

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

FEBRUARY 11, 2009

The meeting was called to order by Councilman Petrocelli, President of the City Council.

1. Roll call by the City Clerk:

Councilmember:	Diane Veltri Bendekovic Jerry Fadgen Robert A. Levy Rico Petrocelli Sharon Moody Uria
Mayor:	Rae Carole Armstrong
City Attorney:	Donald J. Lunny, Jr.

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2. The invocation was offered by Councilwoman Uria.

The Pledge of Allegiance followed.

3. The minutes of the City Council meeting for January 7, 2009 were approved as presented.

4. The minutes of the City Council meeting for January 21, 2009 were approved as presented.

5. The minutes of the City Council meeting for January 28, 2009 were approved as presented.

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Councilman Petrocelli welcomed Alan Randall, a boy scout from Troop 128, who was present for his Citizenship in the Community Merit Badge.

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ITEMS SUBMITTED BY THE MAYOR

Mayor Armstrong introduced Bill Kling and Charles Ayers from the Plantation Democratic Club who recognized the winners of the annual essay contest on the topic of "How are you going to make Plantation greener before you graduate?" The winners from Plantation High School and South Plantation High School are as follows:

Plantation High

Cashmere Ramat - 1st place
Felecia Bell – 2nd place
Robin Bell – 3rd place

South Plantation High

Amanda Dyer
Adam Ayers
Zack Musgrove

Congratulations were offered.

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Resolution No. 10482

6. **RESOLUTION** of Appreciation to Sharon Bond for 24 years of dedicated service to the City of Plantation.

Motion by Councilman Fadgen, seconded by Councilwoman Bendekovic, that Resolution No. 10482 be approved and adopted. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Uria, Bendekovic, Petrocelli
Nays: None

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Representatives from the South Florida Water Management District presented two checks of \$50,000 each for the Water Savings Incentive Program (SIP).

Mr. Breitenkam advised the money will be used in conjunction with the Toilet Retrofit Program. The kick-off will take place at the Green Day celebration on February 28, 2009. A bike parade will also be held as part of that program. Particulars on the program will be included with the water bills in March.

Mayor Armstrong observed that the South Florida Water Management District has partnered with the City on multiple programs that have been related to conservation and recycling initiatives.

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Mayor Armstrong noted the Green Day Celebration is an initiative that will focus on “green”, in conjunction with the P.L.A.N.T. Awards, and is an annual activity in the City of Plantation. It will be celebrated at the same time as Earth Day and Arbor Day. The Environmental Expo, which has been named “Green Day”, will be held on Saturday, February 28, 2009 at Liberty Tree Park from 9:00 a.m. to 3:00 p.m. Announcements are forthcoming.

Mayor Armstrong advised the P.L.A.N.T. Awards will be announced at 10:00 at the Gazebo and the Bike Parade begins at 9:00 a.m. at the Helen B. Hoffman Library.

Mayor Armstrong announced a Town Hall Meeting scheduled for February 26, 2009 at 7:00 p.m. at the Sunrise City Commission Chambers is being hosted by Senator Rich and Representatives Sands and Kiar.

Mayor Armstrong indicated that household hazardous waste and electronic recycling can be dropped off at the Public Works Department, 750 NW 91st Avenue, on Sunday, February 15, 2009 from 8:00 a.m. to 3:00 p.m. They will be accepting items such as paint, motor oil, pesticides, fire extinguishers, computers and monitors, auto batteries and the like, that cannot be disposed of with regular trash pick up.

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Jim Romano, Director of Parks and Recreation, announced the Triple Crown Baseball Tournament will be held Friday, February 13, 2009, through Sunday, February 15, 2009. Games will be played at Plantation Central Park and the players will range in age from 8 to 14 years old.

The City will also be hosting the South Florida Men's Tennis Club Tournament, Friday, February 13, 2009 through Monday, February 16, 2009 at the Frank Veltri Tennis Center. There will be 250 competitors from all over the United States.

Mr. Romano further noted the Spring Class Registration will be held from Monday, February 23, through Sunday, March 8, 2009. Classes will begin on March 9, 2009. Registration is available on line at www.Plantation.org or at any of the Community Centers including the Aquatic Complex.

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CONSENT AGENDA

As a Commissioner of the CRA, Mayor Armstrong had a voting privilege on Items No. 25 and 26.

Mr. Lunny read the Consent Agenda by title.

Councilman Petrocelli commented on the number of liens on the Consent Agenda.

7. Award bid for Liberty Tree Park sod supply, delivery and installation to Galafre Construction and Land Design for \$40,832. (Budgeted – Liberty Tree Park Expansion)
8. Award bid for FDOT I-595 Tree Relocation Project to Brickman in the amount of \$31,950. (Funds to be reimbursed by FDOT)
9. Approve replacement sludge pump for the Regional Wastewater Treatment Plant from Wastecorp Pumps, Inc. for \$19,874. (Budgeted – Utilities)
10. Approve engineering services related to the renewal of the five-year deep well operating permit for the East Water Treatment Plant as required by the Florida Department of Environmental Protection for \$28,300. (Budgeted – Utilities)

11. Approve replacement of #3 waste-activated sludge pump at the Regional Wastewater Treatment Plant by Southeastern Pump for \$24,522.
12. Approve purchase of scale inhibitor PC 1850T from Nalco for \$1.08 per lb. F.O.B. (Budgeted – Utilities)
13. Approve tele-inspect, insitu-line and point repairs to cracked sewer pipe at three locations by Insituform Technologies, Inc. for \$54,982.50. (Budgeted – Utilities)
14. Approve Professional Services Agreement with Post, Buckley, Schuh & Jernigan, Inc. in the amount of \$90,762.30 for the design of the Landscape, Irrigation and Lighting components for the N.E. Quadrant Undergrounding and Beautification Project. (Budgeted – CRA Designated Capital Fund)
15. Award bid for Liberty Tree Park Expansion brick paver path to lowest responsive and responsible bidder, Signature Design Paving Corp in the amount of \$132,570.90. (Budgeted – Designated Capital Fund & FRDAP Grant)
16. Approve WebSense security software maintenance and software support from Insight Public Safety for \$19,800. (Budgeted – Information Technology)

Resolution No. 10483

17. **RESOLUTION** confirming a Plantation City Special Assessment Lien for 6898 NW 12 St. (McVey)

Resolution No. 10484

18. **RESOLUTION** confirming a Plantation City Lien of Utilities Service Charges for 7080 NW 6 St. (Thompson)

Resolution No. 10485

19. **RESOLUTION** confirming a Plantation City Lien of Utilities Service Charges for 381 NW 135 Ave. (Gedman)

Resolution No. 10486

20. **RESOLUTION** confirming a Plantation City Lien of Utilities Service Charges for 576 Westree Lane. (Ortega)

Resolution No. 10487

21. **RESOLUTION** confirming a Plantation City Lien of Utilities Service Charges for 172 SW 62 Terrace. (Jones)

Resolution No. 10488

22. **RESOLUTION** confirming a Plantation City Lien of Utilities Service Charges for 9929 NW 6 Ct. (Hochman)

Resolution No. 10489

23. **RESOLUTION** confirming a Plantation City Lien of Utilities Service Charges for 8720 NW 10 St. (Elcock)

Resolution No. 10490

24. **RESOLUTION** adopting a community-wide Preservation Plan and indicating its commitment to the preservation of the City's heritage assets.

Resolution No. 10491

25. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period January 22, 2009 – January 28, 2009.

Resolution No. 10492

26. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period January 30, 2009 – February 4, 2009.

27. Approve purchase of movable shelving system for Police Department renovations from Advanced Filing Systems, Inc. for \$25,458. (Police – State Forfeiture Funds)

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

Ayes: Fadgen, Levy, Uria, Bendekovic, Petrocelli
Nays: None

Note: Mayor Armstrong voted affirmatively on Items No. 25 and 26.

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ADMINISTRATIVE ITEMS

28. DISCUSSION CONCERNING HEALTH INSURANCE PREMIUM RATE RENEWAL AND PROPOSED PLAN DESIGN CHANGES.

A memorandum dated February 11, 2009 to Mayor and Members of City Council from Daniel Keefe, Assistant to the Mayor, and Margie Moale, Human Resources Director, follows:

As part of our three (3) year contract with United HealthCare (UHC), the third year is due for premium rate renewal on April 1, 2009. Willis, our insurance broker of record, has been in negotiations on our behalf to obtain the best possible premium renewal rate. Essentially, premium rate renewals are based on the claims experience over the last year combined with administrative costs and other underwriting elements. Current nationwide trends for health care costs continue to increase 10% to 14% annually.

Our current annual premium is \$11,301,746 for our fully insured health plan. UHC's initial proposal was \$12,959,712, or a 14.7% rate increase. Willis continued negotiations and UHC revised the proposal to \$12,533,623, or a 10.9% rate increase. Willis persisted on our behalf and UHC gave a final renewal rate of \$12,183,280, or 7.8% increase equaling \$881,534 without plan design changes and remaining as a fully insured plan.

Based upon further analysis of the claims data and other associated factors, Willis pursued the option of converting to a partially self-insured platform. After studying the information, Willis recommends converting to a partially self-insured health plan at a projected lower premium cost and staff concurs. Without any plan design changes, the annual projected premium would be \$11,219,606, or a difference of \$963,674 from UHC's final proposal, and a slight decrease from our current premium of \$82,140.

PROPOSED PLAN DESIGN CHANGES

In light of the fact that the City will enter collective bargaining negotiations with the Fraternal Order of Police (FOP) this year, it is appropriate to review our health plan for potential plan design changes. It is important to note that the proposed plan design changes will be effective 04/01/09 for all eligible general employees only. Plan design changes for FOP covered employees may occur after negotiations.

There are five (5) plan design changes recommended:

- Prescription co-payments
- In-Network Primary/Specialist/Urgent Care Office Visit co-payments
- Hospital/Emergency Room co-payments
- Implementing a 4-Tier Premium Rate Plan
- Spouse Eligibility for New Hires after 04/01/09

Plan design changes position our health plan philosophy into one of users that use the plan pay for the benefit level chosen. These changes also realign both the PPO and the Open Access plan to share greater benefit level consistency. The major difference between the two plans after April 1st will be the ability to have out-of-network benefits in the PPO.

PRESCRIPTION CO-PAYMENTS

Currently, Plantation's prescription utilization is 19% higher than our local peer groups.

Choice Plus Rx PPO:

- >currently \$3/\$20
- >proposed retail \$10/\$20/\$40
- >current mail order \$7.50/\$50*
- >proposed mail order \$20/\$40/\$80*
- (*three month supply)

Choice – Open Access Rx:

- >currently \$10/\$20/\$35
- >proposed retail \$10/\$20/\$40
- >current mail order \$20/\$40/\$70*
- >proposed mail order \$20/\$40/\$80*
- (*three month supply)

The pharmacy plan will now be the same for both plans.

IN-NETWORK PRIMARY/SPECIALIST/URGENT CARE OFFICE VISIT CO-PAYMENTS

Currently, Plantation Specialist utilization is 42% higher than our local peer groups.

Choice Plus Primary – PPO:

- >currently \$15
- >proposed \$15 (no change)

Choice – Open Access Primary:

- >currently \$5
- >proposed \$10

Choice Plus Specialist – PPO:

- >currently \$15
- >proposed \$35

Choice – Open Access Specialist:

- >currently \$5
- >proposed \$35

Choice Plus In-Network Urgent Care – PPO:

- >currently \$0 (after \$200 deductible)
- >proposed \$25 (no deductible)

Choice – Open Access Urgent Care:

- >currently \$25
- >proposed \$25 (no change)

HOSPITAL SERVICES

Currently, Plantation's Emergency Room (ER) utilization is 14% higher than peer groups. Claims data reveals that the #1 reason for ER use is Coughs & Colds, and the #2 reason is Sprains & Strains. Neither diagnosis is life-threatening.

Choice Plus ER – PPO co-payment:

- >currently \$0 (after \$200 deductible)
- >proposed \$200 (no deductible)

Choice – Open Access ER co-payment:

- >currently \$50
- >proposed \$200

Choice Plus In-Hospital – PPO:

- >currently \$0 (after \$200 deductible)
- >proposed \$100 (no deductible)

Choice – Open Access In-Hospital:

- >currently \$0
- >proposed \$100

Note: If a person gets admitted to the hospital as a result of their ER visit, only the \$100 co-payment applies.

4-TIER MEDICAL PLAN

Currently, both health plans are 3-Tier. This recommendation will not affect the City's premium, however, it is consistent with the philosophy of associating costs where the use exists, and reallocates the monthly premium charged employees. An employee is considered 1.0; spouses are 1.0; a child is 0.46 from an underwriting perspective for rate allocation.

Currently, the 3-Tiers are:

- Employee
- Employee +1
- Employee + Family

The proposed 4-Tiers are:

- Employee
- Employee + Spouse
- Employee + Children
- Employee + Family

The chart reflects the claims experience associated with the Employee, the Spouse, and the Children.

SPOUSE ELIGIBILITY FOR NEW HIRES AFTER 04/01/09

If an employee is hired after April 1st, their spouse is eligible to participate in our medical plan:

- If spouse does not have entitlement to participate in another employer's group medical plan, or
- If spouse does not participate in Medicare, or
- If spouse is not participating in another group medical plan.

Note: All current spouses on our medical plans are eligible to continue participating after April 1st.

RATES FOR PARTIALLY SELF-INSURED HEALTH PLANS WITH ALL THE PROPOSED CHANGES

After analyzing the claims data and related factors, Willis has projected an annual Partially Self-Insured premium of \$10,644,894, a difference of \$574,712 from the proposed Partially Self-Insured Plan with an annual premium of \$11,219,606 without plan design changes. The chart reflects the bi-weekly employee premiums based upon this recommendation.

WELLNESS INITIATIVES

The effectiveness of our Benefits Committee has contributed to increased communication with our employees as anticipated. Participation in our wellness programs has risen significantly as reflected in the completed Health Assessment Survey percentages. A few months ago, we had 4.9% of our employees that had completed the survey. At this point, the reports show our participation rate is approximately 30% and still climbing. We will continue building upon this momentum and tracking the results. The aggregate data received assists us in determining the type of programs and risk factors our insured members need to address and improve their health. UHC will continue to include their wellness programs under a self-insured platform. UHC health insurance wellness programs are included in both a fully insured and self insured platforms at no additional cost. We are also considering various incentives to further increase participation with our wellness programs. Accordingly, it is requested that \$100,000 of the premium reductions be earmarked for an incentive program as of April 1st.

With Willis' assistance, we have met with One Care Street, and Mike Meredith is communicating with them on our behalf to quantify the specifics of their proposal in a beneficial format. To better understand their proposal of services, Willis is continuing to work with OCS to clearly define financial and performance goals. Willis involved their Regional Wellness Consultant for Willis in a conference call with One Care Street to get a better understanding of the exact services being offered to the City of Plantation.

At this time, it is our recommendation to proceed with the renewal of UHC and continue exploring the opportunities that we may avail ourselves of with outside wellness vendors.

RECOMMENDATION

In consideration of all of the facts surrounding our renewal rate premium, it is the recommendation by Willis and City staff to adopt the Partially Self-Insured Plans with the five (5) noted changes for a projected premium of \$10,644,894. Stop-Loss Insurance Coverage to protect the City from claims in excess of \$150,000 is also recommended. RFSP's were advertised and we will present our recommendation to Council in March. It is recommended that the proposed wellness incentives from the premium reduction be authorized.

Additionally, it is Willis' and City staff's recommendation to renew the dental/vision plans with Humana/CompBenefits at the same funding rates. At the present time, the dental plan allows for an annual maximum benefit of \$2,000 per calendar year. It is recommended that the maximum allowable benefit be increased to \$2,500 annually.

In light of the fact that we are recommending plan design changes, it is further recommended that the voluntary AFLAC Flexible Spending Account maximum amount for employee contributions be increased from \$2,000 to \$2,500 to allow additional out-of-pocket medical expenses to be paid using pre-tax dollars.

Mayor Armstrong commented on repositioning of the medical benefits program that will help rein in the double digit increases that the City was seeing as of two or three years ago. She expressed appreciation to City staff, consultants and employees who have served on the Employee Benefit Committee. Their efforts have translated into significant savings for the City and the employees.

Mr. Keefe presented an overview and noted it has been the City's intent to go to a partially self-insured program. Willis has recommended and staff agrees that this is the time to do so. It would allow a savings of approximately \$82,000. The City would have stop loss insurance if there were any catastrophic incidences. \$150,000 beyond that would be covered under the stop loss and it has been included in the cost. They have also recommended behavior modification with the employees to help contain costs at the same time.

Ms. Moale discussed plan changes they are recommending as outlined in the memorandum. She noted the proposed changes are not applicable to the FOP at this time. Their plan will remain the same until negotiations are completed.

Ms. Moale commented on the changes in co-pay from the current plan to the proposed plan for physicians and specialists, hospitals, and prescription utilization to be more compatible with peers. She anticipated some savings but there will be additional costs to employees. A four-tier premium rate structure for employees has also been recommended instead of the current three-tier. The total that the City is paying will not change but the costs will be shifted to those who are using the program. She noted spousal eligibility for new hires after April 1, 2009 has changed. After that time, if the spouse has access to another medical plan with their employer, they will no longer be eligible for the City's plan. Children will still be eligible. Spouses of employees who are currently on the plan as of March 31, 2009 or are enrolled during open enrollment will still continue to be eligible. No one is being removed from the plan. She advised that according to the projections, the City will see some significant cost reductions in the premiums.

Ms. Moale commented on wellness activities and noted that health assessment survey participation has risen from the 4.9 percent in October, to 30 percent now and it is still climbing. She advised they just completed their annual benefits survey. Of the 759 employees, 36 percent participated and overall satisfaction has risen significantly. Mail order usage for pharmaceutical maintenance drugs has risen from 11 percent to 19 percent, translating into huge savings for the plan. Preventative screenings, annual physicals and vision exams have also increased.

In response to Councilman Petrocelli with regard to whether the employees are aware of the changes, Ms. Moale advised pay stuffers are distributed every two weeks with the pay stubs. She commented that they cannot please all the people all the time, but they are doing what they can. They are looking for behavioral changes and it was her view that it is up to the employees to take charge of their health.

Councilman Petrocelli liked the screening numbers that were up and the participation numbers.

Councilman Levy advised he is not happy with the changes to the plan which is taking out of the pockets of the employees. He expressed concern about the higher cost of prescriptions and the rise in co-pays. It was his view that they cannot just assume people are going to the emergency room because it is convenient. He felt the City should be doing more for its employees and not throwing the burden on them to keep paying more and more. It was his belief an employee who works for this community should be given the best possible benefits. He observed that co-pays can easily be adjusted upward and, with the people paying more, it will keep the City's rate down. He questioned how this will affect the people on the lower end of the economic ladder who will be paying more and will not be allowed the choices they once had. He felt that is wrong and he emphasized he is not in favor of the changes. He explained he would like to see cost cutting somewhere else and not continuously take more each time from the employees. He wished they had done better.

Ms. Moale explained the changes to the pharmaceutical co-pays and encouraged employees to use the mail order service. She also recommended that they increase a flexible spending account which is the pre-tax reimbursement from \$2,000 to \$2,500 to allow employees, because they will be having more costs associated with this, to get more of those dollars back on a pre-tax basis. She advised the City is trying its best to manage health care costs. She noted they have not made any plan adjustments in ages and the prescription co-pay of \$3 is unheard of these days.

In response to Councilman Fadgen regarding the number of urgent care centers in Plantation, it was Ms. Moale's belief there are approximately 7 or 8. She noted they are printing business size refrigerator magnets that have names and phone numbers of all the urgent care centers in Plantation and they will be distributed during open enrollment. With regard to verifying whether a new hire's spouse being eligible to participate in the City's plan, Ms. Moale advised the employee will certify it. It is an honor system.

Councilman Fadgen felt the direction in which they are going is excellent.

In response to Councilwoman Bendekovic regarding non-contributors, Ms. Moale advised the City pays full premium for the executives, administrative personnel and their families. The City also pays the premium for anyone in the open access plan, the spouse and their dependents. She indicated they are not recommending any changes to that group. With regard to the general employees, Ms. Moale advised that since they formulated the Benefits Committee and began the task of educating the members on health care, claims experience, and comparison with other municipalities, the committee was not surprised with the recommendations and the changes. They know about health care costs as well as the budget and projections. They are willing to help out and do what they need to do.

Councilwoman Bendekovic commented on duplicate coverage through two different plans.

Mayor Armstrong advised at this point, the City plan is available and the choice is up to the individual. However, if they are insured somewhere else, the notification should be made that those individuals have insurance and they should not be included on the City plan.

Councilwoman Uria was glad to see the City is making some changes because nobody has the benefits the City has, which are top in the State. She noted that although the employees are paying more out of pocket, at least they have jobs. She observed there are so many people losing their jobs that do not have insurance. She felt these changes are good steps. Health care costs are continuing to rise and they cannot be controlled by the City. Modifications are necessary.

In response to Councilwoman Uria, Ms. Moale explained at age 62, they are eligible for Medicare; however, most do not go on it until age 65. Part A is hospital services. Part B is doctors and physicians, and Part D is drugs. The City requires them to take Part B but they can opt out of Part D if the City's plan is better. The City becomes secondary when they become 65 on Medicare. There is a lesser charge for those employees.

In response to Councilwoman Uria, Ms. Moale advised that approximately 43 employees participate in the flexible spending account. The City is currently conducting a more active campaign through AFLAC. She noted it does save money.

Councilwoman Uria emphasized the need to stress that these are pre-tax dollars. She underscored that people have to start taking their own responsibility for their future.

Mr. Meredith advised that one of the reasons there is lower participation is because the City's plan is richer than other plans and there is not as much incentive to put money into that account.

Mayor Armstrong observed that with the cost and focus on dollars, she felt it was necessary to present some options to bring the plan in a direction to where it works both for the City's cost and the employees. She advised she understood Dr. Levy's perspective about the employees and she wanted to be sure to continue to be able to provide them with the very best plan possible. She did not want to match everyone else's plan but, rather, to continue to be an exceptional plan. However, the window of making it such has been the topic of the analysis. She felt that even with the adjustments, this plan will still remain far above many others in the market. She emphasized the employees are No. 1 in the consideration with regard to the City's managing of the health benefit program. At the same time, she did not believe anyone would be happy about paying more but she recognized the responsibility to Willis, the employees and taxpayers to keep the program at the target. She underscored the medical program must be top tier and that is what they have been challenged to do.

Mr. Meredith explained when they were asked to benchmark Plantation's plan as compared with other municipalities and private employers, they found that Plantation's plan was definitely in the top percentage. He advised they presented 15 or 20 different options that would have potentially kept this plan in the top quartile of all plans in South Florida. However, the committee and others said they still wanted to be in the top 5 to 10 percent, but with economic times and the challenges with the budgeting, they had to have a reality check. He reviewed how plans were designed in 1985 and noted if co-pays were not changed over time, the plan would pay a disproportionate percentage of the cost and it would erode the plan. He noted health care has become a disproportionate piece of the compensation for running a business. They are moving in a stronger direction of wellness and disease management. He observed there are some people using the emergency room as a primary care physician as indicated by the diagnosis codes on the reports. In his view, the changes being proposed are not aggressive.

In response to Councilwoman Bendekovic and Councilman Fadgen, Mr. Meredith explained the difference between a fully-insured program versus a partially self-funded program. Year one, from a cash flow perspective, there might actually be an outflow of a 20 percent reduction but in terms of a mature cost, they can expect to save 5 to 7 percent annually being partially self-funded. He emphasized they tried to be very conservative in their projections. They hope to do better than that but it must be a long-term decision. He noted they track their clients over a five to ten-year period. Without exception, they have always been better off in a partially self-funded environment.

In response to Mayor Armstrong, Mr. Meredith explained the distinction between fully self-funded and partially self-funded. He noted they have \$150,000 stop loss so that any individual claimant would have a cap of \$150,000. He further noted the utilization in-network has continued to increase which means the plan is capturing that 55 to 56 percent discount and is being managed effectively. If they are partially self-funded, they do not have to buy their stop loss from United Health Care. They can buy it from many of other companies. They can move their medical stop loss and it has no impact on the employees or their dependents. Therefore, every year they can shop to get the most aggressive cost and the best protection within that arena.

In response to Councilman Fadgen, Mr. Meredith explained the City is fully insured this year but will be partially self-insured in the upcoming year.

Motion by Councilwoman Uria, seconded by Councilwoman Bendekovic, to approve the recommendations by Willis and City staff to adopt the partially self insured plans with the five noted changes. Motion carried on the following roll call vote:

Ayes: Fadgen, Uria, Bendekovic, Petrocelli
Nays: Levy

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LEGISLATIVE ITEMS - None

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QUASI-JUDICIAL CONSENT AGENDA - None

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QUASI-JUDICIAL ITEMS - None

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CONSIDERATION OF COUNCILMEMBERS' COMMENTS

Councilman Fadgen commented on the suggestion in the aforementioned essay contest to use hybrid vehicles as a way to keep Plantation green. He advised he recently attended a presentation by an inventor who has developed a process to run a car on water, achieving a 20 or 30 percent fuel efficiency by doing so. It was his understanding that other local or county governments have done tests of this product. Councilman Fadgen advised he is trying to obtain access to that information to avoid the need for the City to conduct its own tests.

The equipment would cost about \$500 per vehicle and about \$150 to have it installed and have the computer adjusted. He suggested perhaps the City should explore this invention to see if it can save 10 to 30 percent on fuel consumption. If the results from another test of this equipment are not already available, he recommended the City acquire a few pieces of equipment and install them in perhaps two City vehicles to see what type of results are achieved. Based on that information, a decision can be made as to whether the City should go fleet wide.

Mayor Armstrong observed that alternative fuels are high on the list of topics for potential funding through some of the stimulus funds. She advised they would examine the information to see if it is something the City can use.

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Councilwoman Bendekovic reminded the residents that there will be several candidate forums as follows:

February 16, 2009	Lauderdale West
February 17, 2009	Jim Ward Community Center
February 26, 2009	Kennedy Community Center
March 3, 2009	Volunteer Park

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Councilman Petrocelli announced Triple Crown Baseball would be held at Central Park over the weekend.

He also urged residents to come to the forums and to vote.

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PUBLIC REQUESTS OF THE COUNCIL CONCERNING MUNICIPAL AFFAIRS

Dennis Conklin commented on the proposed Stimulus Bill and socialized health care. He requested everyone to contact their elected officials with regard to this matter.

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APPROVAL TO WAIVE THE HOLD HARMLESS LETTER REQUIREMENT FOR THE EASTLICK PROPERTY LOCATED ON STATE ROAD 7

A memorandum dated February 10, 2009 to Mayor and Members of City Council from Donald J. Lunny, Jr., City Attorney, follows:

I. Summary

I have prepared this report not knowing whether Dr. Eastlick will attend the Council Meeting tomorrow night to request relief. The Administration did propose that the matter be scheduled for consideration on March 11, 2009, and then offered that the matter be scheduled for the next meeting so that all of you would be able to be informed of this matter in the usual manner. Since I wish all of you to be informed in case it comes up non-agenda, I expedited the delivery of this report.

This matter is being returned to the City Council as Staff does not believe that it has the City Council's authority to waive the required Hold Harmless and Indemnity Agreement which was a condition of Site Plan Approval and subsequent action of the Council. As the Council may recall, Dr. Eastlick's building on State Road 7 has presented special risk considerations wherein the waivers requested involve nonconforming ingress/egress driveways that are very narrow and a nonconforming building very close to the highway. Instead of making the building conform to the land development code, Dr. Eastlick requested waivers that were approved by the Council in May 2006, and which were expressly conditioned upon he and his wife (the property owners) signing an Indemnity or Hold Harmless Indemnity in a form acceptable to the City Attorney. He now does not wish to sign the Hold Harmless and Indemnity but still wishes to take advantage of the waivers.

II. Relevant History

The following items were provided for your reference:

1. A memorandum (and its enclosures) dated February 7, 2009 by Councilperson Fadgen (which was copied to the City Council);
2. The City Council minutes of May 7, 2008 wherein the Council by Motion directed that the Indemnity and Hold Harmless be modified, and further directed that the insurance carrier issuing the policy listing the City as an additional insured would not need to waive subrogation for the City; and,
3. My letter to Dr. Eastlick's attorney sending him the revised Indemnity and Hold Harmless and asking him to sign same on May 8, 2008.

III. History after May 8, 2008

Since this item was last dealt with at the City Council on May 8, 2008:

- A. I have repetitively requested that the Indemnity and Hold Harmless be signed by the property owners, and Dr Eastlick does not wish to sign it.
- B. The City Council still required Indemnity and Hold Harmless be reinforced with insurance obtained by the property owners and which shows the City listed as an "Additional Insured". The letter included in Councilman Fadgen's submissions indicates that insurance carriers have decided that they do not want to insure the exposure created by the site conditions at this time, and have declined to do so. Obtaining insurance is not solely within Dr. Eastlick's control; therefore, I have advised Dr. Eastlick that if he could not obtain insurance listing the City as "additional insured", I would support a recommendation that this be evaluated each year as part of the premises' occupational license approval. If in any given year he could not obtain the insurance and submitted a letter from his broker to that effect, the Occupational License would be renewed. It should be noted that signing the Indemnity and Hold Harmless Agreement is within the property owners' control.
- C. I have also advised that if a traffic safety engineer would certify the ingress and egress turning movements condition as safe (or not unsafe) given the width of the driveways, the location of the building, and the expected speed of traffic along State Road 7, then the City could re-assess the need for the Indemnity and Hold Harmless. This has never been tendered. The City engineer and I have reviewed the letter of November 9, 2004 previously and concur that it stops short of making the desired statement and does not set forth acceptable rationale for the Letter's conclusion. Moreover, it is not certified to Plantation (such that Plantation may rely on same.)

D. Evidence has been provided that the City had at the initial May 31, 2006 Site Plan Approval showing FDOT's concerns about the driveway connections. Importantly, FDOT does not have primary jurisdiction to approve or deny the site's development or redevelopment, and so its approval of the connections was conditional upon City approval of the site plan. Secondly, FSOT noted that the driveways are nonconforming, and that Dr. Eastlick's request for a variance to FDOT standards was initially denied "*due to a nonconforming design in which the safety of pedestrians and the motoring public was a concern. The Department requested that the Applicant revise the direction of travel in the driveways to provide ingress to the South side of the building and egress on the North side of the building. The Applicant declined this suggestion. The Department is granting this Notice of Intent to Issue permit but let it be known that every effort was made to make this a conforming connection.*" This comment is not viewed by Staff as being an approval of the existing conditions as "safe" or as "not safe". Therefore, Staff believes now, as it did in 2006 when the waivers were approved, that an Indemnity and Hold Harmless should be obtained.

A memorandum dated February 11, 2009 to Mayor and Members of City Council from Donald J. Lunny, Jr., City Attorney, follows:

Staff is still attempting to expedite bringing information to the City Council concerning the Eastlick property.

I. Updated information on FDOT permit.

The City Engineer has now been informed by FDOT Staff that the printout and report he was given this morning by FDOT is in error. FDOT advised that because of a settlement it made with Dr. Eastlick, the Notice of Intent to Issue Permit should not have been shown on its records as having expired, and it is in fact still in effect. FDOT advises, however, that Dr. Eastlick will still need to obtain the actual permit, and following, will need to have FDOT perform an inspection to close out the permit. The City Engineer must then be given the close out information.

II. Sovereign Immunity

I do not have sufficient time to render an Opinion concerning whether under the circumstances as we currently know them, the City would or would not have liability exposure; however, a few observations are appropriate:

1. If a Court were to determine that the City Council was merely negligent in enforcing the codes, then under principles espoused in the cases referenced, a city is not liable for a negligent failure to enforce its codes. Importantly, I noted in 2006 and I'll emphasize now, that this case law may change.
2. The usual principles would not apply to circumstances where a Court determined that the City was not merely negligent, but instead, was reckless. Generally, reckless behavior is where an action occurs with a conscious disregard of a known risk of injury. It is therefore critically important that the justification for action be documented in a professionally acceptable manner. As indicated earlier, Staff is of the view that the justifications could be called into question.

3. The City should require the Indemnity and Hold Harmless so as to have a vehicle to transfer any exposure back to the property owner which results from the requested waiver.

III. Information as to Code Enforcement Lien.

This property is subject to an accrued Code Enforcement Fine and Lien. The Final Order in Case No. CE-2926-02-06 dated November 14, 2002 required that Dr. Eastlick comply with the Code by “*submitting an application requesting Site Plan review under the Gateway Enhancement Guidelines and contents specified in Section 27-617(f)(ii) for administrative approval by the Planning, Zoning and Economic Development director on or before the 13th day of December 2002, or in the event the application is denied by the Director, seek review of the decision by the City governing body.*” On May 15, 2003, the Special Magistrate entered a Supplemental Order, and confirmed a \$75 per day fine commencing on May 15, 2003. A site plan was first submitted on January 4, 2005, and was not approved by the Director of Planning, Zoning and Economic Development because of the waivers Dr. Eastlick wished to obtain to the Gateway Enhancement Ordinance. The site plan was then reviewed by the City Review Committee January 25, 2005. The City commenced a foreclosure proceeding to compel compliance with the Special Magistrate’s orders and enforce the lien on April 6, 2006. On June 26, 2006, the City suspended further material litigation effort to give Dr. Eastlick time to complete the improvements. The fine from the date it commenced on May 15, 2003 to the date Dr. Eastlick first submitted for Site Plan Approval on January 4, 2005 is \$44,925.

Michael McAllister, Attorney representing Dr. Eastlick, was present.

Mr. McAllister presented a brief overview of the matter. He noted the last remaining issue at the site is the necessity of a Hold Harmless Agreement which was a condition that was attached to the site due to narrow driveways and a short setback for legal nonconforming uses. The driveway widths have not changed in the 40 years that the property has been there and there have been no incidents. State Road 7 was widened, creating irregularities in the setback. When he came before City Council to get his site plan approved for his medical office use, there was some concern about safety and fire access. It was suggested, therefore, that a way to cure that would be to obtain a Hold Harmless Agreement. At the time, Dr. Eastlick agreed to it but discovered he could not get insurance. They also did research and discovered no other property owner in the City of Plantation has ever been required to have a Hold Harmless Agreement for this type of issue. They were uncertain whether the City was authorized under the City Code to require indemnity, particularly regarding something for which the City is not liable. He requested the City remove that condition so Dr. Eastlick can get his certificate of occupancy and open his medical office. He advised the City Code does not currently allow the City to seek indemnity related to site plan approval for a driveway access. Where indemnity is typically required from a City is when it is acting in a corporate function. In this case, the City is acting in its government function. It has sovereign immunity for its acts as a governmental entity, so when it approves a variance or a site plan and issues permits or certificates of occupancy, the City can never be sued, and that has been previously acknowledged. Furthermore, the State of Florida is responsible for State Road 7. They have issued through the FDOT a pre-approval for a permit for the site. In terms of ingress and egress, that has already been approved by the controlling entity. Dr. Eastlick has also previously submitted a letter to the City from Miller Engineering which states the driveway cannot be considered unsafe. Finally, they have submitted documentation to the City saying that it cannot be insured. They would like this matter resolved so they can get this medical office open.

In response to Councilman Petrocelli, Dr. Eastlick advised the property beside the building is a Christian book store. He felt that even without that, with the turn lane being there, there is sufficient space for a Fire Department to access the building from the front.

In response to Councilman Petrocelli, Dr. Eastlick advised he was uncertain of the turnaround time to open his office but noted he still has a lien problem that needs to be resolved. From a practical point of view, for the last eight years, he has been renting from month to month because he never knows if or when they will move.

The Council members confirmed that each had read the various legal memoranda prepared by Mr. Lunny in connection with this item. Mr. Lunny cautioned them to think carefully about the summations of Dr. Eastlick's counsel and the statements of lay persons in terms of the relative safety of the matter versus the facts of the matter. He noted this matter was thoroughly discussed on May 7, 2008. The proposed Hold Harmless Agreement was given to Council members and Mr. Lunny advised he was directed to make a change. The change was made and it was sent out the next day. He emphasized it is still his advice that it be signed. The property owner is seeking waivers and it is within Council's authority to require a Hold Harmless. He commented that there is a concern about liability exposure created by the waivers, and the Hold Harmless is a vehicle to transfer any exposure from the City back to the property owner. While counsel might try to argue that there is no such concern and the City cannot be held liable, Mr. Lunny advised he is concerned and he encouraged Council to require the Hold Harmless.

In response to Councilman Fadgen, Mr. Lunny explained that staff had established insurance limits prior to May 8, 2009 but the issue was the waiver of subrogation which is a technical legal issue. Mr. Lunny did not believe he had the authority to approve the waiver. Council waived the subrogation and the direction was to still get an insurance reinforced Hold Harmless, meaning that the City would have the owner's insurance and be the additional insured. Specs were set by Risk Management. Regardless, when Dr. Eastlick went to the insurance markets and tried to obtain insurance for this exposure, they would not write the coverage. He emphasized he still wanted the indemnity signed. The problem now is that Dr. Eastlick does not wish to sign the indemnity. He advised he did not agree with Mr. McAllister's comment regarding sovereign immunity. He believes the issue now is a question of whether this is a negligent type of decision or something greater. He underscored that believing one to be immune for a negligent act is not an excuse to be negligent. When a person understands a risk and makes a conscious decision to accept the risk, this is more than negligence. Therefore, Mr. Lunny did not want to say this is a negligence case and the City will be covered under the principles of sovereign immunity because it may not be. In addition, the doctrine of sovereign immunity is an evolving issue of case law and has changed since 2006, and it may change in the future but these circumstances will not. For those reasons, he is advising the City should require an indemnity.

Councilman Fadgen felt the access is from one of the three northbound lanes. He advised he drove to the property, entered and exited it twice, and walked the property to the south and behind. He indicated there are three 12-foot-wide northbound traffic lanes, a 4-foot-wide bike lane, and an 11½-foot deceleration lane directly in front. There was no one behind him or in front of him and he had no problem with ingress or egress. He observed the building is not in the high-speed lane but, rather, the deceleration lane for the right turn at NW 6th Street, the Eastlick property or the auto sales property. It was his view there may be a risk; however, the deceleration lane helps in this case. He advised he understands Mr. Lunny's desire to protect the City, within reason, and at this point, the City is preventing the Eastlicks from using a property they purchased. He suggested with that acceleration lane and that margin between the high traffic lane, he was unsure whether it is as risky as it may seem, based on the engineer's discussion.

In response to Councilwoman Bendekovic, Mr. McAllister explained there are two reasons why they will not sign the agreement. They cannot get insurance for it and if they sign it, they cannot even obtain insurance for their own property. Secondly, it actually might serve to waive sovereign immunity and create extra liability for the City because while the City does enjoy sovereign liability, the one thing all case law agrees on is that when the City actually has insurance, they have waived sovereign immunity. It creates a second tier of liability for the City.

Dr. Eastlick further noted that if he decided to sell the property in the future, the new owner would be under the same restriction.

Mr. McAllister cited cases establishing that the City is not liable when it is acting in its governmental capacity. He requested the City remove the Hold Harmless requirement that is keeping this business owner from being able to open his business, noting that he is liable if it creates an unsafe condition and the City is not.

Mr. Lunny stated that he does not agree with Mr. McAllister's view about the City having immunity liability for exposure in this case.

Mayor Armstrong advised there is no question that the City struggled with this when it was before Council previously. She indicated she understands Dr. Eastlick's desire not to rehab or redo the building in order to be able to create the appropriate access, which is probably the only direction to go in terms of being able to provide the relief he needs to use the building. However, she felt it is an extremely unfair and unreasonable expectation that the City should take the liability that he is not willing to assume. The engineering report was included in the documentation but the engineer is no longer in business and, therefore, any certification or insurances that the City could have relied on in terms of having the outside engineer at least carry some of the responsibility is no longer available. If he wants the waivers being offered, he needs to sign the indemnity.

Dr. Eastlick indicated the engineer is still in business. The City requested Dr. Eastlick provide a letter from the engineer stating the traffic patterns and whether there has been any increase in crashes or anything relative to that by enlarging State Road 7. The letter was included. In addition, he was requested to opine whether the driveways were unsafe. In order for them to get the site plan, they had to submit a driveway plan which is form certified. The City Building Department has had this letter from Mr. Miller since 2004. If the City had required a certification, it could easily been provided it at that time.

Mr. Lunny explained the letter has been there for years but the City Engineer did not accept the letter as being adequate. This was also known before and Mr. Lunny has said if they could produce a letter that is acceptable from a professional standpoint, certified to Plantation so that the engineer is responsible, then the City would have a principled basis to waive the indemnity.

Mr. McAllister commented that FDOT is the entity that actually permits ingress and egress for the facility and they have already done so. The only thing that FDOT has requested is that they just get the medical use approved because they have already approved the ingress and egress for medical use.

Mayor Armstrong underscored that FDOT does not permit the site plans.

Brett Butler, City Engineer, referenced the letter from Miller Engineering on November 9, 2004 addressed to Dr. Eastlick, and noted the consultant tries to make some arguments and assertions regarding safe or not unsafe conditions. The letter suggests that based upon crash history, they have a safe or not unsafe condition. The crash history that was considered by the engineer was considered at a point in time when this property was not

occupied. So to fairly consider crash history, one would want to consider it when the property is occupied; therefore, he discounted that position. Furthermore, the engineer suggests and tries to make analogies between FDOT lane criteria and this property and its condition. Mr. Butler disagreed with the engineer that applying FDOT lane criteria is not a supportable analogy to this. He further argued that FDOT would likely not find a building adjacent to a through lane or a turn lane as they would be applying their criteria on a State highway system. He respectfully disagreed with the engineer's position on that issue. In substance, Mr. Butler advised he could not find anything with which to agree with this engineer on a position that the site is safe or not unsafe. Furthermore, the letter was not certified to the City. Therefore, he was not willing to accept the document.

In response to Councilwoman Uria, Mr. Butler explained this engineer makes arguments and reaches conclusions that the site is safe or not unsafe. He disagreed with the engineer based upon his findings as outlined in the aforementioned examples.

Dr. Eastlick reiterated that the driveways have not been altered in dimension since the time the building has been there.

Councilwoman Uria observed that if the building is uninsured, he cannot sell it. She noted he would also have to tackle the issue of the Code Enforcement lien. It was her view that he has a nonconforming use that is not his fault.

Mr. Lunny advised that sometimes it is so nonconforming that it must be made conforming. The issues seemed to be that he either makes the building conforming, or obtains the waivers that were granted to keep it in a worse condition than the pre-take position. If the City is going to do that and cannot get anyone to make the right statements in a professionally acceptable way, though requests for such statements were made, then it is appropriate to try to transfer the risk of exposure.

Maria Eastlick indicated she came to the City three times before she bought the building that January and advised them that she would not be able to rebuild the building. She questioned whether there was a problem with the building or the area. She was advised at the time that they wanted professionals and that everything was fine.

Ms. Eastlick was further advised by the broker that the City Attorney has stated that they could not get the insurance. Mr. Lunny disagreed with that comment.

Councilwoman Uria observed that things change. She did not believe it was right for the City to say they cannot open their business and that they are stuck with a nonconforming use building that is basically worthless. She agreed with Councilman Fadgen on this matter and felt it should be approved.

Mayor Armstrong emphasized this is a safety issue. She commented that if someone requested to put a medical office at this location, the response would have been that they would absolutely want to have it there. However, that answer does not go to the other issues like the site plan because they quite likely did not know the issue as it related to drive isle and the position of the building. She cautioned them to be sure that in considering this topic, that there was no misinformation on the part of the City in terms of how the building could be used because those things would never have been considered until after the applicant came in with a request with the site plan and the Gateway enhancement which was significantly after the acquisition of the property in 2003. She felt that was not important to the decision that is here. There is the legal aspect to consider and the fact that this is going to be a responsibility of the City if it is approved in this fashion. There was no engineer who was taking responsibility because there is no certification from an engineer. She felt this is not the kind of thing the City

should do on behalf of the taxpayers in taking these kinds of responsibilities, as much as she would like to see a medical office at this location. It has taken this long because Dr. Eastlick has decided not to change the building structure in any way in order to address the problem.

Councilman Fadgen commented that the Eastlicks tried to do their due diligence. He noted the property is like being on a highway with a shoulder. There is a bike lane and a deceleration lane with no activity and totally off the thoroughfare. It may be tight but there still may not be an accident there in the future.

In response to Councilman Fadgen, Mr. Butler indicated that they advised the applicant's representative that the City would not be able to accept the letter, based upon the content of the letter. Mr. Butler commented further on the site. He advised it is true that there is a turn lane directly adjacent to the site. However, he felt that two things must be considered. He noted Councilman Fadgen made his observations at ten o'clock in the morning and the City would be more interested and more concerned about looking at activity during peak hour periods in the a.m. or the p.m. They would also take into consideration the operation of the business. He felt Councilman Fadgen's observations needed to be carefully weighed in terms of when they would anticipate peak traffic conditions that could influence a situation, and perhaps 10:00 a.m. was not the most appropriate time. Furthermore, Mr. Butler felt they also had to consider the point at which a vehicle will enter this turn lane and at what speed they could anticipate it to be at that point. This may be at a point within the turn lane far preceding the point where they really do expect the vehicle to be traveling at a much slower rate of speed because it is going to consider making a turn. Those factors have to be considered when making an argument that a turn lane should not be viewed as a condition the same as a through lane as far as the speed of the vehicle.

Councilman Fadgen commented that SR 7 was *improved*.

Mr. Butler agreed it was *widened* and that FDOT did it for good reasons.

Councilman Fadgen concluded they widened it to improve safety. The deceleration lane will not be traveled except for turning.

In response to Councilwoman Uria, Dr. Eastlick advised that the letter dated November 9, 2004 from Miller Consulting indicated there were no crashes at this location from 2001 to 2003.

Councilwoman Uria further observed the road has been improved. A bike path and deceleration lane were added. In her view, that roadway has become even more safe. It was further noted that Dr. Eastlick would be the only occupant of this building and there would not be any other physicians.

Mrs. Eastlick advised that sometimes they see patients as early as 8:30 a.m.

Dr. Eastlick indicated that with the modification of the parking lot, it limited their parking. They originally had close to 30 parking spaces and they have approximately 15 spaces at this time.

Mayor Armstrong reminded Council that when FDOT did the takings and made changes in that area, they recognized that there were conditions that had to be changed. Some unsafe conditions were created and, therefore, those property owners were compensated in order to make the corrections. She was uncertain whether this site fell specifically in that area but she was inclined to think that the property owner of that building received enough resources to make the changes that needed to be made as part of the widening. Everyone along the corridor had to respect that the widening created some need to make some changes and this property was one of them. The reason it is sitting there now without being able to get insurance is because it is not safe.

Dr. Eastlick advised he had no idea if there had been any compensation to the prior owner.

Motion by Councilman Fadgen, seconded by Councilwoman Uria, to waive the Hold Harmless requirement for the waivers given to the City Code for the utilization of this property. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Uria, Petrocelli

Nays: Bendekovic

* * * * *

WORKSHOP

29. DISCUSSION CONCERNING PROPOSED ORDINANCE PERTAINING TO AMUSEMENT ARCADES

A memorandum dated February 5, 2009 to Mayor and Members of City Council from the Legal Department, follows:

This matter was last considered by the City Council at its December 3, 2008 Workshop. At such Workshop, Staff indicated that it had no obligation to proposed “Nickels and Dimes” family owned arcade being opened in the former Broward Mall “*Tuesdays*” location, provided it proceeded “at its own risk.

Since that time, Staff has formulated an Ordinance for the regulation of amusement arcades and amusement enterprises. A copy of the Ordinance was provided. The “highpoints” are as follows:

I. Arcades

1. An “amusement arcade” is defined as being any portion of a premise which has three (3) or more “amusement devices. Therefore, any use may have up to two (2) amusement devices without being subject to the new regulations. An “amusement device” is defined.
2. Like before, an “amusement arcade” may only be accessory to a primary leisure time or commercial recreation use (hotel, motel, golf facility, restaurant, theatre, small scale tavern, etc.). The income realized from the arcade may never exceed 20% of the income generated by the primary use.
3. Whenever an arcade has more than ten (10) amusement devices, conditional use approval will be required. Additionally, whenever an arcade is operated in conjunction with a restaurant, restaurant bar, restaurant entertainment facility, or live shows, the arcade must receive conditional use approval. These arcades will also require an “Amusement Certificate” which will involve an additional regulatory review under the auspices of the Administration. (see Part III of this Memorandum below).
4. Subject to the above, amusement arcades will only be allowable in the City’s Hybrid Commercial, Four Corners Commercial B-2P, B-3P, and SPI-3 (Midtown) zoning districts.

II. Amusement Enterprises

1. An “amusement enterprise” is best characterized as an amusement arcade that is not an accessory to another use, but instead, is a primary use.
2. An “amusement enterprise” will only be allowed in the SPI-3 zoning district, subject to a size limitation of 9,000 square feet of floor area, and a dispersal requirement of $\frac{3}{4}$ of a mile. Additionally, an amusement enterprise must be located within a building having a minimum of 100,000 square feet of floor area. These uses are also subject to additional regulatory review and will require an Amusement Certificate to operate, which will be issued under the auspices of the Mayor (see Part III of this Memorandum below).

III. Amusement Certificate

1. As a continuing requirement, where applicable to an amusement arcade, and always applicable to an amusement enterprise, the premises must submit an operating plan consisting of: (i) an interior plan (showing the location of all machines and amusement equipment and devices, and access ways); (ii), a complete set of electrical plans; (iii), a sound reduction plan; (iv), a security and supervision plan; a list of other sites operated by the operator and a detailed history of law enforcement responses thereto within the last three (3) years; (v), a proposed or actual lease, and (vi), such other information as may be reasonably requested. The material will be reviewed by the following safety Departments: The Police, Building, and Fire Departments. The purpose of this review will be to help ensure that the premises complies with all provisions of the Florida Building Code, that all areas intended for pedestrian traffic be sufficiently wide to safely accommodate circulation and access for emergency medical rescue equipment, that the City’s noise ordinance is met immediately exterior to the premises under a normal operating scenario, that the premises are actively supervised and secure as to reduce the likelihood of crime or opportunities for crime, that the use will not likely necessitate law enforcement service, that the lease allows the landlord to evict the tenant whenever three (3) or more law enforcement responses to the premises occur within any twelve (12) month period, and that any other particular safety or security concerns can be satisfied. The above Safety Departments may attach reasonable conditions to their approval of the operating plan which are related to the foregoing public safety and welfare policies. The use shall operate continuously in accordance with the approved operating plan. The Safety Departments shall advise the Mayor or her designee whether they are satisfied with the application and the Mayor or her designee may then issue an ‘Amusement Certificate’. The amusement Certificate will need to be renewed after an annual review for the continued operation of the use. This special provision will hopefully assist in preventing these uses from generating adverse secondary effects.

Direction is sought to advertise. As stated previously, Staff has no objection to the subject “Nickels and Dimes” use commencing operations under the “At their own risk” procedures. As you know, the regulations provided are being created by this Ordinance, thus the Ordinance is not being presented at this time in legislative format for ease of review; however, where appropriate, legislative format is used.

Mr. Lunny indicated this item was workshopped previously with some preliminary comments. At the initial meeting, Council’s appetite for change was not viewed as eager but it was his view that with these additional proposed standards, this is workable.

Paul D'Arelli, representing the applicant, advised he reviewed it with the management at the Westfield Broward Mall and they appreciate the effort to accommodate the request and, for the most part, it is workable. They are still waiting for feedback from the tenant. It was his expectation that the tenant will have an issue pertaining to the requirement that the tenant restrict school age children under 16 from being in the premises on school days between 8:00 a.m. and 3:00 p.m. He understands the desire is not to encourage truancy but from an enforcement standpoint, he felt it is a significant burden on the tenant, particularly when this County relies heavily on tourism. It was his understanding it is a defense to prosecution. He felt it was well intentioned but did not believe it is workable from an enforcement standpoint. He noted there could be a variety of reasons why children would not be in school and he did not feel it should be regulated.

Mr. D'Arelli advised the tenant may have an issue with the provision in Section I.(c)(x) in the proposed Ordinance whereby the machines may be removed from the premises by City employees if there is noncompliance and the certificate is revoked. He did not believe the City would want the obligation or liability from removing machines from the premises and felt perhaps there could be a more orderly process. He advised there was no problem with the concept of three or more law enforcement violations resulting in the certificate being pulled; however, he requested a clarification that a law enforcement response would not include an alarm response. If other questions arise, he will contact the City Attorney to raise those comments.

In response to Councilman Petrocelli with regard to the truancy issue, Mr. Lunny advised they did a survey of other jurisdictions and that was one that the Safety personnel liked. He indicated he respects the issues it raises but it is also a nice public purpose.

Councilman Petrocelli expressed concern about enforcement and the pressure on employees to check identification.

On the truancy issue, Councilwoman Bendekovic advised the children belong in school. She believed that if there is a safeguard, it may prevent so much truancy. She agreed with Mr. D'Arelli with regard to the alarms. Although she has concerns, Councilwoman Bendekovic was hopeful that this would turn out to be a positive rather than a negative. She suggested moving forward.

Mr. Lunny explained that with regard to the other the other two issues, they could work with Mr. D'Arelli. If Council wishes, he will work on point #1 as well.

Councilman Fadgen suggested making revisions to the language dealing with truancy. He emphasized they do not wish to encourage truancy but the concern is legitimate.

Mr. D'Arelli felt from a public policy standpoint, his client would not disagree. They certainly want kids in school. However, enforcement by the attendant could potentially be problematic.

Mr. Lunny suggested keeping the prohibition by give several warnings. He advised he would try to soften the language somewhat.

Councilwoman Uria advised she understands Mr. D'Arelli's position. She had no problem with the issues he has brought up and she felt the Westfield Broward Mall would not want any problems either. She did not object to deleting the truancy issue.

Direction was given to advertise with the aforementioned adjustments.

* * * * *

Meeting adjourned at 10:30 p.m.

Rico Petrocelli, President
City Council

ATTEST:

Susan Slattery
City Clerk

RECORD ENTRY:

I HEREBY CERTIFY that the Original of the foregoing signed document was received by the Office of the City Clerk and entered into the Public Record this _____ day of _____, 2008.

Susan Slattery, City Clerk