

The City Council directed staff to amend the Zoning code to require increased interior side yard setbacks for very tall single-family homes. This request was based on an existing home located at 340 North Fig Tree Lane. The building is 33 feet tall (measured from grade to the top of the roof). The RS-1A Zoning requires a 15-foot setback. Percentage wise, the required setback is 45% of the building height.

The typical height of a two-story single family home in Plantation varies between 25 to 27 feet. Staff recommends the Code be amended to require one additional foot of side yard setback for each one-foot of building height over 27 feet. In the case of the 33-foot tall Fig Tree home, the required interior side yard setback would be 21 feet. Percentage wise, the required setback would be 64% of the building height. If the Fig Tree Lane home measured 30 feet in height, the required side yard setback would have been 18 feet, or roughly 60% of the building height.

**Staff requests City Council direction on this matter.**

Guest Houses in RS-1EP Zoning District (Plantation Acres)

The Plantation Zoning Code contains a provision allowing guesthouses or servants' quarter (no kitchens allowed) as an accessory permitted use in all single-family residential Zoning Districts, except RS-1EP. Guesthouses and servant's quarters have been interpreted to be freestanding structures that do not share a common wall with the home.

In the RS-1EP Estate District, guesthouses and servant's quarters are not permitted unless:

- 1) Minimum lot size is 100,000 square feet and
- 2) The guesthouse is not located on the same acre as the principal building.

Currently, we have a request to construct a home with a guesthouse attached to the home by covered walkway. Because sharing a covered walkway is not considered a part of the home, the building is classified as a guesthouse. However, the guesthouse is not permitted because the home is located on a one-acre lot.

If the City Council wished to allow guesthouses and servant's quarters in Plantation Acres on one-acre lots, a Code amendment is required. Please note that guesthouses are currently referenced in the Growth Management Ordinance and will be subject to certain architectural requirements.

**Staff requests City Council direction on this matter.**

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A memorandum dated April 28, 2011 to Mayor Bendekovic and Members of City Council and Members of the Planning and Zoning Board from Donald J. Lunny, Jr. Esquire, City Attorney, follows:

RE: Growth Management Ordinance

This Ordinance is sponsored by the Planning, Zoning and Economic Development Department.

Over the past year, Staff has been working on writing various Growth Management related items requested by the City Council or which have been recommended to the City Council. Consistent with direction we have received, we are proposing to codify these items in one ordinance so as to save on advertising expenses. With some exceptions, the main purpose is to streamline the City's development review processes, increase the authority of Staff to make certain approvals, increase the jurisdiction of the Plan Adjustment Committee, make the Code clearer and more user friendly, change the focus of the Review Committee, better regulate accessory buildings and structures (garages, carports, and sheds, for example), and as most recently requested by the City Council, propose an increase in single-family Zoning setbacks for "McMansions." Many of these topics were conceptually approved at a City Council Workshop in February of this year, and the Council requested that Zoning in Progress apply to these concepts.

This draft Ordinance addresses the following:

1. Section 1 of the Ordinance (**pages 1-12**) pertains to Minor Development approvals. In response to the recessionary influences affecting Plantation, the City Council temporarily authorized the Director of Planning, Zoning and Economic Development to approve certain types of minor development. These authorizations were temporarily extended by the Mayor. Generally, the Director's exercise of these powers has been well received by the private sector, and has reduced public expense. Now that the trial period for the temporary authorizations has concluded, it is proposed that the powers be formally authorized by an ordinance enactment. The "high points" are as follows:
  - a. Increases the thresholds for the extent of approval allowed in the Matrix (**pg. 3**) so as to authorize increased development without requiring Council review (notably, the Council still retains its call up privilege for minor use approvals approved under Subdivision A (**pg. 4**), and any matter that is not approved using this expedited process may still be evaluated using the more extensive development review procedures).
  - b. Creates expanded authority for Director "Administrative Adjustments" for Code waivers in Subdivision B (**pages 5-9**) which are not perceived as material, provides new provisions to allow minor landscape waivers with the concurrence of the Director of Landscape Architecture (**pg. 5**), and clarifies that no notice to adjacent or nearby property owners is required for Administrative Adjustments.
  - c. For Plan Adjustment Committee (PAC) (**pages 9-10**):
    - i. In the event a covering Council member is not confirmed as being able to attend within 48 hours of the meeting, the Mayor is authorized to attend the meeting.
    - ii. Clarifies and expands PAC's jurisdiction by allowing it to consider and approve:
      1. A minor use approval not approved by the Director;
      2. An Administrative Adjustment not approved by the Director;
      3. An application to amend an approved Site Plan, which:
        - a. Does not represent a significant change that should be reviewed under the normal and full site plan process;
        - b. Does not require a waiver of a Code requirement (except for an allowed Administrative Adjustment); and,

- c. Does not involve a specific and express condition of the City Council's approval as expressed in its motion (a general reference to being subject to staff and Advisory Board or Committee comments is not a "specific and express condition").
  - 4. Such other matters as provided by Ordinance or as may be referred to it by the City's governing body.
- iii. Codifies the practice of direct review of PAC denials by the City Council (**page 11**).
  - a. Allows for certain applications to be expedited (**page 11**) such that Advisory Board and Committee review can be waived.
- 2. As a result of the recession, the City's single family residential Zoning Districts have increasingly experienced adverse pressures concerning accessory buildings and structures. Oversized garages, converted garages, added carports, and on-site storage of goods and materials in "utility sheds" have been the subject of concerns and complaints. These are being employed in increased size, number, and various locations. As a result of this pressure, it is apparent that the Code needs to be reinforced with protective provisions that now more clearly regulate these items and impose aesthetic requirements which make them more consonant and compatible with single family residential areas. These proposed regulations are contained in Section 3 of the Ordinance (**pages 12-15**).
- 3. On many occasions during the City's history, persons on corner lots have sought fence height relief. Generally, a fence is limited to 4' high in the "front yard" and 6' high in the side and rear yard. The Code defines the front lot line to be the lot line on a street that has the smallest dimension. As applied to corner lots for fencing purposes, sometimes what the owner thinks to be his or her front yard is required by the definition to be treated as the side yard. Thus, from the owner's perspective, his side yard fence is limited to four feet in height. This problem has been corrected by new language in Section 4 of the Ordinance (**page 15**), so now this issue will be determined by the orientation of the home instead of by the relative length of the street/lot lines.'
- 4. Staff proposes in Section 5 of the Ordinance (**pages 16-19**) to codify the procedural and substantive regulations for an award of Local Activity Center Residential Units (LAC Units). The process is similar to that used for other kinds of Comprehensive Planning residential flexibility. An Ordinance enactment will be required.
- 5. Section 6 of the Ordinance (**pages 19-22**) focuses on the Review Committee. In order to better organize the Code and make it more user friendly, the Section concerning the Review Committee has been transferred from Chapter 2 ("Administration") to Chapter 27 ("Zoning"). Because the Committee is now in the Zoning Chapter, it will be chaired and administered by the Director of Planning, Zoning and Economic Development.

In the interest of achieving efficiencies in operation and to reduce costs, the number of persons required to attend each the Review Committee meeting has been decreased (such that representatives from the Parks & Recreation, and Public Works Departments no longer need to attend each meeting).

How the Committee functions is also proposed to change. Currently, members supply comments to applicants at the meeting and then vote to approve or deny a project. After the meeting, the applicants then schedule individual meetings with affected departments to review comments, and often plans get

modified that affect the comments of other departments. Plans also get modified after Committee Review and never get re-reviewed by the Committee's professional members (and this sometimes creates conflicts between approved Site Plans and comments when construction drawings for permitting are prepared). Inter-department inefficiencies in processing and delays then arise.

To reduce the Staff time involved in project review, the Committee will review a proposed project from a technical perspective with the thought of providing comments and determining if any potential changes to the proposed plan will create potential interdepartmental conflicts. Members will not be required to vote to approve or disapprove a proposed project. Only if all members agree that a further meeting to evaluate plan changes to address comments made at the meeting is unnecessary will the matter proceed to the next level of review. It will be important that plans be as detailed and as complete as possible at this stage of the proceedings.

By not requiring an approval vote on the merits of the project to go forward, the applicant and affected departments will be able to "agree to disagree" so to speak, and allow the review of the project to proceed through the review process at different levels. This, hopefully, will reduce instances where an applicant claims to be "stuck" because of a *qualitative* disagreement with the Committee over aspects of the project as distinguished from Plan incompleteness or unresolved Plan-generated technical conflicts.

6. The Use Variance procedures have been clarified slightly in Sections 7 and 8 of the Ordinance (**pages 21-23**).
7. Sections 9 and 10 and 16 of the Ordinance (**page 23, 24 and 26**) are intended to clarify for the public the City's department roles with respect to the Code's Zoning Chapter. These provisions have not been changed since the Building Department and the Planning, Zoning and Economic Development Department were separately formed from the "Building and Zoning Department" during Mayor Veltri's Administration.
8. Section 11 of the Ordinance (**page 24**) adds a cross-reference to the Sign Chapter 22 of the Code to reference the limited Administrative Adjustments the Director can make for signs under Chapter 27 of the Code so as to make the Code more user friendly.
9. Section 12 of the Ordinance changes the definition of "Logo" in the sign code to clarify same (**page 24**).
10. Section 13 of the Ordinance (**page 25**) adds a cross-reference to the Landscape Chapter 13 of the Code to reference the limited Administrative Adjustments the Director can make for landscaping under Chapter 27 of the Code so as to make the Code more user friendly.
11. Recently, the City Council requested that Staff re-evaluate the setback requirement in the City's single family residential property so as to increase same in light of the maximum size and height of structures that are allowed. Staff has in Section 14 and 15 (**page 25 and 26**) amended the setback requirement for homes and structures exceeding twenty-five feet (25') in height so as to apply an increased setback of one times the height of the structure. This new requirement will only apply to permits obtained after the Ordinance's effective date and will not make existing homes and structures non-conforming.
12. Section 17 of the Ordinance (**page 26**) adds a cross-reference to the Article XI of Chapter 27 (Off Street Parking) to reference the limited Administrative Adjustments and Expedited Review for off street parking requirements in Division 3 of Article III so as to make the Code more user friendly.

13. Section 18, 19 and 20 of the Ordinance concern rights-of-way. Currently the City has procedural regulations for vacating or releasing interests in streets, easements, and rights-of-way that apply to public or private rights-of-way. This law is contained in Chapter 2 of the Code. Chapter 23 of the Code (pertaining to “Streets, Sidewalks, Bridges, and other Public Places), has no mention of this process. In addition, Staff views applications to change or close private roadways as having potential service and Site Plan considerations.

It is now proposed to clarify this law by:

In Section 18 (**pages 26-29**), amending existing law in Chapter 2 so as to among other things, make same clearly apply only to public right-of-way. Since the law as changed now only affects public right-of-way, it is proposed to remain in Chapter 2 of the Code where all public property surplus, sale and purchase provisions reside. No Planning and Zoning Board review is required.

In Section 19 (**page 29**), add a cross reference in the Code Chapter 23 (dealing with Street, Sidewalks, Bridges, and other Public Places) to notify the reader that the process for vacating or releasing public right-of-way is in Chapter 2, so that the Code is more user friendly.

In Section 20 (**pages 29-32**), create in Chapter 23 (dealing with Streets, Sidewalks, Bridges, and other Public Places) a process for evaluating and approving the vacation of private streets and driveways similar to that in Chapter 2, except:

1. The process will not apply to a change to a driveway in a single family lot;
2. Council approval shall not always be required, if after Review Committee review, an application is approved by the Developmental Department Heads and the Police Chief as an Administrative Adjustment (§**3, page 6**);
3. The process will also apply to private road closings and relocations; and,
4. Since these matters involve private property and potential Site Plan considerations, Planning and Zoning Board Advisory review is available.

#### Concluding Remarks

Please note that the draft Ordinance was prepared in stages and through the use of different computers both within the City, and between the City and the Legal Department. As a consequence, metadata is embedded in the final electronic document that made formatting and editing very difficult. Every effort has been made to eliminate “data transmission and conversion nits,” and to show the changes proposed in comparison with the existing Code. We apologize for any remaining discrepancies that may remain.

This Ordinance is now ready for consideration.

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Councilwoman Uria referenced guesthouses in Plantation Acres. She believes the minimum lot size of 100,000 square feet is too much and she is in favor of decreasing that number.

Mr. Leeds explained that every other Zoning District in the City, including Zoning Districts that allow homes on 7,500-square-foot lots as long as they meet setback and lot coverage requirements, can have a guesthouse or servants quarter without a kitchen. Staff is proposing removing the 100,000-square-foot language from the RS-1EP entirely and treating it like any other lot.

Mr. Lunny did not know if that was a remnant of the concept of rural and he questioned if guesthouses would be perceived as too much urban. If Council wants the modified suggestion that is being proposed in terms of the setback in the supplemental, the ordinance provision is different. The ordinance had a one for one; therefore, this would be a change to what was considered by Planning and Zoning and was a further refinement of this thinking.

Mayor Bendekovic likes #3 with the fence because several of those have come before the Council. She would like to see that move forward as the corner lots really need to be looked at.

Mr. Leeds mentioned that staff originally proposed a setback for very large and very tall homes one times the building height; however, upon doing research it was discovered that the common height of a conventional two-story home varies between 25 and 27 feet measured from grade to the top of the roof. The original definition was changed so that the applicant would have to provide an additional foot of setback for each foot in height above 27 feet.

Councilwoman Uria was thinking more in the area of 30 feet.

Mr. Leeds stated that 30 feet would be about 85% to 88% of the house and that would increase the number of waivers and/or possibly variances. If a house is put on a small lot it will limit the size of the house to 25 to 27 feet. The formula can be made more strict and the more strict it is the more likely people will be told that their house cannot be any taller. Under the Zoning Code houses can be 35 feet tall and in the Acreage they can be 45-foot tall because the lots are larger. The number can be increased if the Council prefers.

Councilwoman Uria commented that she would probably like to see it bigger.

Councilman Tingom concurred with Councilwoman Uria. There needs to be a reasonable setback; something more stringent than what has been proposed.

Mr. Lunny believed that the one to one was too much. The ordinance that went to the Planning and Zoning Board says, "one-foot in setback for every foot in height". He questioned whether Council wanted to go back to the ordinance or find something in between. He suggested leaving it the way it is advertised and on second reading Mr. Leeds can show diagrams.

Mr. Leeds advised that currently we are at 65% and perhaps they can be between 65% and 100% of the height. The factor can be changed and the language will not need to be changed. He noted that under the old Code the utility shed was limited to the height of the house. Under the proposed Code a utility shed can be no more than ten feet. A garage is defined differently. Under the pre-existing Code the garage can be the same height of the house, which in most of Plantation, is 35 feet. That has been reduced to the garage cannot exceed 20% of the height of the house. If the house is one-story the garage can be increased by 20%. There is some compression the higher the house gets and there will be a cap of the 35 feet before reaching the 20% increase.

In response to Councilman Jacobs, Mr. Leeds indicated that under the formula a two-story house can have a two-story garage.

In response to Councilperson Stoner, Mr. Leeds stated that ten feet is the top of the roof.

Mr. Lunny advised that the number can be changed without advertising if the Council wishes. The word “shed” was not defined. Accessory buildings are allowed but the interplay between the definition of rural accessory building and accessory building indirectly defines what a shed is.

Councilman Tingom questioned whether this resolves the issue as to what is the front of the house?

Mr. Leeds indicated that in most cases it prevents the situation; it requires the single family homeowner to put the shed, in most cases, in the back of the house. There are certain exceptions for lots that have three sides; however, the general idea is to get the sheds in back of the house.

In response to Councilwoman Uria, Mr. Leeds stated they are already using Zoning in Progress, which is a result of a lot of conversations and Workshops.

Mr. Lunny requested that this be approved at first reading and suggested that other issues be addressed prior to the second reading.

In response to Councilman Tingom, Mr. Leeds clarified that this is an attempt to streamline the process for people to get permits through the City.

***Motion by Councilwoman Stoner, seconded by Councilman Tingom, to approve the first reading of Item No. 18. Motion carried on the following roll call vote:***

Ayes: Jacobs, Levy, Stoner, Tingom, Uria  
Nays: None

\* \* \* \* \*

Mr. Lunny read Item No. 19 by title.

19. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE PERTAINING TO THE SUBJECT OF ZONING; CHANGING THE LIST AND REGULATIONS FOR THE I-LP ZONING DISTRICT; PROVIDING AN EFFECTIVE DATE THEREFOR.

A memorandum dated May 19, 2011 to Mayor Bendekovic and Members of City Council from Donald J. Lunny, Jr., Esq., City Attorney, follows:

RE: Proposed Changes to the I-LP Light Industrial Zoning District

### I. INTRODUCTION

Staff has been meeting with Technology Park landowners and representatives in an effort to evaluate changes to the City’s I-LP (Light Industrial) Zoning District to encourage development now desired by the private sector in this area of the City, to increase clarity in the District’s regulations, and to streamline the permitting process. It has been many years since this portion of the Code was critically evaluated.

This memorandum recounts the Ordinance's evolution up to this point in the enactment process. Section V, commencing on page 5 outlines the Industry Group's remaining requests, and the Staff and Planning and Zoning Board's comments with respect to same. To the best of Staff's knowledge, these are the only remaining identified issues of concern to the Industry Group that remain to be addressed by the Council.

At the outset, Staff wishes to thank Mr. Murphy, Mr. Allsworth, Mr. Laystrom, and Ms. Mellgren for their input and time in acting as the I-LP Zoning District Industry Group representatives, and for coordinating the Industry Group meetings. While Staff was advised that the initial draft of the Ordinance was very well received by the Technology Park business community, we believe the meetings with the Industry Group representatives were helpful in improving the draft Ordinance now under consideration.

## **II. ORDINANCE AS PRESENTED AT WORKSHOP**

The proposed Ordinance's "high points" when it was reviewed at the Workshop was as follows:

### 1. Changes to Encourage Development:

- a. Expands the descriptions of allowed "technology based" industries so as to be able to better attract these uses;
- b. Allows Professional office Uses, Business Office Uses, and Office-Support High Density uses as permitted uses, subject to meeting parking requirements;
- c. Allows as a conditional use a limited amount of fully screened, outdoor storage of construction equipment and construction vehicles, and commercial vehicles which can not fit within a standard sized 9' x 18' parking space or are not located in designated loading space(s) accessory to a principal use so as to better reflect existing conditions and avoid Code Enforcement;
- d. Creates a limited opportunity for auto repair conditional uses to be located within the District, with paint and body work being excluded;
- e. Allows a limited amount of art, dance, and music schools, as well as fitness uses;
- f. Increases the degree of accessory showroom space from which retail sales may be conducted; and,
- g. Allows facilities for governmentally owned utilities and offices accessory thereto.

### 2. Changes that Increase Clarity:

- a. Clarifies that most uses are encouraged to be within an enclosed building (the exception is the conditional use of accessory outdoor storage of construction equipment, construction vehicles, and commercial vehicles as indicated above);
- b. Eliminates the former Code section which expressly permitted the City to defer local concurrency requirements for building streets (this was used before the District's street network was fully developed and is no longer needed);

- c. Eliminates several uses not desired in the District by expressly stating they are prohibited (including governmental administrative services, temporary or transitional housing, and penal, correctional, or rehabilitative uses);
- d. Clarifies that high parking demand uses will not be allowed (convention centers, auditoriums, and other assembly uses).

3. Changes that Streamline Permitting:

- a. Promotes expedited site plan review by emphasizing fixed development criteria.
- b. Authorizes the Director to allow uses that do not exceed 20,000 gross square feet in size to locate in the District even though they are not listed as a permitted, conditional, or prohibited uses, provided they are technology based uses. This will avoid a Code amendment in each instance.

### **III. CHANGES MADE AS A RESULT OF COUNCIL'S WORKSHOP**

1. Height-Setback.

At the Workshop, the City Council tentatively approved a one hundred (100) foot height limit on buildings. Staff now proposes instead a new property line setback of .5 times building height (which is much more forgiving than the 1.5 times building height setback requirement in other Zoning Districts), and a further reduction in the building height limit to seventy-five (75) feet. In addition, the Sunrise Boulevard setback for freestanding pole or tower mounted wind or solar power equipment was reduced from the earlier proposed two times the maximum equipment height to one and one and a half times the maximum equipment height. These changes are on page 10 and 11 of the Ordinance.

2. Additional Parking Changes.

The Ordinance has been revised to add provisions also discussed at the Workshop to the effect that the parking requirement for office gross floor area within warehouses and distribution centers will only be counted at the "office count" to the extent the office floor area exceeds fifteen (15)% of the warehouse or distribution center overall gross floor area. By the same token, office floor area within any manufacturing, assembly, service, or technology based use will only be counted at the "office count" to the extent it exceeds twenty-five (25)% of the overall gross floor area. Office floor area that is not accessory will be required to meet the "office" parking requirement for the entire office floor area. Additionally, the Ordinance has been clarified to indicate that medical offices or clinics are prohibited uses in the District consistent with discussion. These changes appear on page 3, 4 and 10 of the Ordinance.

The Ordinance has also been revised to allow a portion of a building to contain low-parking demand physical training schools, such as art, dance, and music schools, martial arts, gymnastics, cheerleading, or other physical fitness or sports training, subject to the following:

- a. If the site has a 1/500 parking space build-out, then up to 5,000 square feet or 25% of the building floor area, whichever is less, can be devoted to these uses.

- b. If the site has a 1/200 parking space build out, then up to 10,000 square feet or 49% of the building floor area, whichever is less, can be devoted to these uses.

3. Restoring Helistops.

Instead of deleting “Helistops” as was previously proposed, the current draft Ordinance indicates that these will remain conditional uses as requested by the City Council (pg. 6).

4. Include Aesthetic Standards.

At the Workshop, the Council authorized Staff to formulate some minimum aesthetic standards designed to discourage buildings from having large, blank, unarticulated faces, and so as to prevent metal buildings from being constructed in this District. Staff examined ordinances from other jurisdictions (Chicago City, Gonzales, and Louisville) for Industrial Park building design guidelines. From these, minimum standards were formulated, and were reviewed by the Administration, Design and Construction Department, and the PZED Department. They were revised consistent with Staff suggestions. The aesthetic regulations are on pages 13 – 15 of the Ordinance.

5. Directed Further Meetings with the Industry Group.

The City Council also directed at Workshop that Staff continue to meet with the Industry Group. The remaining issues resulting from these additional meetings are identified in Part V of this memorandum below.

#### **IV. PLANNING AND ZONING BOARD REVIEW**

The Planning and Zoning Board reviewed the proposed Ordinance on May 3, 2011, and recommended its passage to the City Council. The Board reviewed the various topics raised by the Industry Group, and any specific direction it desired to include for the Council’s review is included in Part V of this memorandum.

#### **V. INDUSTRY GROUP ADDITIONAL REQUESTS, AND STAFF AND PLANNING AND ZONING BOARD REACTIONS**

The following are areas where additional substantive changes were requested by the Industry Group, and Staff and Planning and Zoning Board’s response and recommendations (if approved by the City Council, the changes will be made prior to Second Reading):

1. The Industry Group requested that the Ordinance be changed to allow governmental administrative services as a permitted use. Examples given were voter registration, property appraiser sub office, probation office, marriage counseling, and a BSO satellite office.

Staff is opposed to this idea because of: (i) compatibility impacts that certain types of these uses can have, (ii) high parking demands and impacts to sites built with low parking requirements, (iii) impacts of these uses on the City tax base, and (iv) the fact that only two of these uses were permitted previously by the City by Use Variance (Social Security Office and vehicle registration). The draft currently prohibits penal or correctional institutions, jails, detention centers, temporary or transitional housing or shelters, or treatment centers or facilities for disorders, addictions, or other health or social

problems. If the City Council wishes to nevertheless allow government administrative service uses of the general public service type (i.e. those not described in the prior sentence), Staff would recommend that they be allowed only as a Use Variance.

**The Planning and Zoning Board consensus was to allow government administrative services to be allowed on a use variance basis.**

2. The Industry Group requested that the Ordinance be changed to expand the list of permissible schools to include tutoring schools, computer schools, and day care facilities.

Staff would note that the draft Ordinance allows a limited amount of low-parking demand physical activity schools (i.e. art, dance, music, gymnastics, and cheerleading) where per average per-pupil floor space is expected to be greater than classic classroom instruction. Tutoring schools and computer schools are not viewed as being similar. Day care facilities are not recommended by Staff in this Zoning District, unless they are accessory to a principal use.

If the City Council wishes to nevertheless allow these uses, Staff would recommend the following:

- a. Tutoring schools, computer schools, and day care centers shall be included within the same floor area limitation of the physical training schools category. For example, if a site has a 1/500 parking space build-out, then up to 5,000 square feet or 25% of the building floor area, whichever is less, can be devoted to a combination of classic education, day care, and physical training schools.
- b. Day care facilities shall have a 1,000-foot separation requirement.

**There was no consensus of the Planning and Zoning Board as to this topic; consequently no recommendation one way or another was made.**

3. The Industry Group requested that the Ordinance be changed to allow personal services as a permitted use.

Personal services (e.g. barber and hair salons, spa and nail centers, massage parlors, and the like) are currently not permitted in I-LP zoning. Because personal services have high parking demands, Staff does not recommend them as being compatible with a Technology Park, especially in light of previously agreed to reductions to office, retail, and physical training school parking requirements.

**The Planning and Zoning Board consensus was to allow non-accessory personal services be limited such that where the site has a 1/500 parking space build out, then only 10% of the building can be devoted to these uses; whereas, if the site has a 1/200 parking space build out, then only 15% of the building can be devoted to these uses. This action was consistent with Staff's advice at the time concerning limiting criteria if non-accessory uses were to be approved.**

Staff would suggest that if the City Council wishes to allow personal service uses, the following limitations be required:

- a. Regulate personal services as a conditional use.

- b. Limit personal services to buildings providing a 1/200 parking space build out, not to exceed 15% of the gross building area.

Staff emphasizes that the proposed Ordinance would already allow buildings providing 1/500 parking spaces to have up to 25% of space for office and 25% for physical training schools. If high-parking demand personal services were also allowed, 60% of an industrial building could be occupied by non-industrial uses with no corresponding increase in parking.

4. The Industry Group requested that the Ordinance be changed so as to expressly permit private utilities (other than franchised providers) as a permitted use.

Staff does not think these uses should be permitted uses; instead, if the City wishes to have the ordinance clarified in this regard, the Staff recommends that these uses be made conditional and that there be no outside storage of trucks and equipment. Staff will be re-zoning property purchased by the City to CF-P.

**There was no consensus of the Planning and Zoning Board as to this topic; consequently no recommendation one way or another was made.**

5. The Industry Group requested that the ordinance be changed so that where outdoor storage of construction vehicles and equipment is part of a contracting principal use, the parking lot not be screened with a fence and landscaping, or a wall and landscaping.

Staff does not recommend this change. It is critical to improving the Technology Park (and attracting technology uses) that large vehicle storage outdoors be decreased over time, and that where allowed, it be screened fully and secured. Staff has agreed that existing and compliant sites be given a five-year time period within which to comply.

**The Planning and Zoning Board consensus was to not recommend the Industry Group's requested change.**

6. The Industry Group requested that the ordinance be changed so as to allow one I-LP property to store commercial vehicles from another I-LP property located within two blocks.

Staff recommends against this proposal. This proposal would encourage the renting of parking lots for off-site parking. It would be difficult to manage and enforce, and would not encourage maintenance or redevelopment of buildings located on the parcels leasing their parking lots (because the parking lots would be used by persons not leasing building space). The concept of allowing off-site outdoor storage of commercial vehicles is inconsistent with the intent of the I-LP Zoning District and will inhibit redevelopment of the area.

Nevertheless, if the City Council desires this change, Staff would recommend that the procedure be somewhat similar to that used for State Road 7 which requires (i) Council approval in each instance, (ii) that the site used for parking be within 300 feet of the site where the use is located, (iii) that the leased parking spaces be "excess parking" and not "required parking" (i.e. that the leased parking not count towards the use's off street parking requirement) and (iv) written documentation approved by the City Attorney is recorded as against both properties affected.

**There was no consensus of the Planning and Zoning Board as to this topic; consequently no recommendation one way or another was made.**

7. The Industry Group requested that the ordinance be changed so as to allow auto repair facilities without the draft's protective provisions on pages 7 and 8.

Generally, Staff does not support auto repair facilities in the District because Staff believes these uses hamper the District from becoming a Technology Park, and because the City allows these uses along State Road 7. The protective provisions were suggested so that if any auto repair was to be allowed, it functions similar to the Sears Auto Repair in the Broward Mall, or the Pep Boys in the Best Buy Center.

The concept of allowing auto repair without the protective provisions on pages 7 and 8 will cause the Plantation Tech Park to deteriorate in a manner similar to the B5-P Zoning District located in the southeast corner of the Tech Park. If the protective provisions are not desired, Staff recommends that auto repair facilities be deleted from the I-LP Zoning District as provided in the current IL-P Zoning designation.

**The Planning and Zoning Board consensus was to not recommend the Industry Group's requested change.**

8. The Industry Group requested that the Ordinance be changed so as to allow automobile internet sales.

The draft currently prohibits sale, rental, leasing, painting, or bodywork of autos. Generally, Staff does not support car sale facilities in the District because Staff believes this use will hamper the District from becoming a Technology Park, and because the City allows this use along State Road 7. As described to Staff; however, "internet sales" would be limited to selling from an inventory located offsite, or selling from an inventory stored in an enclosed warehouse on the site. The Ordinance currently permits office and showroom usage in warehouses, and thus, if this use is desired by the City, Staff would recommend that prohibition of auto sales would be clarified to allow internet sales to meet these suggested requirements.

**The Planning and Zoning Board consensus was to allow internet sales as clarified by Staff and the Industry Group.**

9. The Industry Group requested that the Ordinance be changed so as to allow car rental facilities.

The draft currently prohibits the sale, rental, leasing, painting, or bodywork of autos. Generally, Staff does not support car rental facilities in the District because (i) Staff believes this use hampers the District from becoming a Technology Park, and because the City allows this use along State Road 7, and (ii) any use that is parking lot intensive relative to indoor floor space will not encourage maintenance or redevelopment of the site's buildings. The concept of allowing car rental facilities, like off-site outdoor storage of commercial vehicles, is inconsistent with the intent of the I-LP Zoning District and will inhibit redevelopment of the area.

**The Planning and Zoning Board consensus was to not recommend the Industry Group's requested change.**

10. The Industry Group is evaluating whether the setback changes affect any of the existing property.

The draft Ordinance creates a new .5 times the height of a building setback because, in the future, building heights up to 75 feet will be allowed. Since none of the existing buildings has a height in excess of 50 feet, and since the current District minimum setback is 25 feet, Staff does not think the new standard will make any existing buildings non-conforming.

**The Planning and Zoning Board noted that there did not appear to be any disagreement about this issue, as Mr. Laystrom indicated that he was still verifying Staff's belief that no existing buildings will violate the minimum setback.**

11. The Industry Group requested that a portion of Section 27-539 be retained so that sidewalk construction requirements may continue to be deferred until the District's sidewalk network is established.

Staff agrees with this suggestion and amended the Ordinance prior to the Planning and Zoning Board meeting.

**The Planning and Zoning Board noted that there did not appear to be any disagreement about this issue.**

12. The Industry Group requested that the Ordinance be changed so as to eliminate a clause conferring upon the City Council the authority to impose additional Site Plan approval conditions.

The draft's language reads as follows:

*"The City Council may attach to its approval of the site development plan any reasonable conditions as are necessary to further the purpose of this article."*

Staff opposes this change, and the City Attorney noted it is strongly recommended.

**The Planning and Zoning Board consensus was to not recommend the Industry Group's requested change.**

13. The draft Ordinance allows the PZED Director to approve uses that are not "on the list" so to speak, provided the Director determines that the use is a technology based industry use and is similar to a use presently allowed (pg. 15). The Industry Group requested that the Ordinance be changed so as to allow these "sameness determinations" for any use.

Staff disagrees with this suggestion. The idea in creating this provision was to allow flexibility in promoting the primary purposes of the District, and since this authority is new in Plantation, it should be used sparingly.

**The Planning and Zoning Board consensus was to not recommend the Industry Group's requested change.**

14. The Industry Group requested that the ordinance be changed so as to delete the language in Sec. 27-541(f), pg. 15, which states that appeals from Staff "sameness determinations" as described above will be considered by the Board of Adjustment.

The Board of Adjustment hears and considers all appeals from Staff interpretations and determinations concerning the Zoning Code. The Council can amend the Zoning Code if the Board determines not to uphold an interpretation.

**At the Planning and Zoning Board hearing, Staff agreed to remove this provision, so that there would not be a redundant provision in the I-LP Zoning District regulations.**

**Since this provision would no longer be included within the Ordinance, the Planning and Zoning Board did not believe a recommendation one way or another was appropriate.**

15. The Industry Group wanted some assurance that existing buildings would be “grandfathered” such that they would not need to comply with the Ordinance’s new requirements.

Under Section 27-784, Plantation City Code, structures made non-conforming in the I-LP District as a result of new building or site design requirements, do not need to be made compliant with new requirements, unless they: (i) are enlarged or structurally altered; (ii) are damaged beyond 50% of their replacement value; or (iii) are moved. Thus, if a new use is proposed for an existing building, and no structural alternations are proposed for the building, then the above provisions would not apply. However, if a new use is proposed for an existing building and the building owner wishes to propose a change to the structural aspects of the building, the owner shall be required to comply with the requirements of the new Ordinance.

The Industry Group requested a special provision for the I-LP District that would expressly allow existing buildings to not comply with the new site or building design requirements unless the proposed structural changes to a building, or other changes to an existing building or occupancy or use were proposed which, would cause the entire building to meet all of the then existing requirements of the Florida Building Code.

Staff would support this additional request, in view of the new aesthetic regulations that Staff is recommending.

**The Planning and Zoning Board noted that there did not appear to be any disagreement about this issue.**

16. Finally, the Industry Group proposed that the proposed aesthetic standards in the Ordinance be modified.

Since the District Site Design and use regulations have become more objective, streamlined, and liberalized, the City will have fewer opportunities to comment on the qualitative aspects of building appearance. Recognizing this fact, the City Council authorized staff to draft some objective and easy to administer aesthetic standards for buildings. These proposed standards are contained on pages 13-15 of the Ordinance.

The Industry Group comments are as follows:

- a. All portions of the aesthetic regulations, except for subsection 27-543(c)(4)(b) (the building façade material components matrix) were acceptable.

- b. As to the building façade material components matrix in subsection 27-543(c)(4)(b), the comments were:
- i. For building facades that face Sunrise Boulevard, the Industry Group wanted the minimum percentage requirement for Class 1 components decreased from 25% to 10%; and
  - ii. For building facades that front on other public rights-of-way in the District, the Industry Group questioned whether any regulation of building materials components should be necessary, and if determined appropriate, wanted the minimum percentage requirement for Class 1 components decreased from 10% to 5%.

At the Planning and Zoning Board hearing, Staff advised that it had reconsidered this request, and felt that it was reasonable.

**The Planning and Zoning Board noted that there did not appear to be any disagreement about this issue.**

## VI. CONCLUSION

This matter is now ready for legislative consideration at First Hearing.

Please note that the draft Ordinance was prepared in stages and using different computers both within the City, and between the City and the Legal Department. Therefore, metadata is embedded in the final electronic document that made formatting and editing very difficult. Every effort has been made to eliminate “data transmission and conversion nits,” and to show the changes proposed in comparison with the existing Code. We apologize for any remaining discrepancies that may exist.

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Mr. Leeds explained the memo prepared by Mr. Lunny. He believes that about 95% of the requested changes have been accommodated. Mr. Lunny has provided a summary of each change, the applicants’ wishes and staffs’ recommendation as well as the Planning and Zoning Board recommendations. Mr. Leeds would like to give the applicant’s representative an opportunity to address the Council.

Councilwoman Uria suggested going through comments item by item.

Attorney Emerson Allsworth was present on behalf of the applicant. He referred to Staff Report V, Item #1 on Page 4. He noted that Bill Murphy was supposed to attend this meeting; however, his plane was grounded in Tampa. He stated that Attorney Bill Laystrom and Michelle Mellgran, Planner, were also present.

Mr. Allsworth referenced comment #1, which has to do with the issue of Governmental Administrative Services. He noted there are two kinds of Governmental Services offered; one is the offices where the public does not come in and the other is services where the public does come in. The proposal of a Governmental Service Office can be approved on a use variance and two have been approved in the last two years; one for the Social Security Administration and the other for the Auto Tag Agency. Mr. Leeds has added an addendum in the staff report saying, “However, if the Council wishes to exceed to the request that it be under certain conditions”. As to Governmental Services, they think they should not take away from the Council what they have today, which is

the right to grant a Governmental Service Office by a use variance. Mr. Leeds has said that he does not particularly like Governmental Services because of a greater impact. They realize that a parking study has to be done on a use variance. The use variance is very stringent as far as the level that must be attained. It is requested that this be left open. They agree with Mr. Leeds' comments that if the use variance is passed they are not trying to make it a blanket use.

Mr. Leeds advised that staff is used to the use variance process. The first issue with Governmental Office Administrative Services is parking; however, the more serious issue is the loss of tax base. If a Governmental entity purchases a piece of property the Police and Fire Departments still have to respond and we get no tax from it; that is the concern. If it is the consensus of the Council that they feel this should be allowed in some form then it should require the use variance process. It can also be regulated as a use variance but you run the possibility or may get a very nice building on a large piece of land that pays no taxes.

Councilman Jacobs questioned how often Governments buy instead of lease. His experience is that they tend to lease a lot of the locations and the tax revenue is not lost.

Mr. Leeds agreed if dealing with the Federal Government. When dealing with Local Government or the County it is more likely that we are looking at a purchase. He stated that the Social Security Administration, which is a Federal building, is being leased from a turnkey company that is privately owned and they are paying taxes.

Mr. Lunny advised that the Council can amend the Zoning Code at any time. This is not a restriction on the City's authority; another obstacle is being created for someone that wants to have Government Administrative Services, as they would have to apply to either rezone the property CF-P or they would have to request that the I-LP ordinance be changed to allow the use on a use variance basis. It is not that we are suggesting that the Council's authority be diminished; they are proposing a different process. Should Council wish to leave Governmental Administrative as an available use the suggestion would be to leave it the way it is. When regulating another Governmental entity the law is not the same as an application that is strictly from the private sector.

Councilman Jacobs referenced the parking concern and Mr. Allsworth's comment that there are two kinds of Governmental services where the public would come in and where there is no public allowed. He questioned whether that would impact the parking requirements and if so, perhaps one kind could be less restrictive.

Mr. Leeds indicated that Administrative Office, which is not open to the public, was calculated at five per 1,000. It is Administrative Services, which is a much higher requirement because there is a high volume of people. Mr. Allsworth is correct; that would be part of the use variance process.

Mr. Lunny believed they should be approved as permitted uses; they are already allowed under this draft. Governmental Administrative Offices is allowed and Services are restricted.

Councilwoman Uria commented that perhaps future Governmental Services could pay taxes that are less restrictive.

Mr. Leeds stated that the tax or no tax issue is separate. If someone comes in under the current ordinance with an office building it is a permitted use; however, Services can be regulated as a use variance, as we already do.

In response to Mr. Allsworth, Mayor Bendekovic advised that the second reading will be held on June 22, 2011 since he will be out of town for two weeks.

Mr. Allsworth referenced comment #2. He noted that it has to do with permissible schools. They reached an agreement with staff that certain schools would be allowed to come in as a permitted use. Item #2 outlines physical activity schools, such as art, dance, music, gymnastics and cheerleading. He would think that the intent would allow an exercise health spa as well. In addition, he is requesting that tutoring or computer schools be allowed in the Park. He also requested that a day care center be allowed. Mr. Leeds has again pointed out if the Council agrees there would be a couple of restrictions; that the tutoring and computer schools have the same floor area limitation on parking as the activity schools, which is agreeable. There may be a misunderstanding relating to the day care; the owners' envision a day care center in the Park, not a little day care center for various office buildings. Under the State Law, a day care center is very expensive; there must be a playground area, a certain amount of water fountains and restrooms. Mr. Leeds says if Council allows this there should be a 1,000-square-foot separation and he is right. They are agreeing with all of Mr. Leeds' restrictions.

Mr. Leeds indicated that the way the ordinance is drafted in terms of physical education schools it would not include a health spa, a health club, a 24-hour fitness; those have extremely high parking requirements. Currently the physical education schools are not allowed; however, it was included because there was an interest. Generally if dealing with a cheerleading school there is a lot of space but not a lot of drivers. There is a slight concern about tutoring and computer schools in terms of parking; however, they are willing to compromise. Physical education is currently allowed in a typical industrial building as long as they do not exceed 5,000 square feet or 25% of the building floor area, whichever is less. They would agree to include computer schools, tutoring schools and day care centers if collectively they are all subject to that same square footage limitation.

Mr. Allsworth agreed.

In response to Mr. Lunny, Mr. Leeds advised that it is treated in a typical industrial building, which is two spaces per 1,000; one to 500. There would be one category, A, that would include physical training schools plus educational training schools. Category B would be day care centers.

Councilwoman Uria clarified no fitness or health spas are allowed. She suggested no chain fitness centers, but perhaps smaller fitness gyms and personal training places could be permitted with a restriction.

Mr. Leeds indicated that he would look at that with the context that it will not be together with the 25%, 5,000-square-foot rule.

Councilman Jacobs commented that those kinds of facilities require restrooms and showers.

Mr. Leeds stated that small facilities, under 5,000 square feet, may not require showers; it depends on the types of activities.

Councilman Tingom suggested tabling this item, move on to Item 21 and then come back to Items #19 and #20.

Councilwoman Uria preferred to continue this discussion.

Mr. Allsworth referenced comment #3, to allow personal services such as a barber shop/hair salon. He agreed that restrictions would have to be put on the size and agreed to all of the staff comments.

Mr. Leeds advised that he and the Planning and Zoning Board had a bit of a disagreement. Uses are being allowed that generate more parking. Many of the buildings are based on two per 1,000 and there are some that are based on five per 1,000. The majority are in the lower parking category. If allowing this, he would regulate

it as a conditional use and to buildings that provide 100 to 200 parking ratio and 15% of the gross area. Item B is the standard used in office buildings for personal services. Traditionally if there is a large office building many services are provided on the ground floor and they want to limit it to buildings that have sufficient parking; only buildings that provide five spaces per 1,000. If you get into a 1 to 500 building we begin to have problems with parking and buildings that provide only the industrial standards.

Councilwoman Uria noted that Mr. Allsworth agreed that it should be regulated as a conditional use.

Mr. Laystrom referenced comment #4. He stated that there are a number of private utilities and they would like to have the ability to have those uses on their properties. Screening requirements are mentioned for outside storage with a wall and landscaping or a fence and landscaping. The real objection staff seems to have is of the outside storage and he requested to allow that storage at least with regard to vehicles. Perhaps they could be made a conditional use instead of a permitted use.

Councilwoman Uria would probably agree with a conditional use.

Mr. Leeds mentioned that there are two requirements. Private utilities are permitted if they are allowed as a conditional use; permitted means they are allowed by right and they can come in and get a Business License. Private utilities should not include any outdoor storage of trucks. Outdoor storage of trucks and construction vehicles is addressed in another section of the Code as a separate conditional use subject to limitations. Staff has no problem with private utilities as a conditional use but they are referring to inside the building. If someone wants outdoor storage they would have to apply for that at the same time.

In response to Councilman Jacobs, Mr. Leeds indicated that would be two conditional use applications. There are restrictions in the conditional use in terms of the size of the parcel, square footage and percentage of the site with limited outdoor storage. Construction vehicles can only be partially screened because the walls are six to eight feet and they cannot be higher without a waiver.

In response to Councilperson Stoner, Mr. Leeds stated that this is an Industrial Park but it is intended for light industrial high tech. Outdoor storage is allowed with conditions because we do not want it to become an outdoor storage park. When people lease storage space they do not build buildings and again, it is a tax base issue. The intent of the Code wants to encourage tax based intensive quality uses and the concern for limiting the size of the outdoor storage is because it does not generate any added value. Commercial vehicles are allowed if they can fit in a 9 x 19 space and they just have the name of the company.

Councilperson Stoner commented that some companies require larger commercial vehicles with equipment and want to store them in a fenced in area overnight.

Mr. Leeds advised that overnight storage of vehicles with equipment is allowed as a conditional use subject to conditions; however, the limitation is how much of the lot can be used for storage. He read a section of the Code.

In response to Councilperson Stoner, Mr. Lunny indicated that a person would have to come back for permission to store additional company vehicles on the property and the policy reason is because we are trying to take a light industrial and move it to a Technology Park, discouraging incidents of industrial that were more of the heavy in the light range.

Councilperson Stoner stated there is nowhere to park commercial vehicles without permission; they cannot be parked in driveways and have to be pulled in the garage if there is any signage on the side of the work trucks.

Mr. Lunny advised that in this Technology Park conditional use will be required and there will be some restrictions, which is what staff proposes. If it is felt this is not appropriate it can be changed.

Councilwoman Uria commented that this item only deals with the use within the building.

Mr. Laystrom indicated that he is willing to let them be a conditional use. In response to Councilperson Stoner, he would come in for a conditional use with an expansion plan already in place. He wants to avoid two different applications. Perhaps it can be worded as a conditional use incorporating those conditions into this section of the Code so they do not have to get a waiver. The difficult part is the materials outside and the conditional use gives that control. He feels the conditional use is a compromise if it is made one.

In response to Councilman Jacobs, Mr. Lunny stated that could be done.

Mr. Allsworth referenced comment #4. Everyone understands that outdoor storage must be screened from public view; however, some vehicles are above the normal height of the wall. The way this is written it requires screening of a fence or wall and landscaping. Some of the owners are objecting to what appears to be double screening.

Councilman Jacobs commented that there cannot be a wall without landscaping; it will look too industrial.

Mayor Bendekovic advised that when conversing with Mr. Murphy he indicated that he had no problem with landscaping.

Councilwoman Uria stated that perhaps we should consider if commercial vehicles are parked in that area that they cannot be parked next to the wall.

Mr. Leeds indicated that once the wall or fence is installed there will be no control of what goes on. This is an Industrial Park and he believes that landscaping is necessary but does not separate the outdoor storage area from the street. He thinks a wall or fence and landscaping is needed. The current Code is consistent throughout the City and he differs with the applicant on this issue.

In response to Mr. Allsworth, Councilwoman Uria clarified that Mr. Leeds and Councilman Jacobs are saying that if there is a wall or a fence it must be landscaped.

Councilperson Stoner questioned the setback because if there is only two feet a hedge will not look too great. There is a maintenance issue that is difficult in a very small planting bed.

Mr. Leeds commented that there is five feet. It is a landscape issue and they will not put up a wall with so little space that the landscaping will die or that the root system will be detrimental to the wall. Less than five feet would create issues.

In response to Mr. Allsworth, Councilman Jacobs suggested getting rid of the word screen.

Mr. Leeds advised that he would not use the word screen. The wall is six or eight feet and it separates the outdoor storage from the street and landscaping is necessary for aesthetic purposes.

In response to Councilwoman Uria, Mr. Leeds stated that if something behind the wall is higher than the wall it will not have to be covered. Most of the vehicles will be above a six to eight-foot wall. A crane would be a different issue.

Mr. Lunny indicated that the objection was to a fence or wall and landscaping. The Planning and Zoning Board and staff felt that both are necessary. It will be written to very clearly have a height limit as suggested.

Dennis Fontaine, resident and business owner, referenced comments #5 and 36. He purchased a building in the Park to run his business out of. He put a custom made fence cover for the chain link fence; however, he could not put landscaping in front of the gate because he would not be able to use the gate or the driveway. He does not understand the technology definition; there is not a lot of technology in the Park. It is zoned industrial, which is the most business friendly. This area of the City should be the most liberal zoning; we need to build the industrial side. The intent is to screen it from the road.

Councilwoman Uria concurred that the intent is to keep it nice looking from the road. She was not sure whether it should be changed to Business Park or Industrial Park.

Mr. Leeds advised that the Code says you must come in for a conditional use. The City wants a process so if there is a tenant in the building that there is some parking.

Councilwoman Uria commented that Mr. Fontaine owns his building and he should have the right if he has area in the back. There are businesses in the City that need a place to park commercial vehicles and there is nothing wrong with him having a few trucks from another business that have an office in our City.

Mr. Leeds indicated that the problem is that the current Code does not allow one of the changes that the applicant is requesting, which is that if he owns a building he can lease the parking spaces for trucks and commercial vehicles to someone who does not own space in the Park.

Councilwoman Uria does not have a problem with that and believes it should be addressed.

Councilperson Stoner stated this is similar to the City trying to be in charge of what residents put in their backyard behind a fence. These are commercial owners abiding by everything else but we are going to tell what they can do in the rear of their properties and she feels it is a deterrent to businesses, which she is not for.

Councilman Jacobs advised that we are discussing making a conditional use and this process is not simple. He questioned whether Council would consider a small number of vehicles not to be a conditional use.

Mr. Fontaine commented that there are four or five vehicles for the roofer and four for his business.

Councilman Jacobs noted that the concern is extremely large trucks, not so much vans, etc.

Ron Feder, owner of a building in the Technology Park, believes that walls will create a security issue. He does not understand why there is a problem with large trucks; there is no traffic in the Park.

Mr. Leeds indicated that if vehicles fit in a 9 x 18 space he will not make an issue; however, there is no way to enforce this. A process used on State Road 7 was suggested that allows spaces to be leased to a piece of property that has an office 300 feet away. He does not want this to turn into an outdoor parking area and questioned whether Mr. Feder would object to any regulations.

Councilwoman Uria stated that Council does not want this to turn into an outdoor parking area. We need to find a way to help businesses because there is no place to park in this City and she thinks there are areas where they can park.

Mr. Leeds advised that he would like to meet with Mr. Laystrom because he may suggest that we do not regulate this at all; he does not want to create an ordinance that is unenforceable; he would rather acknowledge the reality. He questioned whether Council would object to setting some standards for a conditional use.

Mayor Bendekovic stated that there should be some type of perimeters.

Councilwoman Uria believes we need to be liberal and sympathetic to what businesses and contractors have to go through. She advised that we need to look at this further.

Michelle Mellgren, Planning Consultant, referenced comment #7. The Industry Group is requesting that Council consider allowing some minor auto repair in the Park in the spirit of getting some flexibility. They are comfortable with allowing it as a conditional use so each request can be assessed on a case by case basis to see what the impact would be. In trying to fill this space it would allow some flexibility in doing so. As Mr. Lunny indicated, Council is not precluded in two, three, or five years from now in going back and revisiting this.

Mayor Bendekovic advised there would still need to be protective provisions on auto repairs.

Mr. Leeds indicated that this would be the fastest way to allow the Park to deteriorate; he was not willing to take any of the protective provisions out of the ordinance.

Mr. Lunny re-emphasized that we are down to the final few issues and the majority of this ordinance was reactive and proactive in terms of trying to liberalize those uses and there is a lot of liberalization that has already gone into this. He does not want anyone to think that the Council is restrictive on these final few issues; they have already approved significant modifications.

Mr. Laystrom referenced comment #8 and noted that they are fine with this. He reiterated that staff, Mr. Leeds and Mr. Lunny have spent a lot of time on this; there are a lot of other provisions not being discussed where the City is definitely helping this Park and they are very happy they have done so.

Mr. Laystrom referenced comment #9, car rental facilities. This request is to allow a car rental similar to an Avis. This would be mostly for people coming into or visiting the Park. Any space the cars take would count as a required space; therefore, the parking lot would fill up very quickly.

Mr. Leeds advised that the City cannot control the number of cars. The number of cars would have to be limited to ten or less.

Councilwoman Uria stated the intent is to allow a small rental car facility.

In response to Mr. Leeds, Mr. Laystrom indicated that he would be fine having this allowed as a conditional use.

Mr. Laystrom stated that they are all right with comments #10 and #11.

Mr. Allsworth referenced comment #12.

Councilman Levy disagreed with the Industry Group's request that this Council not be allowed to impose additional site plan approval conditions; that is the reason we are here.

Mr. Allsworth indicated that it is not equitable to impose this restriction on this little area and not Citywide.

Mr. Leeds commented that that information is incorrect; the Broward Mall is zoned SPI-3 and contains a provision along with most of the zoning districts within the City that allows the City Council to place conditions on the approval. The only districts that do not are B6-P, Community Facilities, IL-P and the SPI-2 on State Road 7.

Councilman Levy stated that he does not want to give up that privilege because there may be many cases that the City Council determines a need for something.

Mr. Leeds advised that we are already doing it and are doing it through most of the City.

Councilman Tingom concurred with Councilman Levy.

In response to Mr. Lunny, Councilwoman Uria indicated that no one disagreed and Mr. Allsworth said all right.

Mr. Allsworth referenced comment #13. They believe that Mr. Leeds should have authority if something is not on the list to come in with administrative interpretation. The way this proposal is worded is that he can do so if it is technology based but he cannot do it if it is retail or office space.

Mr. Leeds thinks that wiggle room is provided for the kind of uses the City wants to occur. They want him to have the ability to approve any use that is not listed. The way the Code is proposed, if it is not listed you cannot do it. Staff is suggesting that the Code be made more flexible but only for uses that are technology based because that is what they want to encourage.

Councilwoman Uria noted there could be some good uses that may not be technology based.

Mr. Lunny advised this is a new concept for Plantation and he recommended that Council go slowly to see how this works for the next few years. His advice to the Council and the Planning and Zoning Board is to see how it goes and if it is working in a few years then consider doing so.

In response to Councilwoman Tingom, Councilwoman Uria believed the Council already granted some authority to Mr. Leeds.

Mr. Lunny indicated if it is not on the list as a permitted use or a conditional use it requires a Code amendment. He noted that the use regulations are very broad. He suggested that Council think about this and review the wide range of uses allowed. He does not believe there will be too many of these problems; there are policy reasons why the use list is the way it is. He suggested being careful because if staff is allowed to do everything it may be too much of a culture change.

NOTE: Councilman Jacobs left the meeting.

Councilwoman Uria commented that is a new concept but there are new businesses every day; perhaps we could put a limitation on the size of the business.

Councilman Levy disagreed with that statement. He feels that everyone understands the knowledge and dedication Mr. Leeds has towards the public purpose of our community and within the perimeters of technology he should be allowed to use his discretion. As he sees it that is the trial period and down the road if we want to include industrial we can look at it. For now we are only saying technology and he feels Mr. Leeds should have that leeway; every day that you do not have a business going is another day of money being spent without engendering any money for the businessman. He would like to streamline the process by allowing Mr. Leeds to have the authority to review something on a smaller scale and allow it as part of technology. He knows that it is good and it is right and we trust him.

Mr. Lunny did not think there is a size limit for technology; what is being asked is that the authority be expanded outside that umbrella.

Mr. Leeds advised there is a size limitation. At this time he is only permitted, under the Code to make a determination for technology based businesses that do not exceed 20,000 square feet.

Councilwoman Uria questioned why we couldn't do the same thing for 10,000 square feet for businesses outside of technology.

Councilman Tingom and Councilman Levy believed that 20,000 square feet for all would be all right.

Mr. Feder commented that the division for the Technology Park is not clearly defined and the zoning may be inconsistent with market demands. This was recognized by the City six years ago as being obsolete and incomplete.

Mr. Leeds advised that if we said no in the past it was because either the use was not allowed or there was not enough parking, which is being changed. He believes what is being done is a good thing. He is a little concerned that if something is 10,000 square feet that he will be put in a position of saying no to someone and he does not know if he wants that much flexibility.

Councilman Levy indicated that any concerns should be brought to Council.

Mr. Leeds stated that every time staff tries to enforce a Code and the applicant disagrees with his interpretation it comes before the Council and he does not feel it should work that way. If someone has a disagreement with the interpretation he thinks it should go to the Board of Adjustment. That is what is being done now and based on his experience the Council should not work as a super Board of Adjustment.

Councilwoman Uria commented that everyone will think about this; there are three people thinking the same way and that may change at the second reading.

Councilman Levy advised that the process needs to be streamlined and give people the opportunity to be able to come to Plantation and feel that everyone is working together while still maintaining quality and standards.

Mr. Leeds feels that a lot has been done; however, he may disagree sometimes.

Councilwoman Uria suggesting letting businesses thrive; give them a chance.

Mr. Leeds stated if that is the consensus he is willing to trade off a bit of a parking problem.

Councilman Tingom noted that if Mr. Leeds is uncomfortable he should bring it before the Council.

Mr. Lunny indicated that if Mr. Leeds does not approve this one can ask to change the Zoning Code and Council can act on that application. He reminded everyone that the Board of Adjustment reviews appeals from Mr. Leeds' interpretations of the Zoning Code. If going further than suggested he would recommend that the Board of Adjustment review the item and if the person still wants to change the law to allow the use they can file an appropriate application and request Council to do so.

Mr. Laystrom understands that at this point staff has removed the provision from this ordinance that sent all the appeals to the Board of Adjustment. They did so because there is another provision that sends them to the Board of Adjustment but might want to talk later as to whether that is a good idea with regard to making policy decisions. Since it is removed from this ordinance it is not part of the discussion on the ILP.

Mr. Leeds concurred with Mr. Laystrom.

Mr. Laystrom stated that they are in agreement with comments #15 and #16.

Councilperson Stoner referenced comment #15 and noted that the issue is enlarged or structurally altered. If there is a building with a TI inside and there is a new tenant the whole Zoning and Land Development regulations have automatically been triggered to be applicable.

Mr. Leeds indicated we want to encourage occupancy of a building. If a new tenant requires the entire building to be brought up to the Florida Building Code they would also have to meet Zoning and Landscape approval.

Councilwoman Uria commented if there is a small office, that is not over 50% and that should not trigger everything coming back in.

Mr. Leeds concurred.

Ms. Mellgren stated that they added the word structural to clarify that it is a structural component of the building; a low bearing wall; but that it would not apply to interior build-outs or interior remodeling.

Councilperson Stoner noted that needs to be clarified.

Mr. Lunny advised that that was the intent. It was designed to be more liberal and light industrial.

Ms. Mellgren clarified that it would be worded as a major structural component of the building.

Ms. Mellgren referenced comment #16. Staff has reconsidered and is all right with this.

Mr. Lunny advised that he will try to come back before Council with something more acceptable.

***Motion by Councilman Tingom, seconded by Councilman Levy, to approve the first reading of Item No. 19.  
Motion carried o the following roll call vote:***

Ayes: Levy, Stoner, Tingom, Uria

Nays: None

NOTE: Councilman Jacobs was not present for this vote.

\* \* \* \* \*

Mr. Lunny read Item No. 20 by title.

20. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE PERTAINING TO THE SUBJECT OF COMPREHENSIVE PLANNING; RECAPTURING THE PREVIOUSLY APPROVED 227 FLEXIBILITY UNITS, AND REASSIGNING UP TO 227 FLEXIBILITY UNITS TO THE FOLLOWING DESCRIBED PROPERTY LOCATED IN FLEX ZONE 75 SO AS TO PERMIT THE CONSTRUCTION OF UP TO 227 MULTI-FAMILY DWELLING UNITS WITHOUT AMENDING THE CITY COMPREHENSIVE FUTURE LAND USE PLAN; PROPERTY LYING IN SECTION 9, TOWNSHIP 50 SOUTH, RANGE 41 EAST, AND DESCRIBED AS JACARANDA PARCEL 816, AS RECORDED IN PLAT BOOK 114, PAGE 9, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, LESS OUT PARCELS 1, 3, 4, 7, 9, AND 11, COMMONLY KNOWN AS "THE FOUNTAINS" AND GENERALLY LOCATED AT THE SOUTHEAST CORNER OF SW 78TH AVENUE AND SW 6 STREET; PROVIDING FINDINGS; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE THEREFOR.

Mr. Lunny recommended consolidating the hearing on the application for flexibility and the site plan, which follows as #21. The reason for this recommendation is because the flexibility rules that apply to the award of flexibility within the City would be better implemented. The ordinance is a legislative item and there is greater discretion to deny or choose not to enact that ordinance than under site plan considerations. As a strategic and defensive recommendation, he requested that Council do it that way and if it is consolidated there is no need for a repeat presentation on the site plan.

Mayor Bendekovic made a Jennings Disclosure. She had a conversation with the applicant; however, it will not affect her decision in case she has to vote.

Bill Laystrom, attorney for American Land Ventures, gave a brief overview of the site plan. This is a request to put in 227 units that were originally approved when Phase I was approved. It is at the height that it was previously; the only significant change to this site was the parking area, which provides significant cost savings. They believe they have been able to provide tremendous screening along the garage facility so no one will notice it from the road. There are three extremely minor waivers and staff has recommended approval of all of them. They are actually increasing the parking within Phase II on the third waiver; however, because there have been some additional uses in the shopping center the entire complex now has more of a shared parking concept. Their parking is typically in the evenings and many of the surrounding uses are day time uses.

In response to Councilwoman Uria, Mr. Lunny advised that he was not requested to condense the site plan and waivers. He does not believe there is a lot of material disagreement.

Mr. Laystrom indicated that they agree with staff comments. He referenced Page 5 where staff has requested that they take the bike shed away from the Linear Park, which they agree to do. They will put some bike rack parking within the garage which is right across the street. The only item that is new for them is that the Fire Department has requested a significant contribution toward a fire truck or other vehicle/improvement for this District. One thing discussed with the I-LP is the anticipation of what you will be required to do. In this particular case they had to put in significant sewer and lift station improvements on Federated Road. Because the City ultimately purchased the property no one shared in that cost and American Land paid for it as part of

Phase I. To add an additional significant cost they believe the project cannot cover. They are trying to control the costs of the project; they are about 87% to 88% leased in Phase I and are expecting that within a year and a half that will be fully leased and they can move right into this project. They are going to provide the Fire Department with a Fire Command Center at the top of the building and have provided all of the other fire requirements necessary. If it looks like the District needs to generate funds for additional fire equipment or men, he believes the City needs to go through an analysis process and come up with that as far as manpower, etc. and either have an assessment District wide if the equipment and men are for the District or Citywide if it is something we need to renew our equipment. He knows the City has not, in the past, and is not inclined to have a Fire service fee but there might be a Midtown Fire service fee. They believe that as they build they will provide those funds through tax dollars to actually provide those services. Their only request is that that not be imposed upon them; he does not believe it is a Code requirement or any requirement that is created by the sudden development of Phase II.

Councilperson Stoner commented that a lot of times items are approved subject to staff comments and when there is no specific dollar amount she began thinking of a way that might work for everyone. She believes a Fire service fee or impact fee might be more appropriate since we have several buildings coming up and then the funds would go to a dedicated enterprise type fund so that the funds for this would be available when the time comes to buy the equipment. Her concern with putting this on one particular client is that the entire City is going to use whatever equipment is available if we even have a place to put it. She does not think it is business friendly to require them to put in something that the entire City is going to participate in; some type of formula needs to be created that would come about after a study.

Mr. Lunny advised that the Code requires that in evaluating the award of flexibility staff examine the extent to which the project impacts public services, which include Fire, EMS, etc. If this approval is granted a considerable amount of time and money is being saved because no Comp Plan Amendment will be necessary. Unfortunately this comment is one that is reflective of fiscal realities and it would not have been seen four or five years ago because the finances of the City might be different or the expectations of the Council might have been different. More and more staff is coming to the realization that there will be very little capital and probably very little operational for many years and the appetite for new fees is not there. The options would be to do nothing, which would mean that the City would have approved structures for new residents over this concern, defer this development until formulas and fees are developed and then apply it. The last time something like this was up the Council said they would look at doing a Midtown fee or charging it against Midtown but that did not occur when the budget cycle came around. This is an unusual comment but it is a comment made because of the position we are in and it has to be dealt with one way or the other. He believes an attempt can be made to negotiate a fair share contribution because we do not have any method of otherwise picking it up and some value is being granted. Life safety staff is becoming more concerned about how realistically they are going to be able to retain the resources they need to protect our future residents.

Councilperson Stoner stated there are three or four of these types of projects coming in and when a developer, builder or owner comes in these impact fees are part of their soft costs. If the projected soft cost cannot be calculated they may choose that they do not need to be in this City because they will be so far into the process that they cannot pull out and feel like they are being held hostage. Everyone understands that 90% of the fires above the fifth floor are put out by the sprinkler system. This is coming down to a rescue type piece of equipment that will be shared across the board by the entire City not just dedicated to these multi story buildings. Some of these safety and life safety issues are supposed to be part of the tax base that we pay for the City. In her opinion this is not a new question; there has been plenty of time and opportunity that has passed that something should have been started or put in place.

Mr. Lunny concurred with Councilwoman Stoner; however, the City has not yet gotten the funding and has not settled on a formula.

Mr. Leeds indicated that the applicant requested that we expedite the review within a very compressed timeframe because the cost of construction materials is going up. The difference between a six-month approval and a three-month approval will make a big difference in the cost of this project and we want them to put the money into the building. It was discussed with the applicant; however, the Fire Department has not had the time to have a conversation and a dialogue. He understands the lack of certainty but they just went through a similar process in determining the Fire Department requirements for Phase II of Veranda. They met with the applicant, Mr. Laystrom and Chief Stearns and worked out the problem. He requested an opportunity to have the dialogue and if they reach a point where they still disagree he will get Mayor Bendekovic involved and they will continue to negotiate.

NOTE: Councilman Jacobs returned to the meeting.

Fire Chief Harris concurred with Mr. Lunny; the issue was not about purchasing a ladder truck, the issue was with timing. We are at the end of our lifecycle with our two aerials. The aerials they would purchase would service everyone but they will not routinely respond to other places; however, they will go to these projects routinely. He is running out of time and the aerials are over \$1 million. They are planning to buy one aerial and have no choice; either the City will purchase it or we will get help to purchase it. This entire area will greatly impact the Fire Department.

Councilperson Stoner agreed and the question is how do we get there?

Fire Chief Harris advised that they would at least like to speak with the applicant. There was a comment that the man room is on the top, it is not; that is an antenna system that has to be installed because they need it to operate in that building, which is also separate from everybody else.

In response to Councilperson Stoner, Mr. Lunny stated there is no impact fee. It could be indicated that the contribution could be used for this purpose within a certain time period and if it is not used it will get returned. This can be included in Midtown or in the tax base; however, they did not get the sense that the need will be funded because of the City's other great and fiscal problems.

Mr. Laystrom commented that all of these units were looked at during the 321 North hearing three years ago. They are actually paying a \$3,500 fee to have the City reconsider the 227 units already given and we are now being told that something else is needed after they have built a multi billion dollar building. They made their economic decision years ago and now they are trying to make the second phase work and to come along and add this is not fair. From his perspective, they have done everything required. If Fire Chief Harris does not want the repeater station on top of the building they will not do it and will pay those funds to the City. Financially these projects are very thin lined. There was discussion about studying this at some point; however, that did not occur. They need to move forward and will meet with the Fire Department to discuss their equipment needs, as well as meet with the Midtown Board, who has tax dollars that may be allocated for something specific for the District.

In response to Councilman Tingom, Fire Chief Harris advised that a normal structure fire response would be sent if there was a fire in a Midtown structure above five stories. Councilman Tingom would be in favor of continuing negotiations to see what can be done; he is in favor the project. Fire Chief Harris agreed with Mr. Laystrom and noted that things have changed; the financial situation was different three or four years ago. They

are at a critical stage and with all this new development coming in they thought what better way to offset some of the costs for the users who are going to use it the most.

In response to Councilman Tingom, Mr. Lunny indicated that the percentage invested in the City over the last two years for capital was a low number; he could not recall the exact number.

In response to Councilman Tingom, Mr. Laystrom stated that they agree with all of the landscape comments. He noted that all of the apartments are the same and parking is adequate. They are even all right with the root barrier system.

Mayor Bendekovic commented that the investment being made into Midtown is greatly appreciated. Midtown is the only area in the City that has ten-story buildings in the City of Plantation. She believes that the Fire Department is not requesting the applicant to purchase a truck; they are just trying to see if there is any way that we could possibly distribute the cost of a vehicle. That vehicle not only needs protection and insurance, it also ensures the stability of our Volunteer Fire Department. She believes that all of the developments need to have some type of a contribution and it should be designated for just that equipment. This is not just an investment in a fire truck; it is an investment in the future of our Volunteer Fire Department. She noted there is no money for the City to purchase a fire truck. We would be more than happy to float a bond, as there is no capital at this time; it is entirely up to Council at budget time as to what they wish to do.

Mr. Laystrom advised that approximately \$40 million is the additional tax base for this District. There are so many office buildings within the District, which is denser on a human basis than the residential project. Perhaps this is something the District should consider. Even if sharing among the three projects, someone should have told them that there is \$350,000 coming in the future. He will meet with the Fire Chief to discuss on a District basis as well as with this client. Those kinds of dollars are not in this project.

Councilwoman Uria believes a formula should be done for buildings between eight and ten stories. She agreed that to ask for this now is not good timing. This was mentioned when 321 North came in and it is actually Council's fault that they have not come up with a formula; we have to protect public safety.

In response to Councilperson Stoner, Rachel Cardello, with Ad, Inc., indicated that there will not be any green on the rooftop, as there will be parking in that area.

Jonathan Cardello, Ad, Inc., explained that separating the garage from the building has increased the percentage of open space substantially at the ground level.

In response to Mayor Bendekovic, Mr. Laystrom advised that they are planning on submitting the plans and after that it will probably be 90 days for permitting and about a year for construction.

Councilwoman Uria likes the look of Veranda and noted that Artisia in Sunrise is also attractive. The buildings are very vanilla; she would like to see more character. She does not like the garage to the side and thinks it could have been different.

Mr. Laystrom advised that when they built the first building there were some utility interruptions and they do not anticipate that with the second building; however, they are extra sensitive to it and will provide owners in the surround area with a direct contact so they will have a single person to call for all of their concerns.

In response to Mayor Bendekovic, Mr. Laystrom indicated that the occupancy on the current building is about 87%.

Dr. Kerry Waldee, owner of 817 South University Drive, commented that he is always concerned with parking but he is happy to see the project going forward. They had several interruptions during the first phase and that is his biggest issue.

***Motion by Councilman Jacobs, seconded by Councilwoman Uria, to approve the flex units on Item No. 20. Motion carried on the following roll call vote:***

Ayes: Jacobs, Levy, Stoner, Tingom, Uria  
Nays: None

***Motion by Councilman Jacobs, seconded by Councilman Levy, to approve the site plan, including the waivers and the discussion about the fire truck for Item No. 21. Motion carried on the following roll call vote:***

Ayes: Jacobs, Levy, Stoner, Tingom, Uria  
Nays: None

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**QUASI-JUDICIAL CONSENT AGENDA – None.**

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## **QUASI-JUDICIAL ITEMS**

Mr. Lunny read item by title.

21. REQUEST FOR SITE PLAN, ELEVATION AND LANDSCAPE PLAN MODIFICATION FOR THE RESIDENCES AT THE FOUNTAINS, AKA MIDTOWN 24, PHASE II LOCATED AT 710 SW 78 AVENUE

This item was heard in tandem with Item #20.

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## **COUNCILMEMBERS' COMMENTS**

Councilman Jacobs commented that during an MPO meeting they provided a study about sea level rise and how that would impact the transportation infrastructure of Broward County. They studied one-foot, two-foot and three-foot rise in sea level and even at three feet the City of Plantation is not under water.

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Councilperson Stoner commented on Memorial Day. She expressed sincere appreciation to the men and women in uniform for all they do.

Councilperson Stoner requested a report on Jacaranda during the next meeting.

\* \* \* \* \*

Councilman Levy advised that the noise from the airport will have a two-week earlier deadline.

\* \* \* \* \*

Mayor Bendekovic made the following comments:

- She has had a meeting with Scratch Golf and with The Federation.
- She needs a delegate for the FLC Annual Conference which will be held at the World Center in Marriott in Orlando, Florida from August 11 – 13, 2011. Councilman Levy advised that he would attend the meeting and Councilman Tingom volunteered as an alternate.
- Revisions were done on the ethics ordinances.
- She thanked Mr. Leeds and his staff for the funding document that got \$4.1 million for Midtown.

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**PUBLIC REQUESTS OF THE COUNCIL CONCERNING MUNICIPAL AFFAIRS**

Dennis Conklin, resident, made the following comments:

- Miramar obtained sacred relics from 9/11 and he recently learned that Plantation has also been approved to receive one of the sacred relics.
- He saluted the Armed Forces and the military.
- He distributed a packet and referenced Page 21 referring to the Jihad and Muslim brotherhood.

\* \* \* \* \*

Mr. Lunny advised that he was asked by the Ethics Task Force what the City’s position was and he described it as follows: “Last Wednesday at Plantation the Elected Officials discussed the League’s proposed draft and his letter to Mayor Bendekovic, which is included in the agenda package. While no vote was taken, he thinks the consensus was to generally support the League’s efforts and any other suggestions to approve the regulation proposed recognizing the decision will ultimately be made by the County Commission.” Please let the League know of any comments anyone may have.

\* \* \* \* \*

**WORKSHOPS** – None.

\* \* \* \* \*

Meeting adjourned at 12:05 a.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