

BAL HARBOUR

- V I L L A G E -

Village Council
Regular Meeting Agenda
June 12, 2018
At 7:00 PM

Bal Harbour Village Hall • 655 - 96th Street • Bal Harbour • Florida 33154

CALL TO ORDER/ PLEDGE OF ALLEGIANCE

REQUESTS FOR ADDITIONS, WITHDRAWALS AND DEFERRALS

PRESENTATIONS AND AWARDS

PA1 Recognition of Detective Hector Gonzalez, Bal Harbour Police Department

CONSENT AGENDA

C6 - COUNCIL MINUTES

C6A APPROVAL OF MINUTES

May 15, 2018 Local Planning Agency Meeting Minutes

May 15, 2018 Regular Council Meeting Minutes

[LocalPlanningAgencyMeetingAgenda_May15_2018_MINUTES.pdf](#)

[RegularCouncilMeeting_May15_2018_MINUTES.pdf](#)

C7 - RESOLUTIONS

C7A MOU with Sea View Hotel

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE VILLAGE AND THE SEA VIEW HOTEL, FOR USE OF THE SEA VIEW HOTEL AS A STAGING AREA AND BASE OF OPERATIONS FOR THE PUBLIC SAFETY RESPONSE TO POTENTIAL HURRICANE LANDFALLS THAT MAY IMPACT THE BAL HARBOUR VILLAGE; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN

EFFECTIVE DATE.

[Item Summary - MOU Sea View Hotel](#)

[Council Memorandum - MOU Sea View Hotel](#)

[Resolution - MOU Sea View Hotel](#)

R5 - ORDINANCES

R5A Business Tax Receipt Ordinance

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA AMENDING ARTICLE II “LOCAL BUSINESS TAX” OF CHAPTER 9 “BUSINESS REGULATIONS AND BUSINESS TAX” OF THE BAL HARBOUR VILLAGE CODE OF ORDINANCES; PROVIDING FOR AN INCREASE IN CERTAIN BUSINESS TAXES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - Local Business Tax](#)

[Council Memorandum - Local Business Tax](#)

[Ordinance - Local Business Tax](#)

Q1 - QUASI-JUDICIAL - *Please be advised that the following items on the agenda are quasi-judicial in nature. If you wish to comment upon an item, please inform the Mayor when he asks for public input on the item. An opportunity for persons to speak will be made available after the applicant and staff has made their presentations on each item. All testimony, including public testimony and evidence, will be made under oath or affirmation. Additionally, each person who gives testimony may be subject to cross-examination. If you refuse either to be cross-examined or to be sworn, your testimony will be given its due weight. The general public will not be permitted to cross-examine witnesses, but the public may request the Mayor to ask questions of staff or witnesses on his behalf. Persons representing organizations must present evidence of their authority to speak for their organization. Further details of the quasi-judicial procedures may be obtained from the Village Clerk.*

Disclosure of Ex-Parte Communications.

Swearing In of Speakers by the Village Clerk.

Q1A Non-Use Variance for 84 Bal Bay Drive

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING A NON-USE VARIANCE TO THE REQUIREMENT IN CHAPTER 21 “ZONING,” ARTICLE V “OFF-STREET PARKING FACILITIES,” SECTION 21-384, “NUMBER OF SPACES” FOR ONE PARKING SPACE AT A

SINGLE FAMILY DETACHED DWELLING TO BE WITHIN A CARPORT OR GARAGE,
FOR PROPERTY LOCATED AT 84 BAL CROSS DRIVE; PROVIDING FOR
CONDITIONS; PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - Non-Use Variance for 84 Bal Cross Drive](#)
[Council Memorandum - Non-Use Variance for 84 Bal Cross Drive](#)
[Resolution - Non-Use Variance for 84 Bal Cross Drive](#)
[Attachment 1 - Variance Application for 84 Bal Cross Drive](#)
[Attachment 2 - Justification-Evidence Letter for 84 Bal Cross Drive](#)

R7 - RESOLUTIONS

R7A ARB Appointment

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE,
FLORIDA; APPOINTING A MEMBER TO THE ARCHITECTURAL REVIEW BOARD;
PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - ARB Appointment](#)
[Council Memorandum - ARB Appointment](#)
[Resolution - Appointing ARB Member](#)
[Attachment 1 - Resume - Richard Waserstein](#)

R7B Resolution- Agreement with Advanced Cable Tech for the installation of a Beach Water Service Main

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE,
FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND
ADVANCED-TECH CABLE, INC. FOR THE INSTALLATION OF WATER MAIN LINES
AND ASSOCIATED EQUIPMENT TO PROVIDE WATER SERVICE TO BAL HARBOUR
BEACH DRINKING FOUNTAINS AS DETAILED WITHIN PROPOSAL NO. 2737 IN
THE AMOUNT NOT TO EXCEED THIRTY ONE THOUSAND SIX HUNDRED
DOLLARS (\$31,620); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN
EFFECTIVE DATE

[Item Summary - Drinking Fountains](#)
[Council Memorandum - Drinking Fountains](#)
[Resolution - Drinking Fountains](#)
[Attachment 1 - Advanced Tech- proposal no 2737](#)
[Attachment 2A - A TO Z OCEANA PROPOSAL](#)
[Attachment 2B - A TO Z RITZ CARLTON PROPOSAL](#)
[Attachment 3 - Purchase and Installation Agreement with Advanced Tech Cable, Inc](#)

R7C Resolution-Agreement-Coffman Electrical Equipment-Purchase of a Winpower

DX-250 portable Generator

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND COFFMAN ELECTRICAL EQUIPMENT CO. FOR THE PURCHASE OF A WINPOWER DX-250 DIESEL PORTABLE GENERATOR AS DETAILED WITHIN THE PROPOSAL NO. 052318G3, IN THE AMOUNT NOT TO EXCEED EIGHTY FOUR THOUSAND NINE HUNDRED FORTY NINE DOLLARS (\$84,949); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - Village Hall Generator](#)

[Council Memorandum - Village Hall Generator](#)

[Resolution - Village Hall Generator](#)

[Attachment 1 - Coffman Winpower Quote](#)

[Attachment 2 - WincoDX90-350 Warranty Information](#)

[Attachment 3 - Purchase Agreement with Coffman Electrical Equipment](#)

- R7D** Resolution Agreement with Tirone Electric, Inc. for the provision and installation of a (ATS) as Village hall

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND TIRONE ELECTRIC, INC. FOR THE PROVISION AND INSTALLATION OF AN AUTOMATIC TRANSFER SWITCH (ATS) WITH OTHER NECESSARY ELECTRICAL EQUIPMENT TO PROVIDE FOR THE USE OF A PORTABLE ELECTRICAL GENERATOR, TO SUPPLY EMERGENCY POWER TO THE VILLAGE HALL AND POLICE ADMINISTRATION BUILDINGS AS DETAILED WITHIN PROPOSAL 6A17-444R1 IN THE AMOUNT NOT TO EXCEED FORTY THREE THOUSAND FIVE HUNDRED DOLLARS (\$43,500); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - Village Hall Emergency Transfer Switch](#)

[Council Memorandum - Village Hall Emergency Transfer Switch](#)

[Resolution - Village Hall Emergency Transfer Switch](#)

[Attachment 1 - Proposal from Tirone Electric 6a17-444r1](#)

[Attachment 1A - PSI Terms and Conditions](#)

[Attachment 2 - Purchase and Installation Agreement with Tirone Electric Data](#)

- R7E** Solid Waste Assessment

A RESOLUTION OF BAL HARBOUR VILLAGE, FLORIDA, RELATING TO THE COLLECTION AND DISPOSAL OF SOLID WASTE AND RECYCLABLE MATERIALS IN BAL HARBOUR VILLAGE, FLORIDA; DESCRIBING THE METHOD OF ASSESSING SOLID WASTE COSTS AGAINST ASSESSED PROPERTY LOCATED WITHIN BAL HARBOUR VILLAGE, FLORIDA; DETERMINING THE SOLID WASTE COST AND

THE INITIAL SOLID WASTE SERVICE ASSESSMENTS; DIRECTING THE PREPARATION OF AN ASSESSMENT ROLL; AUTHORIZING A PUBLIC HEARING AND DIRECTING THE PROVISION OF NOTICE THEREOF; AND PROVIDING AN EFFECTIVE DATE.

[Item Summary - Solid Waste Assessment](#)

[Council Memorandum - Solid Waste Assessment](#)

[Resolution - Solid Waste Assessment](#)

R7F Security and Landscape Assessment

A RESOLUTION OF BAL HARBOUR VILLAGE, FLORIDA, RELATING TO THE PROVISION OF SECURITY AND LANDSCAPE SERVICES, FACILITIES AND PROGRAMS IN THE GATED RESIDENTIAL SECTION OF BAL HARBOUR VILLAGE, FLORIDA; DESCRIBING THE METHOD OF ASSESSING SECURITY AND LANDSCAPE COSTS AGAINST ASSESSED PROPERTY LOCATED WITHIN THE GATED RESIDENTIAL SECTION OF BAL HARBOUR, FLORIDA; DETERMINING THE COST OF SECURITY AND LANDSCAPE SERVICES, FACILITIES AND PROGRAMS AND THE INITIAL SECURITY AND LANDSCAPE ASSESSMENTS; DIRECTING THE PREPARATION OF AN ASSESSMENT ROLL; AUTHORIZING A PUBLIC HEARING AND DIRECTING THE PROVISION OF NOTICE THEREOF; AND PROVIDING AN EFFECTIVE DATE.

[Item Summary - Security and Landscape Assessment](#)

[Council Memorandum - Security and Landscape Assessment](#)

[Resolution - Security and Landscape Assessment](#)

R9 - NEW BUSINESS AND COUNCIL DISCUSSION

R9A Discussion regarding Surfside's Firearm Preemption Lawsuit - Councilwoman Cohen/Councilman Freimark

[Discussion Item - Surfside's Firearm Preemption Lawsuit](#)

[Daily Business Review - 20 Cities Pile Into Gun Preemption Legal Challenge](#)

[Sun Sentinel - Broward and Boca Raton ready to sue state over gun law](#)

[Town of Surfside - Discussion Item Memorandum - Firearm Preemption Lawsuit](#)

[Town of Surfside - Resolution No. 2018-2504 Firearm Preemption Lawsuit](#)

[Weiss Serota - Complaint for Firearm Lawsuit Filed - 04.02.18](#)

[Palm Beach Post - \[Editorial\] Every city should join fight against harmful state gun law](#)

R9B Discussion regarding Plastics on the Beach - Councilwoman Patricia Cohen

[Discussion Item - Plastics on the Beach](#)

[City of Miami Beach - Council Memorandum - Plastic Straws Ordinance](#)

[City of Miami Beach - Plastic Straws Ordinance](#)

money.cnn.com - Europe plans to phase out plastic cutlery straws and more
nationalgeographic.com -The Death of the Plastic Straw
Town of Surfside - Ord. No 2018-1676 - Prohibition on Plastic Straws

R9C - PUBLIC COMMENT

R10 - VILLAGE MANAGER REPORT

R11 - VILLAGE CLERK REPORT

R11A Lobbyist Report

[R11A1_Lobbyist Registration Report as of June5_2018.pdf](#)

R12 - VILLAGE ATTORNEY REPORT

END OF REGULAR AGENDA

ADJOURNMENT

One or more members of any Village Committee/Board may attend this meeting of the Council and may discuss matters which may later come before their respective Boards/Committees.

The New Business and Council Discussion Section includes a section for Public Comment. On public comment matters, any person is entitled to be heard by this Council on any matter; however, no action shall be taken by the Council on a matter of public comment, unless the item is specifically listed on the agenda, or is added to the agenda by Council action.

Any person who acts as a lobbyist, pursuant to Village Code Section 2-301 (Lobbyists), must register with the Village Clerk, prior to engaging in lobbying activities before Village staff, boards, committees, and/or the Village Council. A copy of the Ordinance is available in the Village Clerk's Office at Village Hall.

If a person decides to appeal any decision made by the Village Council with respect to any matter considered at a meeting or hearing, that person will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this proceeding because of that disability should contact the Village Clerk's Office (305-866-4633), not later than two business days prior to such proceeding.

All Village Council meeting attendees, including Village staff and consultants, are subject to security screening utilizing a metal detector and/or wand, prior to entering the Council Chamber, Conference Room, or other meeting area located within Village Hall. This is for the safety of everyone. Thanks for your cooperation.

BAL HARBOUR

- V I L L A G E -

Mayor Gabriel Groisman
Assistant Mayor Seth E. Salver
Councilman David J. Albaum
Councilwoman Patricia Cohen
Councilman Jeffrey P. Freimark

Village Manager Jorge M. Gonzalez
Village Clerk Dwight S. Danie
Village Attorneys Weiss Serota
Helfman Cole & Bierman, P.L.

Bal Harbour Village Council Local Planning Agency Meeting Minutes

May 15, 2018

At 7:00 PM

Bal Harbour Village Hall • 655 Street • Bal Harbour • Florida 33154

CALL TO ORDER/ PLEDGE OF ALLEGIANCE - Mayor Groisman called the meeting to order at 7:04 PM.

The following were present:

Mayor Gabriel Groisman
Assistant Mayor Seth Salver
Councilman David Albaum
Councilwoman Patricia Cohen

The following were not Present:

Councilman Jeffrey Freimark

Also present:

Jorge M. Gonzalez, Village Manager
Dwight S. Danie, Village Clerk
Susan L. Trevarthen, Village Attorney
Stephanie Marquez-Quintero, Deputy Village Clerk

LPA1 AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING THE VILLAGE CODE OF ORDINANCES TO ADDRESS SIGNAGE BY AMENDING SECTION 2-191 "SCHEDULE OF CIVIL PENALTIES" TO CLARIFY PENALTIES FOR SIGN CODE VIOLATIONS; AMENDING SECTION 5.5-5 "CRITERIA FOR APPEARANCE" TO INCLUDE STYLE AS A SIGN DESIGN CRITERIA; AMENDING SECTION 6-35 "BUILDING PERMIT FEES" TO REVISE SIGN BUILDING PERMIT FEES; AMENDING SECTION 11-1 "POSTING OF ADVERTISING MATERIAL" TO AMEND THE SECTION TITLE AND REVISE THE PROHIBITION; AMENDING CHAPTER 15 "SIGNS" BY DELETING THE CHAPTER AND ADOPTING NEW SIGN REGULATIONS APPLICABLE THROUGHOUT THE VILLAGE; AMENDING SECTION 17-3 "WRITING ON, DIGGING IN STREET, SIDEWALK; PLACEMENT OF SIGNS, BANNERS," TO DELETE ABILITY TO PLACE SIGNS AND BANNERS IN PUBLIC STREETS OR SIDEWALKS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Gonzalez introduced the item. Kathy Mehaffey (Assistant Village Attorney) provided a PowerPoint presentation highlighting the proposed changes of the ordinance that focus on time, place, and manner and only applies to exterior facing signs and does not apply to government speech, signs in the right-of-way, and signs regarding public safety. She explained that signs that would not be approved by Administration that followed a Unified Sign Plan would need Architectural Review Board review and Village Council approval. She then described the permitting and variance process and listed prohibited and exempt signs. She then described the proposed code requirements for Business District sites over 10 acres and concluded with a description of the components of Unified Sign Plan.

Mayor Groisman suggested reserving Council debate for the second reading of the ordinance.

Councilwoman Cohen asked for clarification of how signs announcing public hearings would be addressed, stating that current guidelines and practices are in adequate and needed further attention. She then asked how the code would apply to garage sale signs to which Ms. Mehaffey replied that under the current code and the proposed code they are not allowed, in that they are considered to be commercial in nature.

Assistant Mayor Salver asked for clarification of the code for real estate signs outside of the residential district, to which Ms. Mehaffey responded that they are permitted and to which Mayor Groisman added that condo associations, as private entities, might not allow them.

Mayor Groisman commented that on Page 17/LPA 30, specific cases should not be referenced in the ordinance and suggested the section be titled "Not For Censorship", the first sentence be struck as well as the citations. He suggested that on Page 42/ LPA 45 the language be changed to allow illumination of identification signs and on Page 30/LPA 43 modifying the language to require that destroyed signs be treated as new signs.

Councilwoman Cohen asked for clarification of how a garage sale sign differs from a free speech sign, to which Ms. Trevarthen explained that commercial signs can be regulated.

Amy Huber (Shubin & Bass - representing the Bal Harbour Shops) stated that she has been working with Village Staff and the Village Attorney on several issues and will address them further on second reading of the ordinance.

Penny Sepler (10275 Collins Ave.) expressed her concern that a sign regarding a lost dog would not be allowed to which Ms. Trevarthen responded that it would be a non-applicable, non-commercial message.

Beth Berkowitz (10160 Collins Ave.) asked who owns and who is responsible for repairing the signs on the east and west side of Collins, to which Mr. Gonzalez responded that the Village owned them.

MOTION: A Motion to recommend that the Village Council approve the ordinance on first reading was moved by Assistant Mayor Seth Salver and seconded by Councilwoman Patricia Cohen.

ROLL CALL:

ROLL CALL	Yes	No
Mayor Gabriel Groisman	X	
Assistant Mayor Seth E. Salver	X	
Councilman David J. Albaum	X	
Councilwoman Patricia Cohen	X	
Councilman Jeffrey P. Freimark	-	-

VOTE: the LPA approved recommending that the Village Council pass the ordinance on first reading by unanimous roll call vote (4-0).

END OF LOCAL PLANNING AGENCY MEETING AGENDA

ADJOURNMENT. - The Local Planning Agency Meeting was adjourned at 7:46 PM.



Mayor Gabriel Groisman

Dwight S. Danie, Village Clerk

BAL HARBOUR

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Bal Harbour Village Council

Regular Meeting Minutes

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Assistant Mayor Seth Salver
Councilman David Albaum
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The following were not present:

Councilman Jeffrey Freimark

Also present:

Jorge M. Gonzalez, Village Manager
Dwight S. Danie, Village Clerk
Susan L. Trevarthen, Village Attorney
Stephanie Marquez-Quintero, Deputy Village Clerk

The Pledge of Allegiance was led by the Council.

REQUESTS FOR ADDITIONS, WITHDRAWALS AND DEFERRALS

PRESENTATIONS AND AWARDS

PA1 Legislative Update

(7:56 PM) Florida State Representative Joseph Geller provided a recap of the 2018 Legislative Session stating that dollars appropriated by the Legislature for the Haulover Inlet Bypass Project and Roadway Infrastructure Improvements were vetoed by the Governor. He then provided an overview of the budget passed by the Legislature

highlighting the defeat of challenges to home rule. He then described the bill passed in the wake of the Parkland school shootings.

(8:18 PM) Lobbyist Ron Book reiterated the highlights of the bill passed after the Parkland school shootings. He concluded, saying that the chances for the successful appropriation of dollars for the Bypass and Infrastructure projects would improve the next Legislative Session.

Councilwoman Cohen voiced her concern for Mr. Book's representation of retail pet stores, which she emphasized was contrary to the Village's position and challenged the Village's home rule powers. She asked him, what was the outcome of the County's decision to grant him a waiver. Mr. Book responded that it was a moot issue and that all this was being stirred up by "two carpetbagging commissioners" from Broward County and that he would not be resigning his representation.

Mayor Groisman stated that Mr. Book cannot at the same time advocate for home rule and against home rule, and in the next Legislative Session he would have to choose between his clients. He then asked Mr. Book to notify the Village if the conflict arises.

Mr. Gonzalez recommended that the Council consider whether or not to provide Mr. Book with a waiver, and asked Mr. Book the outcome of this day's proceeding at the County, to which Mr. Book responded that it was a ministerial act and a moot issue.

(8:35 PM) Senator Daphne Campbell provided a summary of the Legislative Session and read presented members of the Council with a proclamation.

Mayor Groisman then provided an update on the resident autistic child whose family had received a letter containing unacceptable language from a neighbor who, in turn, had decided to move out of the Village after the intervention of the Police department and himself. He then announced that there would be Autism Awareness event at Village Hall on May 30, 2018 at 7:00 PM, led by Detective Hector Gonzalez, and invited all to attend.

PA2 Presentation of Red Nose Day Proclamation (7:05 PM)

Mayor Groisman presented a proclamation to Mark Swartz, Miami Community Outreach Coordinator for Comic Relief USA | Red Nose day.

The Village Council Regular Meeting was recess at 7:12 PM to convene the Local Planning Agency Meeting, and was reconvened at 7:46 PM.

CONSENT AGENDA

C6 - COUNCIL MINUTES

C6A Approval of April 17, 2018 Minutes

C7 - RESOLUTIONS

C7A A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND QUALITY CONSTRUCTION PERFORMANCE, INC. FOR THE RESTORATION OF THE JOGGING PATH, AS DETAILED WITHIN PROPOSAL NO. 2018-3217, IN THE AMOUNT NOT TO EXCEED SEVENTY NINE THOUSAND SIXTY TWO DOLLARS (\$79,062.00); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

MOTION: A Motion to approve the Consent Agenda was moved by Assistant Mayor Seth Salver and seconded by Mayor Groisman.

VOTE: The Motion was passed by unanimous voice vote (4-0).

R5 - ORDINANCES

R5A AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING THE CODE OF ORDINANCES BY AMENDING SECTION 9-1 "DEFINITIONS" OF CHAPTER 9 "BUSINESS REGULATIONS AND BUSINESS TAX" TO CREATE AN EXEMPTION FROM AUTOMATIC TIP DISCLOSURE REGULATIONS FOR OCEANFRONT ACCESSORY RESTAURANTS THAT ARE ACCESSORY USES IN MULTI FAMILY RESIDENTIAL BUILDINGS THAT DO NOT SERVE THE PUBLIC; PROVIDING FOR DEFINITIONS, SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE. (Second Reading)

Mr. Gonzalez summarized the ordinance. There was no public comment.

MOTION: A motion to approve the Ordinance on second reading was moved by Assistant Mayor Seth Salver and seconded by Councilwoman Patricia Cohen:

ROLL CALL:

ROLL CALL	YES	NO
Councilman Albaum	X	
Councilwoman Cohen	X	
Councilman Freimark	-	-
Mayor Groisman	X	
Assistant Mayor Salver	X	

VOTE: The Ordinance passed on second reading by unanimous roll call vote (4-0).

R5B AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING THE VILLAGE CODE OF ORDINANCES TO ADDRESS SIGNAGE BY AMENDING SECTION 2-191 "SCHEDULE OF CIVIL PENALTIES" TO CLARIFY PENALTIES FOR SIGN CODE VIOLATIONS; AMENDING SECTION 5.5-5 "CRITERIA FOR APPEARANCE" TO INCLUDE STYLE AS A SIGN DESIGN CRITERIA; AMENDING SECTION 6-35 "BUILDING PERMIT FEES" TO REVISE SIGN BUILDING PERMIT FEES; AMENDING SECTION 11-1 "POSTING OF ADVERTISING MATERIAL" TO AMEND THE SECTION TITLE AND REVISE THE PROHIBITION; AMENDING CHAPTER 15 "SIGNS" BY DELETING THE CHAPTER AND ADOPTING NEW SIGN REGULATIONS APPLICABLE THROUGHOUT THE VILLAGE; AMENDING SECTION 17-3 "WRITING ON, DIGGING IN STREET, SIDEWALK; PLACEMENT OF SIGNS, BANNERS," TO DELETE ABILITY TO PLACE SIGNS AND BANNERS IN PUBLIC STREETS OR SIDEWALKS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE. (FIRST READING)

Mr. Gonzalez summarized the item. Amy Huber (Shubin & Bass - representing the Bal Harbour Shops) requested that her comments from the Local Planning Agency Meeting be incorporated.

MOTION: A motion to approve the Ordinance on first reading was moved by Assistant Mayor Seth Salver and seconded by Councilwoman Patricia Cohen:

ROLL CALL:

ROLL CALL	YES	NO
Councilman Albaum	X	
Councilwoman Cohen	X	
Councilman Freimark	-	-
Mayor Groisman	X	
Assistant Mayor Salver	X	

VOTE: The Motion passed by unanimous roll call vote (4-0).

R7 - RESOLUTIONS

R7A A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE DESIGN CONCEPT FROM ZYSCOVICH ARCHITECTS FOR THE FUTURE DEVELOPMENT OF BAL HARBOUR PARK; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

Mayor Groisman said that there had been misinformation circulating about the scope and timeframe of the project, and that although there had been two workshops and many discussions with residents, he urged those residents who still had questions to personally contact him for clarification. He added that he would be forming a committee, with an appointee from each Council member, to work with the Architect and the Administration, throughout the design of the project.

Mr. Gonzalez summarized the item stating that currently only one third of the potential site is available for recreation and that through negotiations during the Bal Harbour Shops Expansion project, the Village now has the opportunity to develop a waterfront park on the entire three lots, given a \$3.5 million from the Shops for public benefits. He stated that Bernard Zyscovich (Zyscovich Architects) would be presenting the elements of a site plan that were gleaned from recommendations gathered at public workshops and no designs have been completed. He stated that the first phase of the project would include selecting an architectural/engineering firm to create true construction drawings and did not think that construction would begin within the next 24 months. He said he would also be seeking authorization to select a location to move the existing parks and public works operations. He said that it is his intent to keep the existing recreation area operational by beginning work on the north end of the park and that the second phase of the project, which would include building a recreational facility of the current Village Hall site would probably not occur within the next 7 to 8 years.

Councilwoman Cohen said that she had met with residents to present the Agenda materials and she made it clear that she was not consulted whether Option 1 or Option 2 was a better option.

Mr. Zyscovich provide a presentation of proposed park elements and possible locations adding that there was a general consensus to include a lot of open green space, a fitness and recreations center on the current Village Hall site, and an air-conditioned community center building that would occupy the northern end of the park. He then presented the two options, main difference being the massing of the community center, Option 2 having more indoor space and a roof-top terrace.

Rene Syriani (24 Bal Bay Dr.) expressed his concern of the noise that could be generated from public building next to his property.

David Portnoy (88 Camden Dr.) said that, as a resident, he was excited to see the proposed features, and expressed that priority should be given to the fitness and recreation center.

Sandy Lieberman (179 Bal Cross Dr.) said that the project is beautiful and would like to see a tennis court included. She agreed with having a community center roof-top with a water view.

Beth Berkowitz (10160 Collins Ave.) expressed her concern with the sufficiency of the infrastructure (water/sewer) and the number of allotted parking spaces. Mr. Gonzalez stated that the Development Agreement allowed Village Staff to utilize parking at the Shops during construction. Mayor Groisman added that available parking after the second phase of the project is yet to be addressed.

Deborah Portnoy (88 Camden Dr.) said she appreciated the beauty and expressed her concern regarding the proposed location of the children's playground. She also expressed her concern for younger children have to cross the street to the fitness and recreation center. She said she would prefer a community center more like Surfside's, with a pool and social areas.

Ree Kelly (2000 Towerside Ter.) said the project is an incredible piece of eye candy and stated that she was confused why the Village had to wait 9 years. Mayor Groisman explained that the only park of the park that would take that long is the building of the fitness and recreation center.

Neil Alter (9801 Collins Ave.) asked what the ultimate cost of the project, to which Mr. Gonzalez responded that cost depended on what ultimately is decided for the site, and he did not anticipate issuing bonds.

Shena Dominitz (194 Park Dr.) commended Mr. Zyscovich for beautifully incorporating the ideas presented at workshop and expressed her hope to see the project move ahead as quickly as possible.

Penny Sepler (10275 Collins Ave.) agreed that the site plan was beautiful and expressed her concern for pedestrians living on the east side of Collins accessing the park.

Brian Mulheren (10245 Collins Ave.) asked for the cost of taking down the public works building and that first, environmental studies be completed.

Mayor Groisman agreed that infrastructure and environmental studies are important for doing the project right and that this evening the Council would be approving the basic concepts for the park.

Assistant Mayor Salver stated that this is not intended to be a finished project, that there is plenty of discussion still to be had. He said it is important to move forward, that one major motivation is that as soon as plans are approved, the Village can begin collecting rent (\$700,000+ per yr.) from the Suntrust Bank. He added that he sees the value of maximizing indoor space and he would support Option 2 and would like to see more seating on the waterfront.

Councilwoman Cohen suggested following design/charrette process.

Councilman Albaum suggested having more park elements in the large open green space. He said he was sympathetic with Mr. Syriani and consideration should be given to the noise impact. Mayor Groisman added that the nature of the building could actually be an improvement. Mr. Zyscovitch added that the building on the north shelters the park from colder north winds allowing the southeast breezes.

MOTION: A Motion to approve the site plan Option 2, but moving the Kid's Playground to the north side of the park at the discretion of the architect was moved by Mayor Gabriel Groisman and seconded by Assistant Mayor Seth Salver.

VOTE: the Motion was approved by unanimous voice vote (4-0).

Mayor Groisman stated that he would like to form an ad hoc committee with appointees from each Council member to work on the next steps of the park design.

R7B A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT WITH MIAMI-DADE COUNTY TO ALLOW THE VILLAGE, PURSUANT TO SECTION 8CC-11 OF THE MIAMI-DADE COUNTY CODE OF ORDINANCES, TO ENFORCE SECTION 21-81 OF THE MIAMI DADE COUNTY CODE; PROVIDING FOR NECESSARY AUTHORIZATION, IMPLEMENTATION AND AN EFFECTIVE DATE.

(7:46 PM) Mr. Gonzalez summarized the item then introduce Miami-Dade County District 4 Commissioner, Sally Heyman who emphasized that the MOU would help prioritize law enforcement resources by treating certain low-grade misdemeanors as civil citations. Captain Raleigh Flowers, Acting Chief of Police added that officers would have the discretion to make a custodial arrest or issue a civil citation. There was no public comment.

MOTION: A Motion to approve the Resolution was moved by Assistant Mayor Seth Salver and seconded by Councilman David Albaum.

VOTE: The Motion passed by unanimous voice vote (4-0).

R7C A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND NEXTRAN TRUCK CENTER FOR THE PURCHASE OF A 2018 MACK GRANITE 64FR (GU713) GRAPPLE TRUCK WITH A PETERSEN ATLAS GRAPPLE AS DETAILED WITHIN THE PROPOSAL NO. FSA17-VEH15.0 SPEC#15, IN THE AMOUNT NOT TO EXCEED TWO HUNDRED THIRTY THREE THOUSAND FOUR HUNDRED ONE DOLLARS (\$233,401); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Gonzalez summarized the item describing the piggyback process utilized to select the vendor.

MOTION: A Motion to approve the resolution was moved by Assistant Mayor Seth Salver and seconded by Councilman David Albaum.

Beth Berkowitz (10160 Collins Ave.) asked where the truck is currently stored, to which Mayor Groisman responded behind the Suntrust.

Councilwoman Cohen asked what would be the main function of the grapple truck, to which John Oldenburg (Parks and Public Spaces Director, responded that it would be used for debris removal.

VOTE: The Motion was approved by unanimous voice vote (4-0).

R9 - NEW BUSINESS AND COUNCIL DISCUSSION

R9A Discussion on Aventura Arts & Cultural Center - Councilwoman Cohen

Councilwoman Cohen introduced the item suggesting utilizing the Fairfield Manor site for a cultural/recreational center. Mayor Groisman said that, in his mind, the Fairfield site would include a significant public space for the Village's expanding arts program.

R9B - PUBLIC COMMENT

Penny Sepler (10275 Collins Ave.) asked for the water fountains on the beach, to which Mr. Gonzalez reported that irrigation lines had been inadvertently been tapped, and that a bid has been put out to bring potable water to the fountains. She then asked the status of the new boutique hotel, to which Mayor Groisman explained that activity is slow due to bankruptcy proceeds with the previous owners.

Ree Kelly (2000 Towerside Ter.) asked about the status of construction traffic across Bal Cross Dr., to which Mayor Groisman responded that the traffic is allowed. She then announced that working with a group to possibly bring an art show/musical fest to Bal Harbour, to which Mayor Groisman suggest that she contact the Village's Curator, Claire Breukel.

Assistant Mayor Salver commented on the Brightview signs popping up over the Village, to which Mr. Oldenburg said that he could replace with the Village's signs.

Beth Berkowitz (10160 Collins Ave.) asked for clarification for when garbage would be picked up, to which Mr. Oldenburg responded that they have until 4:00.

R10 - VILLAGE MANAGER REPORT

R10A LTC 075-2018 Update following Beach Renourishment Meeting with County Mayor

Mr. Gonzalez said that he had met with the Miami-Dade County Mayor, Mayor Groisman and other municipal Mayors concerned with beach renourishment, with the outcome being that the County has identified recurring funding for the next six years which when coupled with other funding would identify between \$50-60 million for beach renourishment project, but we would still need to work with the Army Corps of Engineers to identify a project and the availability of sand.

Mayor Groisman added that the Mayors went into the meeting agreeing to work together to obtain recurring funds, a broad strategy beach protection and dedicated staffing.

R11 - VILLAGE CLERK REPORT

R11A Lobbyist Report

R12 - VILLAGE ATTORNEY REPORT

END OF REGULAR AGENDA

ADJOURNMENT - the meeting was adjourned at 10:42 PM.



Mayor Gabriel Groisman

Dwight S. Danie, Village Clerk

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE VILLAGE AND THE SEA VIEW HOTEL, FOR THE USE OF THE SEA VIEW HOTEL AS A STAGING AREA AND BASE OF OPERATIONS FOR THE PUBLIC SAFETY RESPONSE TO POTENTIAL HURRICANE LANDFALLS.

Issue:

Should the Village enter into a Memorandum of Understanding with the Sea View Hotel to authorize the Village to use the Sea View as a staging area and base of operations during a hurricane landfall?

Item Summary/Recommendation:

In preparation for the 2018 Hurricane Season, which begins on June 1 and ends on November, 30, the Bal Harbour Village (BHV) Administration has been reviewing its critical incident management and severe weather recovery response.

As part of this year's preparation efforts and review of the *Critical Incident Operations Plan (CIOP)*, staff has identified the need to establish a back up or secondary base of operations in the event of a total power or infrastructure failure to Police Headquarters, which serve as the Village's Emergency Operations Center.

The Memorandum of Understanding (MOU) between Bal Harbour Village and the Sea View Hotel authorizes the temporary use of the Sea View's facilities to direct the Village's public safety response during recovery efforts.

THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS RESOLUTION

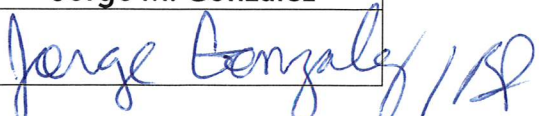
Advisory Board Recommendation:

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Financial Information:

	Amount	Account	Account #
1			

Sign Off:

Acting Chief of Police	Chief Financial Officer	Village Manager
Raleigh Flowers, Jr.	Amber Riviere	Jorge M. Gonzalez
		

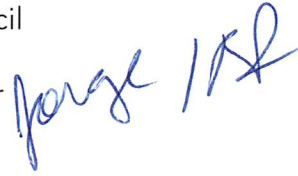
BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: June 12, 2018

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE VILLAGE AND THE SEA VIEW HOTEL, FOR THE USE OF THE SEA VIEW HOTEL AS A STAGING AREA AND BASE OF OPERATIONS FOR THE PUBLIC SAFETY RESPONSE TO POTENTIAL HURRICANE LANDFALLS THAT MAY IMPACT THE BAL HARBOUR VILLAGE; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

Approval of this Resolution is recommended.

BACKGROUND

In preparation for the 2018 Hurricane Season, which begins on June 1 and ends on November, 30, the Bal Harbour Village (BHV) Administration has been reviewing its critical incident management and severe weather recovery response.

Integral to my responsibilities as Manager, is the direction of emergency management functions for the Village. As a result, I have been working closely with my staff in ensuring we are prepared to provide the most effective public safety response to our residents and visitors.

ANALYSIS

As a coastal community, the Village's effective response to the landfall of a hurricane or severe weather event is paramount. The Village's *Critical Incident Operations Plan (CIOP)* significantly addresses the pre-planning, response, recovery, and mitigation to the adverse effects of a tornado or major hurricane. This plan, on-going training and close coordination with the Miami-Dade Emergency Operations Center will ensure a successful response to a severe weather event.

As part of this year's preparation efforts and review of the CIOP, staff has identified the need to establish a back up or secondary base of operations in the event of a total power or infrastructure failure to Police Headquarters, which serve as the Village's Emergency Operations Center.

AGENDA ITEM _____

The Bal Harbour Police Department facilities, which also serve as the Village's Emergency Operations Center (EOC), may not be equipped to safely withstand the negative weather impacts of a major hurricane with winds in excess of 131 miles per hour. As a result, staff has been working to identify appropriate alternate accommodations for the Village's EOC.

The Sea View Hotel, located at 9909 Collins Avenue, is a concrete structure constructed to withstand a hurricane, equipped with impact windows, a backup generator for stable electrical power, and a secure area to house and protect a compliment of Bal Harbour Police Department personnel, Bal Harbour Village Officials, and emergency vehicles. Therefore, the Sea View Hotel was identified as a viable back up or secondary base of operations for the Village.

The Memorandum of Understanding (MOU) between Bal Harbour Village and the Sea View Hotel authorizes the temporary use of the Sea View's facilities to direct the Village's public safety response during recovery efforts.

The same agreement is under consideration by St. Regis Hotel and the One Bal Harbour and will be brought to Council accordingly.

CONCLUSION

In conclusion, we are committed to providing effective public safety to Village residents, business owners and visitors in general, but especially during emergencies. I, therefore, recommend your approval of this Resolution authorizing the Memorandum of Understanding with the Sea View Hotel.

RESOLUTION NO. 2018-

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE VILLAGE AND THE SEA VIEW HOTEL, FOR USE OF THE SEA VIEW HOTEL AS A STAGING AREA AND BASE OF OPERATIONS FOR THE PUBLIC SAFETY RESPONSE TO POTENTIAL HURRICANE LANDFALLS THAT MAY IMPACT THE BAL HARBOUR VILLAGE; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Bal Harbour Police Department is charged with the public safety response to emergencies and critical incidents, to include the landfall and negative weather impacts of major hurricanes, and

WHEREAS, as part of the responsibility to respond to emergencies and critical incidents, the Bal Harbour Police Department needs a secure facility to coordinate and deploy personnel resources and equipment to effectively provide public safety to residents and visitors to Bal Harbour Village; and

WHEREAS, the Bal Harbour Police Department facilities may not be equipped to safely withstand the negative weather impacts of a major hurricane with winds in excess of 131 miles per hour; and

WHEREAS, if the Bal Harbour Police Department base of operations should lose electrical power or sustain damage severe enough to negatively impact or prohibit Bal Harbour Police Department operations, then the Bal Harbour Police Department base of operations will move to the Sea View Hotel at 9909 Collins Avenue; and

WHEREAS, the Sea View Hotel, located at 9909 Collins Avenue is a concrete structure constructed to withstand a hurricane, equipped with impact windows, a backup generator for stable electrical power, and a secure area to house and protect a compliment of Bal Harbour Police Department personnel, Bal Harbour Village Officials, and emergency vehicles; and

WHEREAS, the Bal Harbour Police Department will utilize the Sea View Hotel facility until it is determined that it is safe to resume normal operations; and

WHEREAS, the Sea View Hotel will provide reasonable accommodations at a negotiated rate to be determined by June 1 of each year, to include access to apartments, rest rooms, and secured parking; and

WHEREAS, this Council has determined that it is in the best interest of the Village to approve the Memorandum of Understanding with the Sea View Hotel ("MOU") to allow the Bal Harbour Police Department to utilize the Sea View Hotel as a staging area and base

of operations for the public safety response to potential hurricane landfalls that may impact BHV.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That the above stated recitals are hereby adopted and confirmed.

Section 2. MOU Approved. That the MOU with the Sea View Hotel, for use of the Sea View Hotel 9909 Collins Avenue, as a staging area and base of operations for the public safety response to potential hurricane landfalls that may impact the Village, in substantially the form attached hereto as Exhibit "A," is hereby approved and the Village Manager is hereby authorized to execute the agreement on behalf of the Village.

Section 3. Implementation. That the Village Manager is hereby authorized to take all actions necessary to implement the purposes of this Resolution.

Section 4. Effective Date. That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this ____ day of June, 2018.



Mayor Gabriel Groisman

ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA AMENDING ARTICLE II "LOCAL BUSINESS TAX" OF CHAPTER 9 "BUSINESS REGULATIONS AND BUSINESS TAX" OF THE BAL HARBOUR VILLAGE CODE OF ORDINANCES; PROVIDING FOR AN INCREASE IN CERTAIN BUSINESS TAXES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

Issue:

Should the Village Council approve the proposed 5% rate Local Business Tax increase for FY 2018-19?

Item Summary/Recommendation:

It is recommended that the Council approve the Ordinance authorizing a 5% rate adjustment to Local Business Taxes for FY 2018-19. An increase of 5% would generate an increase of approximately \$36,000 of general revenue for FY 2019 and adjusting rates every other year as permitted by State law would generate approximately \$147,000 in general revenue over the next four years.

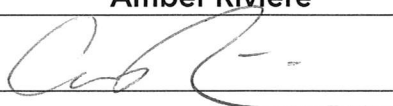
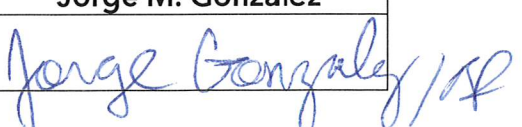
Advisory Board Recommendation:

The Village Budget Advisory Committee evaluated the proposed change at their May 22, 2018 meeting and recommended the proposed adjustment to keep pace with consumer price index adjustments for our area.

Financial Information:

	Amount	Account	Account #
		Local Business Tax	01-00-316000

Sign Off:

	Chief Financial Officer	Village Manager
	Amber Riviere	Jorge M. Gonzalez
		

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: June 12, 2018

SUBJECT: **AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA AMENDING ARTICLE II "LOCAL BUSINESS TAX" OF CHAPTER 9 "BUSINESS REGULATIONS AND BUSINESS TAX" OF THE BAL HARBOUR VILLAGE CODE OF ORDINANCES; PROVIDING FOR AN INCREASE IN CERTAIN BUSINESS TAXES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

It is recommended that the Council approve the Ordinance authorizing a five-percent (5%) rate adjustment to Local Business Taxes for FY 2018-19 (FY 2019).

BACKGROUND

Pursuant to Chapter 205, Florida Statutes, counties and municipalities are authorized to levy a local business tax. As part of the levy, each local government establishes categories of professions, occupations, and businesses, and then imposes a tax on each designated category. Under current law, the rate structures and classifications cannot be modified but the rates can be increased five percent every other year. Revenues collected remain with local governments as general revenue. Local Business Tax Revenue for Bal Harbour Village were \$682,100 in FY 2015, \$721,400 in FY 2016, \$740,100 in FY 2017 and are projected at \$715,800 for FY 2018. FY 2018 reflects a decrease due to lower reported inventory for the retail establishments. Historically, Bal Harbour Village Local Business Tax generated approximately \$460,000 of general revenue per year. In FY 2015 and in FY 2017, the annual renewal rate was increased by five-percent; prior to then the last increase was in FY 2010.

Formerly referred to as occupational license taxes, they were first authorized in Florida in 1869. The state prescribed rates, and counties could receive 50 percent of the state taxes collected. Additionally, cities and towns were authorized to impose their own tax not to exceed 50 percent of the state license tax. In 1967, Chapter 205, Florida Statutes,

"Occupational License Taxes," was amended to require that two thirds of the occupational license taxes collected by the county would be distributed to the state, with the other one-third remaining in the county where collected. Municipalities could enact a similar tax, but only at a rate equal to 50 percent of that allowed for counties to assess. Rates for individual business and occupational types were specified and certain exemptions were allowed.

In 1972, Chapter 205, Florida Statutes, was amended to make the occupational license tax a local tax and eliminate the requirement that county collected taxes were transferred to the state. In 1980 and 1982, the Florida Legislature amended Chapter 205 again to allow percentage increases in the occupational license tax rates charged by counties and municipalities. In 2006, the Florida Legislature formally changed the name to Local Business Tax.

The Village Budget Advisory Committee evaluated the proposed rate change at their May 22, 2018 meeting and recommended the adjustment to keep pace with consumer price index (CPI) adjustments to the rate to ensure the rate increases did not outstep annual consumer price index adjustments. As presented, the proposed FY 2019 five-percent rate adjustment falls 4.0% short of keeping pace with cumulative CPI adjustments for our area since FY 2011.

Currently, Local Business Taxes in Bal Harbour Village are levied based on the following rate structure:

Business Tax Receipt			
Retail	\$ 60.64	1st \$1,000 worth of stock value - Based on inventory	Sec. 9-34
Retail	\$ 3.58	for each additional \$1,000 or fractional part thereof	Sec. 9-34
Restaurant	\$ 60.64	for the first 35 chairs	Sec. 9-34
Restaurant	\$ 1.65	for each additional chair/seat over 35	Sec. 9-34
Restaurant - Late Hour Bar	\$ 551.25		Sec. 9-34
Professional	\$ 71.66		Sec. 9-34
Per Professional	\$ 22.05		Sec. 9-34
Vending Machines	\$ 3.02	Per Machine	Sec. 9-34
Services	\$ 60.64		Sec. 9-34
Services - Barber Shops & Beauty Parlo	\$ 12.67	per chair in excess of 4	Sec. 9-34
Hotels & Cabanas	\$ 2.21	Per room or cabana	Sec. 9-34
Insurance	\$ 71.66		Sec. 9-34
Financial Institutions	\$ 220.50		Sec. 9-34
Financial Institutions	\$ 55.13	Per Branch if main bank is within Village	Sec. 9-34
Nightclubs	\$ 2,756.25		Sec. 9-34
Delinquency during the month of October	\$ -	10%	Sec. 9-34
Delinquency after October in addition to	\$ -	5% Not to exceed 25%	Sec. 9-34
Failing to obtain BTR	\$ 262.50		Sec. 9-34

The Local Business Tax rates are now eligible for adjustment for FY 2019 by Ordinance. n increase of five-percent could generate an increase of approximately \$36,000 more general revenue than the current year projection of \$715,800 at \$751,600. By selecting to not adjust these rates as provided by Florida Statutes the Village would not keep pace

with the Consumer Price Index for the same time period and would forego an estimated \$147,000 in additional general revenue over four years that could be collected by the Village. Keeping current with Local Business Tax rate adjustments ensures that commercial properties carry their fair and proportionate share of the cost of government services.

CONCLUSION

Approval of this Ordinance is recommended to help ensure that Business Tax Receipt rates will keep pace with the consumer price index adjustments and that commercial properties pay their proportionate share for the cost of Village services.

ORDINANCE NO. 2018-

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA AMENDING ARTICLE II "LOCAL BUSINESS TAX" OF CHAPTER 9 "BUSINESS REGULATIONS AND BUSINESS TAX" OF THE BAL HARBOUR VILLAGE CODE OF ORDINANCES; PROVIDING FOR AN INCREASE IN CERTAIN BUSINESS TAXES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council desires to increase by 5% the annual rate charged by the Village for the issuance of certain business tax receipts as authorized by applicable law.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That the above stated recitals are true and correct and are hereby adopted.

Section 2. Village Code Amended. That Section 9-34 "Local business tax schedule" of Article II "Local Business Tax" of Chapter 9 "Business regulations and business tax" of the Code of Bal Harbour Village is hereby amended to read as follows:¹

Sec. 9-34. Local business tax schedule.

Local business taxes for the following businesses, occupations, or professions are hereby levied and imposed as follows:

(A) *Retail sales and lease--Goods.*

- (1) Businesses in this category shall include but not be limited to:
 - Florists
 - Flower stands, selling cut or potted flowers or plants
 - Food sales, where not in connection with regularly licensed grocery store
 - Grocery stores, which, within the meaning of this chapter, shall be construed as any place of business where groceries are sold at retail
 - Merchants, including any person engaged in the business of selling merchandise of any kind
- (2) Taxes:

¹ Additions to existing text in the Village Code shall be indicated by underline, deletions from existing text in the Village Code shall be indicated by ~~strike through~~.

- (a.) Where goods carried do not exceed one thousand dollars (\$1,000.00) of stock in value . . . ~~\$57.75~~ \$60.64
 - (b.) For each additional one thousand dollars (\$1,000.00) or fractional part thereof . . . ~~\$3.41~~ \$3.58
- (3) No additional receipt required for storage accessory to selling of merchandise. Merchants possessing a local business tax receipt from the Village under the "Merchants" category for a business premises located within a building (the "Primary Business Premises") may occupy a second location within the same building or shopping mall development, solely for the purpose of providing accessory storage space for the Primary Business Premises, without being required to obtain a second local business tax receipt, so long as the value of any goods maintained in such accessory storage area have been included in calculating the local business tax applicable for the Primary Business Premises. This accessory storage space shall only be used for the storage of merchandise and shall not be used to conduct business. The use by a merchant of a desk, chair, copier, telephone, fax, modem, computer or like furnishings within said accessory storage space shall constitute conducting a business.

(B) *Same--Services.*

- (1) Businesses in this category shall include but not be limited to:
 - Automobile renting business; per auto
 - Barbershop
 - Beauty parlor
 - Boat livery, including rental, leasing; per boat
 - Carwash facility
 - Caterer
 - Dry cleaning agency and/or valet shop
 - Fruit shipping
 - Golf, practice driving nets
 - Parking cars, meaning the business of parking motor vehicles for guests of hotels, apartment houses, clubs and similar places
 - Parking lot
 - Photographer
 - Service station
 - Solarium
- (2) Taxes:
 - (a.) [Generally] . . . ~~\$57.75~~ \$60.64
 - (b.) For barber shops or beauty parlors with chairs in excess of four, per chair . . . ~~\$12.07~~ \$12.67

(C) *Lodging.*

- (1) Business in this category shall include but not be limited to:
Apartment houses or other leased or rented buildings (each room that can be leased or rented not including kitchens and bathrooms); per each room Cabanas; each Hotel, motel; per each room that can be leased or rented

- (2) Taxes, per room or per cabana . . . ~~\$2.10~~ \$2.21

(D) *Restaurants.*

- (1) Business in this category shall include but not be limited to:
Restaurants, drugstores, soda fountains, or other establishment serving food, and/or liquor

- (2) Taxes:

(a.) For the first thirty-five (35) chairs or seats . . . ~~\$57.75~~ \$60.64

(b.) For each additional chair or seat over thirty-five (35) . . . ~~\$1.57~~ \$1.65

(E) *Late Hour Bars.*

- (1) Business in this category shall include but not be limited to:
Establishments serving intoxicating liquor, either given away or consumed on the premises between the hours of midnight and 7:00 a.m., and shall be subject to the Late Hour Bar business tax as well as the Restaurant business tax defined in this Section.

- (2) Taxes . . . ~~\$525.00~~ \$551.25

(F) *Professional.*

- (1) Business in this category shall include but not be limited to:
Agent, broker, operator dealer, all kinds
All individuals holding a professional license, engaged in the practice of any profession who offers his services for a consideration
Professional management
Stockbroker

- (2) Taxes:

(a.) [Generally] . . . ~~\$68.25~~ \$71.66

(b.) Per Professional. . . ~~\$21.00~~ \$22.05

(G) *Vending machines.*

Per machine . . . ~~\$2.88~~ \$3.02

(H) *Insurance.*

Insurance company. A business tax receipt of ~~\$68.25~~ \$71.66 shall be paid by each insurance company doing business whether an office is maintained or an agent or a representative resides in the Village.

(I) *Financial institutions.*

(1) Business in this category shall include but not be limited to:
Financial institution, which, within the meaning of this chapter, shall include federal and State chartered banks, federal and State chartered savings and loans, industrial savings banks, trust companies, international banking agencies or representative office, credit unions and other financial businesses which are regulated by State and federal law

(2) Taxes:

(a.) [Generally] . . . ~~\$210.00~~ \$220.50

(b.) Per branch (if main bank within Village) . . . ~~\$52.50~~ \$55.10

(J) *Nightclubs.*

Which is defined to be a restaurant, or dining room with entertainment. In addition to business tax for a restaurant or the sale of liquor

Tax . . . ~~\$2,625.00~~ \$2,756.25

Section 3. **Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion in the Code. That it is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Bal Harbour Village; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Effective Date. That this ordinance shall become effective immediately upon adoption.

PASSED AND ADOPTED on first reading this ____ day of **June**, 2018.

PASSED AND ADOPTED on second reading this ____ day of **September**, 2018.

Mayor Gabriel Groisman

ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING A NON-USE VARIANCE TO THE REQUIREMENT IN CHAPTER 21 "ZONING," ARTICLE V "OFF-STREET PARKING FACILITIES," SECTION 21-384, "NUMBER OF SPACES" FOR ONE PARKING SPACE AT A SINGLE FAMILY DETACHED DWELLING TO BE WITHIN A CARPORT OR GARAGE, FOR PROPERTY LOCATED AT 84 BAL CROSS DRIVE; PROVIDING FOR CONDITIONS; PROVIDING FOR AN EFFECTIVE DATE.

Issue:

Should the Village Council approve a non-use variance to the parking requirements of Section 21-384, "Off Street Parking Facilities" for the property located at 84 Bal Cross Drive?

Item Summary/Recommendation:

The Owner of the property located in the R-2 Single Family, Residential District of Bal Harbour at 84 Bal Cross Drive is seeking a non-use variance from the requirements of Section 21-384, to permit a variance to the requirement for one parking space at a single family detached dwelling to be within a carport or garage.

This residence is a 3,688 square foot, one story single family Mediterranean style home that was originally built in 1967 and is located in the R-2 zoning district of the Village of Bal Harbour. The lot is approximately 10,643.65 square feet.

On May 24, 2017 the Owner submitted an application to demolish the existing carport. The application was approved by then Building Official Suramy Cabrera on June 6, 2017. On June 9, 2017, the plans were submitted to the Village Planner, Michael Miller's office for review and the Village Planner subsequently denied the application because the demolition of the carport structure would not be in compliance with the Village Ordinance requirement of at least one parking space provided with a carport or garage.

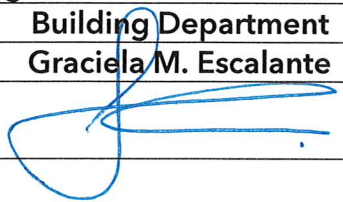
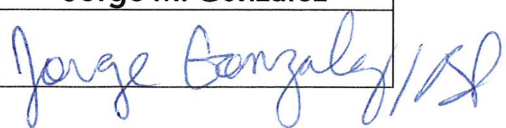
Advisory Board Recommendation:

N/A

Financial Information:

	Amount	Account	Account #
1	N/A	N/A	N/A

Sign Off:

Building Department		Village Manager
Graciela M. Escalante		Jorge M. Gonzalez
		

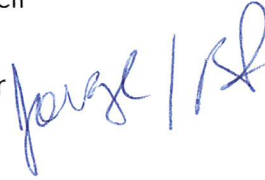
BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: June 12, 2018

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING A NON-USE VARIANCE TO THE REQUIREMENT IN CHAPTER 21 "ZONING," ARTICLE V "OFF-STREET PARKING FACILITIES," SECTION 21-384, "NUMBER OF SPACES" FOR ONE PARKING SPACE AT A SINGLE FAMILY DETACHED DWELLING TO BE WITHIN A CARPORT OR GARAGE, FOR PROPERTY LOCATED AT 84 BAL CROSS DRIVE; PROVIDING FOR CONDITIONS; PROVIDING FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

I am recommending the Council review this application for a variance.

BACKGROUND

The Owner of the property located in the R-2 Single Family, Residential District of Bal Harbour at 84 Bal Cross Drive is seeking a non-use variance from the requirements of Section 21-384, to permit a variance to the requirement for one parking space at a single family detached dwelling to be within a carport or garage.

This residence is a 3,688 square foot, one story single family Mediterranean style home that was originally built in 1967 and is located in the R-2 zoning district of the Village of Bal Harbour. The lot is approximately 10,643.65 square feet.

The Owner obtained a building permit on November 11, 2000 to convert an enclosed one car garage into a playroom and constructed the covered canvass carport that exists today.

On May 24, 2017 the Owner submitted an application to demolish the existing carport. The application was approved by the Building Official Suramy Cabrera on June 6, 2017.

On June 9, 2017, Ms. Cabrera submitted the plans to the Village Planner, Michael Miller's office for review and the Village Planner subsequently denied the application because the demolition of the carport structure would not be in compliance with the Village Ordinance requirement of at least one parking space provided with a carport or garage. Subsequently, the demolition permit was put on hold.

Code Sec. 21-384. - Number of spaces reads as follows:

"The schedule of off-street parking requirements shall be as follows:

- (1) Single-family detached dwellings: Two parking spaces for each dwelling unit, with not less than one space provided within a garage or Carport."*

Based on the Village Code, Section 21-52, all variance requests are decided by the Village Council. The code reads:

When an application for a nonuse variance or for a public hearing has been filed under this division, it shall be promptly transmitted to the Village Council, together with the Written recommendation of the Village Manager or his designee, such recommendation to become a part of the hearing file and record and open for public inspection.

The requested variance is made under Division 2 - Amendments; Zoning Changes; Variances, of the Village Zoning Code which authorizes the Council, in specific cases where the code would result in undue or unnecessary hardship, to grant a variance to such regulations by way of a resolution. The code provides guidance for reviewing such applications. The findings required by Village of Bal Harbour Code Section 21-53 (b)(1) are as follows:

- a. *The subject property has special conditions, not applying generally to other neighboring properties in the same zoning district, which occasion the necessity for the petitioned variance.*
- b. *The development resulting from the granting of such variance shall be in harmony with the policies embodied within the Village Comprehensive Plan.*
- c. *The granting of such variance shall be consistent with the general purpose and intent of the applicable zoning district regulations governing the property on which approval is granted.*
- d. *The granting of such variance shall not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations nor hinder or discourage appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.*
- e. *That the literal and strict enforcement of the applicable provisions of the zoning regulations or other provisions of the Code of Bal Harbour Village, would result in undue or unnecessary hardship to the applicant.*
- f. *That the granting of the requested variance will provide substantial justice and not be contrary to the public interest as reflected in the applicable regulations.*
- g. *That the need for the variance does not arise from conditions which are personal to the owner but instead relate to the uniqueness of the property.*
- h. *It is the responsibility of the applicant to submit evidence that addresses the above criteria.*

In compliance with section 21-53(b)(1)(h) above, the applicant has submitted their evidence addressing the criteria and is attached hereto (Attachment 1), for the Council's consideration.

In evaluating the criteria, it is important to bear in mind that according to the Village of Bal Harbour's Code, Sec 21.53, the purpose of zoning codes and code regulations is as follows:

The Council is advised that the purpose of zoning and zoning regulations is to provide a plan and design to lessen the congestion in the highways; to secure safety from fire, panic and other dangers; to promote health, safety, morals, convenience and the general welfare; to provide adequate light and air; to prevent the overcrowding of land and water; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements, with the view of giving reasonable consideration, among other things, to the character of the district or area and its peculiar suitability for particular uses and with a view to conserving the value of Buildings and Property and encouraging the most appropriate use of land and water throughout the Village.

CONCLUSION

The Bal Harbour Village Council is the body entrusted with reviewing and deciding the merits of variance applications. The Village Code provides criteria for the Council's guidance. The responsibility of submitting the evidence for the Council's use in evaluating the application per the criteria detailed in the code is on the Owner. The Owner has provided this evidence. The Council should consider this application and the evidence submitted by the Owner. The attached Resolution was prepared for Council consideration should you determine that a variance is warranted.

ATTACHMENTS:

1. Non-use Variance application
2. Owner's Letter with Justification

RESOLUTION NO. 2018-_____

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING A NON-USE VARIANCE TO THE REQUIREMENT IN CHAPTER 21 "ZONING," ARTICLE V "OFF-STREET PARKING FACILITIES," SECTION 21-384, "NUMBER OF SPACES" FOR ONE PARKING SPACE AT A SINGLE FAMILY DETACHED DWELLING TO BE WITHIN A CARPORT OR GARAGE, FOR PROPERTY LOCATED AT 84 BAL CROSS DRIVE; PROVIDING FOR CONDITIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Applicant, Sara Mizraji, has applied for a necessary variance to Section 21-384, "Number of Spaces," of the Bal Harbour Village Code of Ordinances (the "Code") which requires one parking space at a single family detached dwelling to be within a carport or garage for property located at 84 Bal Cross (the "Property"); and

WHEREAS, the variance is necessary to permit the removal of a covered canvass carport; and

WHEREAS, the Village Council finds that based on the application and the testimony presented, the application **[meets/does not meet]** the requirements for granting a variance in the Code; and

WHEREAS, the Village Council finds that **[approval/denial]** of this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Findings. THIS MATTER came before the Village Council of Bal Harbour Village, Florida, on June 12, 2018. The Village Council having considered the public testimony, evidence in the record, the testimony of the Applicant, and the recommendation of the administrative staff, finds that the application, as conditioned herein, **[meets/does not meet]** the requirements of Section 21-53 as follows:

- a. The subject property **[has/does not have]** special conditions, not applying generally to other neighboring properties in the same zoning district, which occasion the necessity for the petitioned variance.
- b. The development resulting from the granting of such variance **[is/is not]** in harmony with the policies embodied within the Village Comprehensive Plan.
- c. The granting of such variance **[is/is not]** consistent with the general purpose and intent of the applicable zoning district regulations governing the property.
- d. The granting of such variance **[will not/will]** adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and **[will not/will]** hinder or discourage appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.
- e. The literal and strict enforcement of the applicable provisions of the zoning regulations or other provisions of the Code of Bal Harbour Village, **[would/would not]** result in undue or unnecessary hardship to the applicant.
- f. The granting of the requested variance **[will/will not]** provide substantial justice and **[will not/will]** be contrary to the public interest as reflected in the applicable regulations.

- g. The need for the variance **[does not/does]** arise from conditions which are personal to the owner and **[does/does not]** relate to the uniqueness of the property.

Section 3. Approval/Denial. The request to approve a variances to Section 21-384, to allow the removal of an existing covered canvass carport, where no carport or garage parking space will remain on the property, for property located at 84 Bal Cross, is here by **[denied/approved]**.

Section 4. Conditions. Any APPROVAL granted herein is subject to the following conditions:

1. All applicable Village, state and federal permits must be obtained before commencement of the demolition.
2. This approval is specific to the Property as it is currently developed, and does not run with the land.
3. Future redevelopment of the Property shall be subject to all the standards and requirements of the Code, subject to any future variance or approval granted by the Village Council, under the applicable Code, at the time of redevelopment.
4. If all required building permits are not obtained and demolition begun, or an extension granted pursuant to the Code, within the prescribed time limit, this approval shall become null and void.

Section 5. Effective Date of Resolution. This Resolution shall become effective immediately upon adoption hereof.

PASSED AND ADOPTED this ____ day of _____, 2018.



ATTEST:

Mayor Gabriel Groisman

Dwight Danie, Village Clerk

Approved as to Form For Use and
Reliance of Bal Harbour Village Only

Village Attorney

VAR

BAL HARBOUR VILLAGE

APPLICATION FOR VARIANCE

Date: May 21 2018

Case No: _____
Receipt No.: _____

Fee: The application shall be accompanied by a public hearing filing fee in accordance with Sec. 21-51(b) of the Code of Ordinances. Cost recovery deposits shall be required in accordance with Sec. 21-51(c) of the Code of Ordinances. The Village shall maintain a record of all costs involved in the review including Village staff, consultants and out of pocket costs including advertising and public notice. Prior to scheduling a public hearing the applicant shall pay the Village for the actual costs of review over the initial deposit.

In addition to this application form, the Applicant shall supply the documentation required by, and show compliance with Section 21-53(a) (if in the Business District) or Section 21-53(b) (if in any other Zoning District) of the Village's Code of Ordinances. Additional analysis, information or evaluation may be required by staff as needed to provide sufficient information as necessary to fully evaluate the request's compliance with the Code requirements.

Petitioner: Sara Mizraji

Signature of Petitioner: [Signature]

Petitioner Address: 84 Bal Cross Dr City: Bal Harbour

Phone: 305-812-7889 Fax: _____ E-mail: Saramizraji@gmail.com

If Petitioner is not the Owner, Name of Owner: _____

Signature of Owner: _____

Owner Address: _____ City: _____

Phone: _____ Fax: _____ E-mail: _____

Request (include identification of the Code Section from which a variance is requested in addition to specific descriptions

of the requested modifications and attach any illustrations and plans as applicable): Sec. 21-384
removal of carport - see attached document

Present Zoning District: _____ Present Future Land Use Map (FLUM) Designation: _____

Address of Property: 84 Bal Cross Dr Bal Harbour FL 33154

Legal Description of Property (Plat Book/Page or Metes and Bounds): Bal Harbour Residential Section PB44-98

Lot 7 B1X4 and Prop Int into to Common elements (May Attach Separate Legal Description) not dedicated to the public

OWNER / AGENT CERTIFICATE:

This is to certify that I am the owner/agent of the subject lands described above in the application for Variance Approval, and that all information supplied herein is true and correct to the best of my knowledge. By signing this application, owner/agent specifically agrees to allow access to described property at reasonable times by Village personnel, for the purpose of verification of information provided by owner/agent.

Signature of owner/agent: [Signature] Sworn to and subscribed before me this

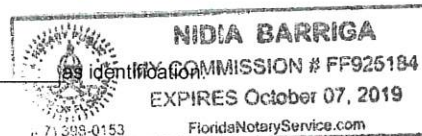
21 day of May 2018 by SARA GROSFELD MIZRAJI

☐ He/She is personally known to me or

☒ He/She has presented [Signature]

Signature of Notary Public [Signature]

Type or Print Name NIDIA BARRIGA



FOR STAFF USE ONLY

Village Council Date: _____ () Approved Resolution No. _____
() Denied () Approved with conditions

Sara Mizraji
84 Bal Cross Drive
Bal Harbour Fl 33154

Graciela M. Escalante RA
Building Director
Bal Harbour Village
655 96th Street
Bal Harbour, Fl 33154

I am writing in reference to my home, the property located at 84 Bal Cross Drive, Bal Harbor Fl 33154, as referred to on permit # D-17-05-001 attained on June 1, 2017.

After some investigation of the building code, by both Suramy Cabrera of the Bal Harbour Building Department, and Michael J. Miller, AICP, Consultant Village Planner, it was discovered that the permit, which was given to us by the city to remove our carport, was not going to solve the problem that we are facing. The problem being, that over the last 25 years we have maintained our home within code (section 21-384), which requires there to be a covered space per residence. However, it has become increasingly more difficult for us to do so, due to the constant propulsion of tree parts, limbs, and debris, from the trees in the adjoining lot, through the canvas of my carport. The issue is that if we remove the carport (as our permit allows us to do) it may cause us to be in violation of the code. Therefore, we are seeking a variance of section 21-384.

For many years the trees in the "bird sanctuary" owned by the city of Bal Harbour, on the lot next door to our home (on the corner of Park Drive and Bal Cross Drive), have been the cause of the deterioration of the canvas of our carport. It has become financially burdensome to have to replace the carport canvas, at thousands of dollars each time. The problem is further exacerbated by the fact that the trees have a protected status, and cannot but cut down or trimmed more than a small percentage at a time. Over the years, the trees have actually also caused other damage to my home, which the city has taken responsibility for.

For this reason, and due to the fact that I do not own, have control over , or condone the presence of the trees and their destruction of the canvas, I am requesting a variance so that I may remove the carport and not be in violation of code. Removing the carport, would not affect anyone, since it is hidden and

unseen from the neighbors homes and will not cause any hardship or inconvenience to homeowners or the city.

I believe that for all the reasons mentioned above, there is good and sufficient cause to grant the variance, and not doing so would in fact result in exceptional and ongoing hardship.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sara G. Mizraji". The signature is fluid and cursive, with a small dot above the 'i' in Mizraji.

Sara G. Mizraji
84 Bal Cross Drive,
Bal Harbour FL 33154



Carport and roof under trees in "Bird Sanctuary" located adjacent to 84 Bal Cross Drive, on the corner of Park Dr and Bal Cross Dr



View from within the carport where you can see how all the tree branches have propelled and ripped carport.

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA;
APPOINTING A MEMBER TO THE ARCHITECTURAL REVIEW BOARD.

Issue:

Should the Village Council appoint a new member to the Architectural Review Board (ARB)?

Item Summary/Recommendation:

The ARB is comprised of five (5) members appointed by the Council as a body. The qualifications require that four (4) members be either registered architects or registered landscape architects. The fifth member shall be a resident layperson having familiarity with architecture, construction, plans review or similar relevant knowledge. With the exception of the resident seat, no residency requirement exists for the remaining four members. Currently, there is one vacancy on the Architectural Review Board. This situation creates difficulty in scheduling as well as achieving and keeping quorum resulting in cancelled meetings and applicants' reviews taking longer than is necessary.

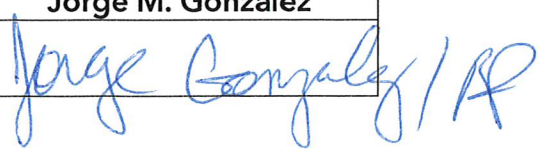
The vacant position's only requirement is that the appointee be a Village resident with familiarity on the ARB's general topics.

Advisory Board Recommendation:

Financial Information:

	Amount	Item	Account
1	N/A		

Sign Off:

		Village Manager
		Jorge M. Gonzalez
		

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: June 12, 2018

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPOINTING A MEMBER TO THE ARCHITECTURAL REVIEW BOARD; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

Consider the proposed resolution, discuss potential applicants and appoint member(s) to the Architectural Review Board (ARB).

BACKGROUND/ANALYSIS

At the November 2017 Council Meeting, the Administration advised the Council that the ARB's resident layperson member seat remains vacant. On that notice, Councilman David Albaum has submitted Bal Harbour resident Richard Waserstein for Council's consideration as an appointment to the ARB.

The ARB is comprised of five (5) members appointed by the Council as a body. The qualifications require that four (4) members be either registered architects or registered landscape architects. The fifth member shall be a resident layperson having familiarity with architecture, construction, plans review or similar relevant knowledge. With the exception of the resident seat, no residency requirement exists for the remaining four members. Currently, there is one vacancy on the Architectural Review Board. This situation creates difficulty in scheduling meetings as well as achieving and keeping quorum resulting in cancelled meetings and applicants' reviews taking longer than is necessary.

The one vacant seat was previously occupied by James Howell, a Bal Harbour resident layperson. At this time, the current composition of the ARB is as follows:

- Stephanie Heffen, Registered Architect
- Jaime Shapiro, Registered Architect
- Tim Schrock, Registered Architect
- Barry Miller, Registered Architect or Landscape Architect
- Vacant, Resident Seat

CONCLUSION

Attached you will find a resume for Mr. Richard Waserstein. His résumé states that he has been a Florida Bar Attorney for 32 years with specialization in real estate transactions, construction and development.

Attachments:

1. Résumé - Richard Waserstein

RESOLUTION NO. 2018-

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPOINTING A MEMBER TO THE ARCHITECTURAL REVIEW BOARD; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 5.5(11) of the Bal Harbour Code of Ordinances enumerates the composition of and the qualifications for service on the Village's Architectural Review Board (the "Board"); and

WHEREAS, there are currently two open positions on the Board; and

WHEREAS, the Village has received an application from Mr. Richard Waserstein who meets the qualifications for service on the Board; and

WHEREAS, the Village Council has determined that it is in the best interest of the Village to appoint Mr. Richard Waserstein to serve on the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, AS FOLLOWS:

Section 1. Recitals Adopted. That the above stated recitals are hereby adopted and confirmed

Section 2. - Appointment. That in accordance with the provision of Section 5.5. of the Village Code, Richard Waserstein is hereby appointed to the Village Architectural Review Board for a term of two years.

Section 3. - Implementation. That the Village Manager is hereby authorized to take all actions necessary to execute the appointment and implement this Resolution.

Section 4. Effective Date. That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this 12th day of June, 2018.

Mayor Gabriel Groisman



ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.

REAL ESTATE BIO

RICHARD WASERSTEIN

1124 KANE CONCOURSE, BAY HARBOR, FLORIDA 33154

305-861-8000

I am presenting this Bio at the request of the Honorable Councilman David Albaum, who is graciously recommending me for the Architectural Review Board.

I have been a Florida Bar Attorney for 32 years, specializing in Real Estate Transactions, Construction and Development. Since 1983 and through the present day, I have developed over 40 single family residences, office buildings, and condominium, retail and multi-family properties. Below is a small sampling of the projects of which I have been a part.

EDUCATION:

University of Miami - B.B.A. Finance Major

University of Miami Law School - Juris Doctor Degree 1986

SINGLE FAMILY RESIDENCES:

6325 Allison Road, Miami Beach

56 Camden Drive, Bal Harbour

4570 Royal Palm Ave, Miami Beach

3446 Royal Palm Ave, Miami Beach

8843 Hawthorne Ave, Surfside

9149 Garland Ave, Surfside

9389 Byron Ave, Surfside

Additional single family homes have been built and/or renovated in Miami Beach, North Bay Road, Eastern Shores, Surfside and surrounding areas.

MULTI-FAMILY RESIDENCES:

945 Michigan Avenue – The Terraces – New construction 9 unit condominium

1010 SW 2nd Avenue – Brickell Ten – New Construction 155 unit condominium

6305 Indian Creek – 63 Nobe Condo – New Construction 28 unit condominium

7330 Ocean Terrace – St. Tropez - New construction 96 unit res/com condominium

11855 NE 19 Drive - Sutton House – Condominium Conversion 149 units

2005 San Souci Boulevard – Claremont - Condominium Conversion 25 unit

10001 W Bay Harbor Drive – Ambassador Place - Condominium Conversion 25 units

13300 Walsingham Road – Portofino at Largo – Redevelopment 145 unit condominium

1016 71 Street – Concourse Plaza – Condominium Conversion 10 unit res/com

COMMERCIAL PROJECTS:

5911 NW 36 Street – Candlewood Suite Hotel (IHG) 130 unit hotel

10 Family Dollar Locations throughout Miami-Dade County (constructed/developed)

8027 W Oakland Park Blvd – Springtree - Commercial Shopping Center

6001 NW 153 Street – Miami Lakes Office Center – Office Building

300-325 75th Street – 75,000 sq.ft. Warehouse being subdivided into live/work units

LANGUAGE: FLUENT IN ENGLISH AND SPANISH

We have developed, renovated, and managed numerous other projects in South Flo0rida and would be happy to provide additional information at your request.

If you require any additional information please feel free to contact the undersigned.

Very truly yours,

RICHARD WASERSTIEN, ESQ.

PORTFOLIO OF NEW DEVELOPMENTS



BRICKELL TEN CONDOMINIUMS



Completed Summer 2017

1010 SW 2nd Ave
Miami, Florida

155 Residential Units



HOLIDAY INN HOTEL FT. LAUDERDALE AIRPORT



Starts Winter 2018

2106 FEDERAL HIGHWAY
Fort Lauderdale, Florida

144 Rooms By IHG



PORTFOLIO OF NEW DEVELOPMENTS



CANDLEWOOD SUITES HOTEL MIAMI INTL. AIRPORT



Completed Spring 2018

5911 NW 36th Street Miami, Florida

130 Rooms - Candlewood Suites
By IHG

HOLIDAY INN EXPRESS HOTEL MIAMI INTL. AIRPORT



Starts Spring 2019

5911 NW 36th Street Miami, Florida

100 Rooms – Holiday Inn Express
By IHG

PORTFOLIO OF NEW DEVELOPMENTS



SPRINGTREE SHOPPING CENTER



Complete Winter 2018

900 S. FEDERAL HIGHWAY
Hallandale Beach, Florida

320 Residential Units
150 Hotel Rooms by Marriot

900 HALLANDALE RESIDENCES



Starts Winter 2019

900 S. FEDERAL HIGHWAY
Hallandale Beach, Florida

320 Residential Units
150 Hotel Rooms by Marriot

WALGREENS STORE AND LIQUOR



Complete Winter 2018

2106 FEDERAL HIGHWAY
Fort Lauderdale, Florida

144 Rooms By IHG

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND ADVANCED-TECH CABLE, INC., FOR THE INSTALLATION OF WATER MAIN LINES AND ASSOCIATED EQUIPMENT TO PROVIDE WATER SERVICE TO BAL HARBOUR BEACH DRINKING FOUNTAINS AS DETAILED WITHIN PROPOSAL NO. 2737 IN THE AMOUNT NOT TO EXCEED (\$31,620).

Issue:

Should the Village Council approve the agreement with Advanced-Tech Cable, Inc., to install the drinking fountain water service main lines as detailed within their proposal in the amount not to exceed (\$31,620)?

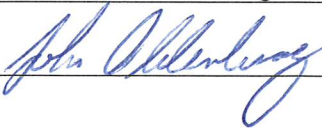
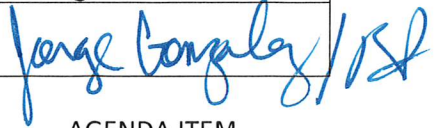
The Village recently installed two drinking fountains along the Bal Harbour Beach access path in the vicinity of the Ritz-Carlton Hotel and the Oceana Condominium. The fountains were serviced using a water service line which provides water to the irrigation system along the beach vegetative areas. The fountains remained operational until the Village was advised that the fountains required a dedicated water service. The fountains were taken out of service until the new water service line is installed. The required work includes the installation of one thousand three hundred twenty five feet (1325') of two inch (2") diameter PVC water line with all required device connections. Requests for proposals were sent to the following three (3) plumbing contractors to obtain pricing for the required work: A to Z Statewide Plumbing; Felix Fera Plumbing; and Advanced-Tech Cable Inc. Additionally, an onsite meeting was conducted with the three firms to review the scope of work and site conditions. The Village stated preferred method to install the water line is to install the lines using an underground directional bore method which reduces the impact to the landscape plantings and hardscape features within the work zone. During the meeting, the three company representatives were advised that while the directional bore method was preferred, the Village would review alternative methods if proposed. Subsequently, two of the three companies provided quotes. Advanced-Tech Cable, Inc., provided a proposal at the lowest cost totaling thirty one thousand six hundred twenty dollars (\$31,620) for the requested work. The Advanced-Tech Cable, Inc. proposal is based on underground directional boring to install the water service, which is faster and minimizes damage to surrounding infrastructure.

THE ADMINISTRATION RECOMMENDS APPROVAL OF THE RESOLUTION.

Financial Information:

	Amount	Account	Account #
1	\$ 31,620.00	Meter and Main Relocations Capital	40-36-506308

Sign Off:

Chief Financial Officer	Director Parks & Public Spaces	Village Manager
Amber Riviere	John A. Oldenburg	Jorge M. Gonzalez
		

AGENDA ITEM _____

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: June 12, 2018

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND ADVANCED-TECH CABLE, INC. FOR THE INSTALLATION OF WATER MAIN LINES AND ASSOCIATED EQUIPMENT TO PROVIDE WATER SERVICE TO BAL HARBOUR BEACH DRINKING FOUNTAINS AS DETAILED WITHIN PROPOSAL NO. 2737 IN THE AMOUNT NOT TO EXCEED THIRTY ONE THOUSAND SIX HUNDRED TWENTY DOLLARS (\$31,620); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

I am recommending the approval of this Resolution.

BACKGROUND

The Village recently installed two drinking fountains along the Bal Harbour Beach access path in the vicinity of the Ritz-Carlton Hotel and the Oceana Condominium. The fountains were serviced using a water service line which provides water to the irrigation system along the beach vegetative areas. The fountains remained operational until the plumbing inspector advised that the fountains required a dedicated water service. The installation of the dedicated water service main line to these drinking fountains is required under the State of Florida Building code, plumbing section, which necessitates this work. Additionally, the fountains were taken out of service until the new water service line is installed.

ANALYSIS

The required work includes the installation of one thousand three hundred twenty five feet (1325') of two inch (2") diameter PVC water line, backflow prevention devices, designs and connection to the existing drinking fountains.

AGENDA ITEM _____

Requests for proposals were sent to the following three (3) plumbing contractors to obtain pricing for the required work: A to Z Statewide Plumbing; Felix Fera Plumbing; and Advanced-Tech Cable, Inc. Additionally, an onsite meeting was conducted with the three firms to review the scope of work and site conditions. The Village stated preferred method to install the water line is to install the lines using an underground directional bore method which reduces the impact to the landscape plantings and hardscape features within the work zone thereby eliminates the need to restore the work zone, which also reduces the overall cost of the work. During the meeting, the three company representatives were advised that while the directional bore method was preferred, the Village would review alternative methods if proposed. Subsequently, two of the three companies provided quotes with Felix Fera Plumbing not responding.

A to Z Statewide Plumbing submitted proposals totaling one hundred sixty thousand dollars (\$160,123) for the work requested. A to Z Plumbing based their quote on installing the water line and backflow preventers using open trench excavation, which would also require landscape and hardscape restoration at an additional cost.

Advanced-Tech Cable, Inc. provided proposal No. 2737 totaling thirty one thousand six hundred twenty dollars (\$31,620), rounded to the nearest dollar for the requested work. The Advanced-Tech Cable, Inc., proposal is based on underground directional boring to install the water service, which is the preferred method, is faster and minimizes damage to surrounding landscape and hardscape features.

The water fountains also contain water chillers to cool the water provide to the user. The electrical service for the Oceana drinking fountain is already in place and will be functional after the water service is provided. The Ritz-Carlton location does not have existing electrical service in the vicinity. The Village is researching the installation of a solar panel to provide the required power to the water chiller at this location. If a solar panel energy source is deemed inadequate, electrical service will need to be installed and if the cost exceeds current purchase authority limits, additional Council approval will be requested.

CONCLUSION

The installation of the dedicated water service main line to these drinking fountains is required under the State of Florida Building code, plumbing section, which necessitates this work. I have reviewed the proposals received from Advanced-Tech Cable, Inc. and A to Z Statewide Plumbing. Based on the prices provided and the analysis of the proposed method of installation by both companies, I have determined it to be in the best interest of the Village to approve the proposal from Advanced-Tech Cable, Inc. to install the drinking fountain water service main line as detailed within their proposal in the amount not to exceed, thirty one thousand six hundred twenty dollars (\$31,620), rounded to the nearest dollar for the requested work. Therefore I recommend your approval of this Resolution.

Attachments:

1. Advanced-Tech Cable Corp Proposal No 2737
2. A to Z Statewide Plumbing Proposals

RESOLUTION NO. 2018-

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND ADVANCED-TECH CABLE, INC. FOR THE INSTALLATION OF WATER MAIN LINES AND ASSOCIATED EQUIPMENT TO PROVIDE WATER SERVICE TO BAL HARBOUR BEACH DRINKING FOUNTAINS AS DETAILED WITHIN PROPOSAL NO 2737 IN THE AMOUNT NOT TO EXCEED THIRTY ONE THOUSAND SIX HUNDRED TWENTY DOLLARS (\$31,620); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village recently installed two drinking fountains along the Bal Harbour Beach access path in the vicinity of the Ritz Carlton Hotel and the Oceana Condominium. The fountains were serviced using a water service line which provides water to the irrigation system along the beach vegetative areas; and

WHEREAS, the fountains remained operational until the Village plumbing inspector advised that under the State of Florida Building Code, plumbing section, the fountains required a dedicated water service; and

WHEREAS, requests for proposals were sent to the following three (3) plumbing contractors to obtain pricing the required work: A to Z Statewide Plumbing, Felix Fera Plumbing and Advanced-Tech Cable, Inc. Two of the three companies provided quotes with Felix Fera Plumbing not responding; and

WHEREAS, Advanced-Tech Cable, Inc. provided the lowest overall cost proposal totaling thirty one thousand six hundred twenty dollars (\$31,620), for the requested work; and

WHEREAS, the Council has determined that it is in the best interest of the Village to enter into an agreement with Advanced-Tech Cable, Inc., for the requested work as detailed within proposal No. 2737, in the amount not to exceed thirty one thousand six hundred twenty dollars (\$31,620).

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That the above stated recitals are hereby adopted and confirmed.

Section 2. Agreement Approved. That the agreement with Advanced-Tech Cable, Inc. for the requested work as detailed within proposal No. 2737, in the amount not to exceed thirty one thousand six hundred twenty dollars (\$31,620), in substantially
Bal Harbour Village - Resolution No. 2018-

the form attached hereto as Exhibit "A", is hereby approved and the Village Manager is hereby authorized to execute the agreement on behalf of the Village.

Section 3. Expenditure Approved for Water Service Installation. That the expenditure of identified budgeted funds for the provision of the water service installation services as detailed within proposal No. 2737, in the amount not to exceed thirty one thousand six hundred twenty dollars (\$31,620), is hereby approved.

Section 4. Implementation. That the Village Manager is hereby authorized to take all actions necessary to implement the purposes of this Resolution.

Section 5. Effective Date. That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this 15th day of May, 2018.



Mayor Gabriel Groisman

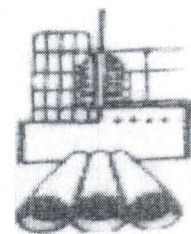
ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.

PROPOSAL

**From: Advanced Tech Cable, Inc.**

Aerial Utility Transmission Distribution # 10-1E-17119-X

Underground Utility, Excavation

CUC1224532

Cable Television

10-1G-17121-X

Plumbing Contractor

CFC1427830

Description:

Proposal Number: 2737

P.O.

Date: 6/1/2018

To: Bal Harbour Village

Attn: Jason Atkinson

Location of work:

First Job: Ritz-Carlton Water Fountain
Project, Bal Harbour, FL 33154

Second Job: Oceana Shower & Water
Fountain, Bal Harbour, FL 33154

Type:

Original

.
..

LUMP SUM BIDFirst Job:

- Supply 2" Wilkins RPZ= \$625.00
- Install 2" Backflow= \$375.00
- Certification= \$125.00
- Connect the water line to backflow & water fountain, including materials= \$300.00
- Bore sod, 200ft with 1-2" SDR9 blue 24" deep, 200ft*\$14.00= \$2,800.00
- Bore pavers, 520ft with 1-2" SDR9 blue 24" deep, 520ft*\$20.00= \$10,400.00
- Dig up pavers for 2 locations, 2*\$250.00= \$500.00
- Materials= \$4,152.20

Subtotal= \$19,277.20

Second Job:

- Supply 2" Wilkins RPZ= \$625.00
- Install 2" Backflow= \$375
- Certification= \$125.00
- Connect the water line to backflow & water fountain, including materials= \$300.00
- Bore sod, 520ft with 1-2" SDR9 pipes 24" deep, 520ft*\$14.00= \$7,280.00
- Bore concrete, 85ft for pavers with 1-2" SDR9, 85ft*20.00= \$1,700.00
- Materials= \$1,937.50

Subtotal= \$12,342.50

LUMP SUM AMOUNT: \$31,619.70

Price includes:

- Contact Sunshine One Call for location to avoid damage.
- Setup and tear down of bore equipment.
- Trench, backfill and restore trench line.
- Install conduit and pull box.
- Sweep ends of conduit against footer.

Price does not include: Permit and permit processing.

If permit needed the price will be added to the deposit. (Engineer drawing, permit fee and permit processing.)

Acceptance of Proposal by: Dan Ganea

The prices, specifications and conditions are satisfactory and are hereby accepted. I hereby authorize Advanced Tech Cable, Corp. to complete the work as specified. Payment is due on receipt. All legal fees incurred by Advanced Tech Cable for collection of monies due are at "Bal Harbour City" expense. Supplied material remain the property of Advanced Tech Cable, Corp. until payment is received in full.

Approved By:

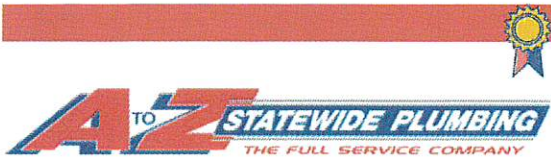
Signature: _____ Print Name: _____ Title: _____ Date: _____

PLEASE RETURN BY EMAIL AT
DANGANE@COMCAST.NET
2839 Dewey St. Hollywood FL, 33020
Direct Line: (954) 347-5972

Service Proposal (Extra 1)

Oceana Shower and Water Fountain

For, Reverse
Ron



Dade (305) 949-2133
Broward (954) 981-2133

Licensed & Insured / CFC # 1426354 / 1426229

A to Z Statewide Plumbing
2215 SW 58th Terrace
West Park, FL 33023
Dade - (305) 949-2133
Broward - (954) 981-2133
www.atozstatewideplumbing.com
service@atozstatewideplumbing.com

Proposal Submitted To

Bal Harbor Florida Paradise

Phone

Date of Plans

Street

655 96 St.

City, State, and Zip Code

Bal Harbor, Fl.

Technician

Eben

Job Name

Water Line and Backflow Install

Job Location

Oceana

Job Phone

We Hereby Submit Specifications and Estimates for:

Arrive on location with plumbing truck, assistance, vac truck, any other necessary excavation equipment, permits and materials. Begin excavation process up to 600 ft. from water meter to shower and water fountain through sand, grass, pavers and concrete areas parallel with building. Complete excavation process. Plumb new 2 inch RP Backflow unit with concrete pad and 2 inch waterline from water fountain and shower to meter using sleeves in necessary areas. Call for inspection and return for backfilling. Final inspection would be responsibility of concrete and paver company. A-to-Z Statewide Plumbing cannot be responsible for loss of fill, concrete, asphalt, pavers, landscaping, special barricades, underground utilities such as electrical conduit, irrigation, permits or traffic issues. Road closures could be possible.

Payment to be Made as Follows

We Hereby Propose to Furnish Material and Labor to Complete in Accordance with the Above Specifications, for the Sum of:

\$73,125.00

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specification involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance. Jobs totaling \$1,000.00 and above may be subject to a 50% deposit and 50% upon completion.

Technician's Signature

Revised
Ron



This Proposal May be Withdrawn by A to Z Statewide Plumbing if not Accepted Within 15 Days.

I understand that I am ordering services and/or custom product(s) manufactured to my personal and unique specifications, which cannot be cancelled after the expiration of the 3-day right-to-cancel period. Custom orders cannot be returned or refunded, except for warranty repair/replacement due to failure to meet the specifications.

I understand and acknowledge the 3-day right-to-cancel period.

Date of Acceptance

The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature

Ritz Carlton Water Fountain

Service Proposal (Extra 2)

For Renewal
Roz



Dade (305) 949-2133
Broward (954) 981-2133

Licensed & Insured / CFC # 1426354 / 1426229

A to Z Statewide Plumbing
2215 SW 58th Terrace
West Park, FL 33023
Dade - (305) 949-2133
Broward - (954) 981-2133
www.atozstatewideplumbing.com
service@atozstatewideplumbing.com

Proposal Submitted To

Bal Harbor Florida Paradise

Phone

Date of Plans

Street

655 96 St.

City, State, and Zip Code

Bal Harbor, Fl.

Technician

Eben

Job Name

Water Line and Backflow Install

Job Location

Ritz Carlton

Job Phone

We Hereby Submit Specifications and Estimates for:

Arrive on location with plumbing truck, assistance, vac truck, any other necessary excavation equipment, permits and materials. Begin excavation process up to 700 ft. from water meter to water fountain through sand, grass, pavers and concrete areas parallel with building. Complete excavation process. Plumb new 2 inch RP Backflow unit with concrete pad and 2 inch waterline from water fountain to meter using sleeves in necessary areas. Call for inspection and return for backfilling. Final inspection would be responsibility of concrete and paver company. A-to-Z Statewide Plumbing cannot be responsible for loss of fill, concrete, asphalt, pavers, landscaping, special barricades, underground utilities such as electrical conduit, irrigation, permits or traffic issues. Road closures could be possible.

Payment to be Made as Follows

Other

We Hereby Propose to Furnish Material and Labor to Complete in Accordance with the Above Specifications, for the Sum of:

\$86,998.00

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specification involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workmen's

Renewed
Roz

Compensation Insurance. Jobs totaling \$1,000.00 and above may be subject to a 50% deposit and 50% upon completion.

Technician's Signature

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line and a vertical line.

This Proposal May be Withdrawn by A to Z Statewide Plumbing if not Accepted Within 15 Days.

I understand that I am ordering services and/or custom product(s) manufactured to my personal and unique specifications, which cannot be cancelled after the expiration of the 3-day right-to-cancel period. Custom orders cannot be returned or refunded, except for warranty repair/replacement due to failure to meet the specifications.

I understand and acknowledge the 3-day right-to-cancel period.

Date of Acceptance

The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature

**Purchase and Installation Agreement with
Advanced Tech Cable, Inc.**

This Purchase And Installation Agreement (the "Agreement") is made and entered into as of the ____ day of _____, 2018 (the "Effective Date") by and between Bal Harbour Village, a Florida municipality (the "Village") and Advanced-Tech Cable, Inc. ("Advanced Tech") with each being referred to herein as a Party or collectively as the "Parties."

WHEREAS, on _____, 2018, the Village approved utilizing Advanced Tech in order to provide a dedicated water service for two water fountains that were recently installed in the vicinity of the Ritz-Carlton and Oceana Condominiums; and

WHEREAS, Advanced Tech ("Contractor") is an experienced contractor and the Village desires to engage its services to provide dedicated water service to the drinking water fountains; and

WHEREAS, Contractor will supply the required equipment to perform the scope of work ("Work") for each fountain; and

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the Village and Contractor agree as follows:

I. SCOPE OF SERVICES.

Contractor shall provide the materials and accompanying scope of services for both fountains incorporated herein and attached hereto as Exhibit "A" ("Project").

II. TERM.

The term of this Agreement (the "Term") shall commence upon execution of this Agreement by all parties hereto, which shall be the Effective Date on page 1 hereof, and shall terminate upon Village approval pursuant to Article IV of this Agreement.

A. Pricing

The cost of the Project shall not exceed thirty one thousand six hundred twenty dollars (\$31,620).

III. PAYMENT

A. Contractor may make an Application for Payment for Work completed during the Project at intervals of not more than once a month. Contractor's

application shall show a complete breakdown of the Project components, the quantities completed and the amount due, together with such supporting evidence as may be required by the Village. Each Application for Payment shall be submitted for approval. Village shall make payment to Contractor within forty-five (45) days after approval of Contractor's Application for Payment. The Village shall provide the format for the application for payment.

B. Ten percent (10%) of all monies earned by Contractor shall be retained by Village until final Completion and acceptance by Village in accordance with Article IV hereof. Any interest earned on retainage shall accrue to the benefit of Village.

C. When determined to be necessary by the Village, and based upon the certification of the appropriate monetary amount to be withheld as determined by the Village, Village may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

1. Defective Work not remedied.
2. Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor.
3. Failure of Contractor to make payments properly to Subcontractors or for material or labor.
4. Damage to another contractor not remedied.
5. Liquidated damages and costs incurred by Village for extended construction administration.

When the above grounds are removed or resolved or Contractor provides a Surety Bond or a consent of Surety, satisfactory to Village which will protect Village in the amount withheld, payment may be made in whole or in part to the Contractor.

IV. DURATION.

The Project shall be completed within 60 days of receipt of the materials included in the scope of services included in "Exhibit A". Completion shall mean an inspection resulting in approval of all required permits necessary to complete the Project. Any extensions shall be granted at the Village Manager's sole discretion, and shall be included in this agreement as an Addendum.

V. TERMINATION.

A. Termination for Cause.

If a Party fails to fulfill in a timely manner, or otherwise violates or defaults upon, any of the covenants, agreements, or stipulations material to this Agreement, the non-defaulting Party, shall thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, the non-defaulting Party shall notify the defaulting Party of its violation of the particular term(s) of this Agreement, and shall grant the defaulting Party ten (10) business days to cure such default. If such default remains uncured after ten (10) business days, the non-defaulting Party may terminate this Agreement without further notice to defaulting Party. Upon termination, the non-defaulting Party shall be fully discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, the Agreement.

Notwithstanding the above, Contractor shall not be relieved of liability to the Village for damages sustained by the Village by virtue of any breach of the Agreement by the Contractor. The Village, at its sole option and discretion, shall be entitled to bring any and all legal or equitable actions that it deems to be in its best interest in order to enforce the Village's rights and remedies against Contractor. The Village shall be entitled to recover all costs of such actions, including reasonable attorney's fees.

B. Termination for Convenience of the Village.

The Village may, through its Village Manager, and for its convenience and without cause, terminate the Agreement at any time during the Term by giving written notice to Contractor of such termination; which shall become effective ten (10) days following receipt by Contractor of such notice. If the Agreement is terminated for convenience by the Village, Contractor shall only be paid for any services satisfactorily performed up to the date of termination; following which the Village shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

VI. INSURANCE REQUIREMENTS

Contractor shall maintain general commercial, automobile (where applicable), workers' compensation, and professional liability insurance in an amount acceptable to the Village.

Contractor shall maintain the following required types and minimum limits of insurance coverage during the term of this Agreement

	<u>Per Occurrence</u>	<u>Aggregate</u>
General Liability	\$1,000,000	\$2,000,000
Automobile Liability	\$1,000,000 combined single limit per accident	
Professional Liability	\$500,000	\$1,000,000
Workers' Compensation Statutory Amount		

This Agreement shall not be deemed approved until the Contractor has obtained all insurance required under this section and has supplied the Village with evidence of such coverage in the form of a Certificate of Insurance and endorsement. The Village shall be named as an additional insured via a blanket endorsement in the endorsement for commercial and automobile liability coverage. The Village shall approve of such Certificates prior to the performance of any Services pursuant to this Agreement.

CERTIFICATE HOLDER MUST READ

Bal Harbour Village
655 95th Street
Bal Harbour, FL 33154

ALL INSURANCE COMPANIES PROVIDED SHALL: Be rated at least A VII per Best's Key Rating Guide and be licensed to do business in Florida. Contractor's liability insurance shall be primary to any liability insurance policies that may be carried by the Village. Contractor shall be responsible for all deductibles and self-insured retentions on their liability insurance policies.

Contractor agrees to provide at least thirty (30) calendar days' written notice of cancellation, material change, or renewal refusal to the Village by certified mail, unless policies are renewed with equal or better coverage.

VI. INDEMNIFICATION.

Contractor agrees to indemnify and hold harmless the Village and its officers, employees, agents, and contractors, from and against any and all actions (whether at law or in equity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or willful or intentional conduct of the

Contractor, its officers, employees, agents, subcontractors, or any other person or entity acting under Contractor's control or supervision, in connection with, related to, or as a result of the Contractor's performance of the Services pursuant to this Agreement. To that extent, the Contractor shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the Village in the defense of such claims and losses, including appeals.

The parties agree that one percent (1%) of the total compensation to Contractor for performance of the Services under this Agreement is the specific consideration from the Village to the Contractor for the Contractor's indemnity agreement. The provisions of this Section and this indemnification shall survive termination or expiration of this Agreement.

Nothing in this Agreement shall be deemed or treated as a waiver by the Village of any immunity to which it is entitled by law, including but not limited to the Village's sovereign immunity as set forth in Section 768.28, Florida Statutes.

VII. NO DAMAGES FOR DELAY.

No claim for damages or any claim, other than for an extension of time shall be made or asserted against Village by reason of any delays. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Village for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay.

VIII. RESPONSIBILITY FOR DAMAGES

A. Contractor shall accept full responsibility for the Work against all loss or damage of any nature sustained until final acceptance by Village, and shall promptly repair any damage done from any cause.

B. Contractor shall be responsible for all materials, equipment and supplies

pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by Village, Contractor shall replace same without cost to Village.

IX. DEFECTIVE WORK/GUARANTEES

- B.** Village shall have the authority to reject or disapprove Work which the Village finds to be defective. If required by the Village, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.
- B.** Should Contractor fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of the Agreement within the time indicated in writing by the Village, Village shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by Village in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor. In the event of failure of Contractor to make all necessary repairs promptly and fully, Village may declare Contractor in default.
- B.** The Contractor shall unconditionally guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of substantial completion. If, within one (1) year after the date of substantial completion, any of the Work is found to be defective or not in accordance with the Agreement, Contractor, after receipt of written notice from Village, shall promptly correct such defective or nonconforming Work within the time specified by Village without cost to Village. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Agreement including but not limited to any claim regarding latent defects.
- B.** Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered.

X. VERIFICATION OF PLANS, SPECIFICATIONS, AND DATA

Contractor shall verify all dimensions, quantities and details shown on the plans, specifications or other data received from Village, and shall notify Village in writing of all errors, omissions and discrepancies found therein

within three (3) calendar days of discovery and Village will promptly review the same. Any Work done after such discovery, but prior to written authorization of the Village, will be done at the Contractor's sole risk.

XI. SAFETY AND PROTECTION

Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project. Village's observations and reporting of unsafe conditions shall not relieve the Contractor of this sole responsibility. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

A. All employees on the Work and other persons who may be affected thereby;

B. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Project site; and;

C. Other property at the Project site or adjacent thereof, including trees, shrubs, lawns, walks, pavements, roadways, existing buildings, structures and utilities not designated for removal, relocation or replacement in the course of construction.

D. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property caused directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed.

E. Contractor shall designate a responsible member of its organization at the Work site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by

Contractor to Village.

XII. ENTIRE AGREEMENT.

This Agreement, Contractor's proposal, estimates, and any warranties on materials and labor shall constitute the entire Agreement. The order of interpretation shall be: 1) this Agreement 2) Contractor's proposal and 3) any additional warranties on materials and labor. In the event of a conflict between the provisions of those documents and this Agreement, the provisions of this Agreement shall prevail. Any amendment to the terms of this Agreement shall be evidenced in writing and executed by both Parties.

XIII. WARRANTIES.

Contractor warrants that it will maintain all professional licenses necessary to perform the Work for the duration of this Agreement. This warranty is supplemental and does not limit or displace any implied warranty for merchantability and fitness for a particular purpose or any warranty offered by a manufacturer or supplier. In the event that this warranty and the Contractor's or any other warranty conflict, the provision that is more favorable to the Village prevails. The period of this warranty shall be for a total of one (1) year following the completion of the Project.

XIV. NON-EXCLUSIVITY.

This Agreement is non-exclusive. The Village retains the right to engage the services of additional third party contractors or assign responsibilities to an employee of the Village to perform the same or similar services provided by Contractor under this Agreement and to assign work to such parties in its sole discretion.

XV. SEVERABILITY.

The Parties to this Agreement expressly agree that it is not their intention to violate any public policy, statutory or common law rules, regulations, or decisions of any governmental or regulatory body. If any provision of this Agreement is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such violation will be inoperative (and in lieu thereof there will be inserted such provision, section, sentence, word, clause, or combination thereof as may be valid and consistent with the intent of the Parties under this Agreement) and

the remainder of this Agreement, as amended, will remain binding upon the Parties, unless the inoperative provision would cause enforcement of the remainder of this Agreement to be inequitable under the circumstances.

XVI. ANTI-DISCRIMINATION.

Contractor certifies that it does not discriminate in its membership or policies based on race, color, national origin, religion, sex, sexual orientation, familial status or handicap. Contractor further agrees that neither Contractor, nor any parent company, subsidiaries or affiliates of Contractor are currently engaged in, nor will engage in during the term of this Agreement, the boycott of a person or business based in or doing business with a member of the World Trade Organization or any country with which the United States has free trade.

XVII. NOTICES.

All notices hereunder shall be given in writing by registered or certified mail, return receipt requested, postage prepaid, addressed to the Parties at the following respective addresses, or at such other address as may be designated in writing by either Party to the other, and shall be deemed delivered for all purposes hereunder upon deposit of same into the United States mail:

To Village: Jorge Gonzalez, Village Manager
Bal Harbour Village
655 95th Street
Bal Harbour, FL 33154

Copy To: Susan Trevarthen, Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.
200 E. Broward Blvd. Suite 1900
Fort Lauderdale, FL 33312

To Contractor: Advanced Tech Cable, Inc.
2839 Dewey Street
Hollywood, Florida 33020
atcc@comcast.net

XVIII. COMPLIANCE WITH LAWS.

Contractor agrees to comply with all laws, ordinances, rules, and regulations that are now or may become applicable to the Services covered by this Agreement, regardless of the applicable jurisdiction.

XIX. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon the Parties and their respective successors, heirs and assigns. However, the Parties agree that nothing contained herein shall authorize the assignment of this Agreement or the delegation of any duties hereunder by either Party, unless previously set out in this Agreement, without the prior written consent of the other party.

XX. SURVIVAL OF TERMS.

Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement which (a) the Parties have expressly agreed shall survive any such termination, or (b) remain to be performed and by their nature would be intended to be applicable following any such termination or expiration. Any liabilities which have accrued prior to termination pursuant to the insurance and/or indemnification obligations set forth below shall survive the termination of this Agreement.

XXI. GOVERNING LAWS.

This Agreement shall be governed by, construed in accordance with, the laws of the State of Florida. The venue for any dispute arising from this Agreement shall be the Circuit Court of Miami-Dade County, Florida. The Parties voluntarily waive any right to trial by jury in the event of litigation between the Parties, which arises out of this Agreement in any way.

XXII. NO CONTINGENT FEES.

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

XXIII. WAIVER.

No delay or omission by either Party hereto, in the exercise of any right or remedy hereunder, shall impair such right or remedy or be construed to be a waiver thereof. Any waiver of any such right or remedy by any Party must be in writing and signed by the Party against which such waiver is sought. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or any other covenant herein contained. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

XXIV. FORCE MAJEURE.

Non-performance of Contractor or Village shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, hurricane, flood, terrorism, governmental acts or orders or restrictions, or other similar reason where failure to perform is beyond the control of and not caused by the negligence of the non-performing Party ("Force Majeure"), provided that the non-conforming Party gives prompt notice of such conditions to the other Party and makes all reasonable efforts to perform.

XXV. CONTRACTOR'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW

Pursuant to Section 119.0701 of the Florida Statutes, Contractor agrees to:

- A.** Keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Village.
- B.** Upon request from the Village's custodian of public records, Contractor shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- C.** Unless otherwise provided by law, any and all records, including but not

limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village. Notwithstanding, it is understood that at all times Contractor's work papers shall remain the sole property of Contractor, and are not subject to the terms of this Agreement.

- D. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of Contractor shall be delivered by Contractor to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Village in a format that is compatible with the Village's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, Contractor shall destroy any and all duplicate records that are exempt or confidential and exempt from public records disclosure requirements. Notwithstanding the terms of this Section, the Parties agree and it is understood that Contractor will maintain a copy of any information, confidential or otherwise, necessary to support its work product generated as a result of its engagement for services, solely for reference and archival purposes in accordance with all applicable professional standards, which will remain subject to the obligations of confidentiality herein.
- E. Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- F. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-866-4633 clerk@balharbourfl.gov OR BY MAIL: Village of Bal Harbour - Village Clerk's Office, 655 96th Street, Bal Harbour, FL 33154.

IN WITNESS WHEREOF, Contractor has signed and delivered this Agreement, and the Village has caused this Agreement to be signed and delivered by its duly authorized officer or representative, all as of the date first set forth above.

CONTRACTOR:

VILLAGE:

Bal Harbour Village
655 Ninety-Sixth Street
Bal Harbour, FL 33154

By: _____
President

By: _____
Jorge M. Gonzalez
Village Manager

Attest: _____
Dwight S. Danie
Village Clerk

Approved as to form and legal
sufficiency for the use and reliance of
the Bal Harbour Village only.

By: _____
Weiss Serota Helfman Cole & Bierman P.L.
Village Attorney

EXHIBIT "A"

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND COFFMAN ELECTRICAL EQUIPMENT CO. FOR THE PURCHASE OF A WINPOWER DX-250 DIESEL PORTABLE GENERATOR AS DETAILED WITHIN THE PROPOSAL NO. 052318G3, IN THE AMOUNT NOT TO EXCEED (\$84,949)

Issue:

Should the Village Council approve the agreement with Coffman Electrical Equipment Co., for the purchase of an emergency portable generator in the amount of (\$84,949)?

The Storm Water Pump Stations located along Harbour Way and 96 Street do not have backup generator power. Additionally, during the Hurricane Irma storm event, the Florida Power and Light (FPL) transformer which services Village Hall and the Police Administration building failed. The Village Hall location currently utilizes a standalone generator located adjacent to the Police Administration building to provide power to Village Hall and the Police Administration buildings during power outages. However, this generator is designed to provide full power to the Police Administration building only. Due to its size of forty Kilowatts (40 KW), the existing generator provides Village Hall power that is only sufficient for limited lighting within Village Hall. Air conditioning, electronic equipment and the elevator cannot be utilized using the existing generator configuration. Village Staff in conjunction with the Village engineering firm, Calvin Giordano and Associates (CGA), determined that a portable generator rated at two hundred fifty Kilowatts (250 KW), would be required to power the individual storm water stations that also could be moved to provide emergency power to Village Hall and the Police Administration buildings. As was the case in the recent Grapple Truck procurement process, in order to obtain pricing, research was conducted to identify existing cooperative purchasing agreements. One cooperative purchasing agreement was identified from the United States General Services Administration (GSA), NO. GS-07F-6044P for the required generator configuration. Coffman Electrical Equipment Co., provided a quote for the requested portable generator with cable configuration utilizing the GSA bidding process in the amount of eighty four thousand nine hundred forty nine dollars (\$84,949).

THE ADMINISTRATION RECOMMENDS APPROVAL OF THE RESOLUTION.

Financial Information:

	Amount	Account	Account #
1	\$ 84,949.00	Machinery and Equipment Capital	01-41-506400

Sign Off:

Chief Financial Officer	Director Parks & Public Spaces	Village Manager
Amber Riviere	John A. Oldenburg	Jorge M. Gonzalez
		

AGENDA ITEM _____

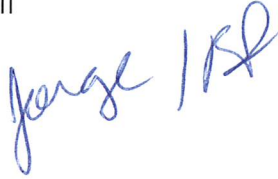
BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: June 12, 2018

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND COFFMAN ELECTRICAL EQUIPMENT CO. FOR THE PURCHASE OF A WINPOWER DX-250 DIESEL PORTABLE GENERATOR AS DETAILED WITHIN THE PROPOSAL NO. 052318G3, IN THE AMOUNT NOT TO EXCEED EIGHTY FOUR THOUSAND NINE HUNDRED FORTY NINE DOLLARS (\$84,949); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

I am recommending the approval of this Resolution.

BACKGROUND

During the Hurricane Irma storm event, the need for additional stand by power redundancy was evident. The Storm Water Pump Stations located along Harbour Way and 96 Street do not have backup generator power. In preparation for Hurricane Irma, the Village obtained a rental generator with the appropriate cables at a cost of three thousand seven hundred fifty three dollars (\$3,753) per week. This generator was used to power the Storm Water Station at Harbour Way after Florida Power and Light (FPL) power failed to pump the storm related standing water from the Gated Community streets. Also, the stand-alone generator located on the roof of the Bal Harbour Shops, which provides emergency backup power to the Police Station, failed during the Hurricane Irma storm event. The Police Station houses the police landfall staff during storm events and serves as the emergency communications center for the Village. While all Village stand by generators are serviced on a regular basis and inspected prior to the weather events, parts can fail.

Additionally, during the Hurricane Irma storm event, the FPL transformer which services Village Hall and the Police Administration building failed. The Village Hall location currently utilizes a standalone generator located adjacent to the Police Administration Building to provide power to Village Hall and the Police Administration buildings during power outages. Both buildings contain power transfer switches which are designed to

AGENDA ITEM _____

automatically connect the two buildings to the generator when FPL service is interrupted. However, this generator is designed to provide full power to the Police Administration building only. Due to its size of forty kilowatts (40 KW), the existing generator provides power that is only sufficient for limited lighting within Village Hall. Air conditioning, electronic equipment and the elevator cannot be utilized using the existing generator configuration. When the Village Hall power transformer failed, the rental generator used originally at the Storm Water Station, was relocated to Village Hall to provide full power to the building while the FPL repairs were made. The total cost to rent the portable generator with cables during this period was seven thousand seven hundred sixty seven dollars (\$7,767).

ANALYSIS

In order resolve the emergency power needs for the key Village locations, Village staff met with the electrical engineer from the Village engineering firm, Calvin Giordano and Associates (CGA) to review the power requirements of the Village Hall, Police Administration buildings and the two Storm Water Pump Stations and to jointly develop a recommendation. It was determined that a portable generator rated at two hundred fifty kilowatts (250 KW) would be required to power the individual storm water stations that could also be moved to provide emergency power to Village Hall and the Police Administration buildings. Additionally, the existing Police Administration building generator was originally mounted on a trailer which could be reconditioned to provide an additional potable backup power generator to the existing Police Station or Village Special Events.

As was the case in the recent Grapple Truck procurement process, in order to obtain pricing, research was conducted to identify existing cooperative purchasing agreements, a form of cooperative public procurement. This type of procurement activity as defined by the National Institute of Public Procurement (NIPP) is a form of intergovernmental cooperative purchasing in which an entity will be extended the same pricing and terms of a contract entered into by another entity. Generally, the originating entity will competitively award a contract that will include language allowing for other entities to utilize the contract, which may be to their advantage in terms of pricing, thereby gaining economies of scale that they would otherwise not receive if they competed on their own.

Additionally, NIGP considers it a "best practice" to consider the use of cooperative contracts after proper due diligences is performed, in order for Government entities to save time and money, obtain higher quality products and services, and standardize products and services by using cooperative contracts.

One cooperative purchasing agreement was identified from the United States General Services Administration (GSA) GS-07F-6044P for the required generator configuration. Coffman Electrical Equipment Co., provided a quote for the requested portable generator with cable configuration utilizing the GSA bidding process in the amount of eighty four

thousand nine hundred forty nine dollars (\$84,949). The generator is mounted on a trailer and is equipped with a five hundred gallon (500) fuel tank. The generator is designed to run continuously for up to fifty hour (50 hrs.) without refueling, dependent on the power load requirements. The manufacturer provides a one (1) year or one thousand hours (1000 hrs.) warranty on structural components. The useful life of these type of portable standby generators is typically fifteen (15) to twenty (20) years and can be as long as twenty five (25) years, if properly maintained. If approved, the generator will be stored inside the garage bay of the Parks and Public Spaces operations facility to reduce exposure to the elements and limit the risk of theft. Additionally, the generator will be added to the existing generator service agreement in place to ensure the maintenance is performed according to manufacturer preventative maintenance schedules.

In order to operate the proposed generator, the Village Hall and Police Administration buildings will require the installation of a new automatic transfer switch (ATS) and other equipment to enable the connection of the portable electrical generator to the main power supply for the two buildings. The approval of the agreement for the required (ATS) and other electrical service work is detailed within a companion item on this Village Council agenda.

CONCLUSION

The Village Critical Incident Operations Plan identifies back up power redundancy within Village facilities as a necessity to ensure efficient and effective execution of emergency response duties. The purchase of the portable generator provides the Village with an appropriate level of redundancy with regard to emergency power for use at Village facilities and provides new emergency backup power capabilities for the Storm Water Stations which the Village does not currently possess. While rental generators are available, during approaching storm events, this type of equipment is highly sought and therefore availability is not guaranteed. If a generator was rented by the Village as a standby unit for the entire twenty six week (26) hurricane season, the cost would be in excess of ninety seven thousand dollars (\$97,000).

The capital expense to purchase this generator if amortized over a fifteen (15) year period, equates to approximately, five thousand six hundred dollars (\$5,600) per year. This is a lower cost than the recent expenditure during post Hurricane Irma, of seven thousand seven hundred sixty seven dollars (\$7,767).

The current lack of emergency power which is adequate to fully service Village Hall and no existing Storm Water station emergency power, creates a situation which affects the readiness of the Village operations during storm events and other FPL power outage events. Additionally, the cost to rent a generator of this size for extended periods is prohibitive.

I have reviewed the proposal received from Coffman Electrical Equipment Co. Based on the prices provided and the analysis of the proposals, I have determined it to be in the best interest of the Village to approve the purchase of the Winpower DX-250 Diesel portable

generator, as detailed within the proposal No. 052318g3, as received from Coffman Electrical Equipment Co utilizing the GSA contract, GS-07F-6044P bid price in the amount not to exceed eighty four thousand nine hundred forty nine dollars (\$84,949), and therefore recommend your approval of this Resolution.

Attachments:

1. Coffman Electrical Equipment Co., GSA Contract: GS-07F-6044P, Quote No. 052318g3

RESOLUTION NO. 2018-

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND COFFMAN ELECTRICAL EQUIPMENT CO. FOR THE PURCHASE OF A WINPOWER DX-250 DIESEL PORTABLE GENERATOR AS DETAILED WITHIN THE PROPOSAL NO. 052318G3, IN THE AMOUNT NOT TO EXCEED EIGHTY FOUR THOUSAND NINE HUNDRED FORTY NINE DOLLARS (\$84,949); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Storm Water Pump Stations located along Harbour Way and 96 Street do not have backup generator power; and

WHEREAS, the Village Hall location currently utilizes a standalone generator located adjacent to the Police Administration building to provide power to Village Hall and the Police Administration buildings during power outages; and

WHEREAS, this generator is designed to provide full power to the Police Administration and limited power to Village hall to provide limited lighting only; air conditioning, electronic equipment and the elevator cannot be utilized using the existing generator configuration; and

WHEREAS, the Village has determined that a portable generator rated at two hundred fifty Kilowatts (250 KW), would be required to power the individual storm water stations that also could be moved to provide emergency power to Village Hall and the Police Administration buildings; and

WHEREAS, Coffman Electrical Equipment Co., has submitted a quote No. 052318g3 for a Winpower DX-250 Diesel portable generator with cable configuration, in the amount of eighty four thousand nine hundred forty nine dollars (\$84,949); and

WHEREAS, the quote No. 052318g3 was obtained through a cooperative bid utilizing the United States General Services Administration GSA contract, GS-07F-6044P; and

WHEREAS, this Council has determined that it is in the best interest of the Village to enter into an agreement with the Coffman Electrical Equipment Co., for the provision of the Winpower DX-250 Diesel portable generator with cable configuration as detailed within the quotation No. 052318g3, in the amount not to exceed eighty four thousand nine hundred forty nine dollars (\$84,949).

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That the above stated recitals are hereby adopted and confirmed.

Section 2. Agreement Approved. That the agreement with the Coffman Electrical Equipment Co., for the provision of the Winpower DX-250 Diesel portable generator with cable configuration as detailed within the quotation No. 052318g3, in the amount not to exceed eighty four thousand nine hundred forty nine dollars (\$84,949), in substantially the form attached hereto as Exhibit "A", is hereby approved and the Village Manager is hereby authorized to execute the agreement on behalf of the Village.

Section 3. Expenditure Approved for Generator Procurement. That the expenditure of identified budgeted funds for the provision of the Winpower DX-250 Diesel portable generator with cable configuration as detailed within the quotation No. 052318g3, in the amount not to exceed eighty four thousand nine hundred forty nine dollars (\$84,949), is hereby approved.

Section 4. Implementation. That the Village Manager is hereby authorized to take all actions necessary to implement the purposes of this Resolution.

Section 5. Effective Date. That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this 12th day of June, 2018.



Mayor Gabriel Groisman

ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.



Quote No.
052318g3

3300 Jefferson Avenue, S.E.
Grand Rapids, MI 49548
P: 616.452.8708
800.852.7699
F. 616.452.1337

E-Mail: customerservice@steadypower.com

- Serving America For Over 65 Years
- General Services Administration Contractor
- Expert Sales and Application Assistance

- Load Banks
- Mobile Light Towers
- Transfer Switches

- Mobile and Standby Generators
- UPS Systems
- Docking Stations and Cables

To: Bal Harbour Village
655 96th ST
Bal Harbour, FL 33154
jatkinson@balharbourfl.gov
[786.709.6555](tel:786.709.6555)

Project: Winpower DX-250

Date: May 23, 2018

We are pleased to quote you on the following material:

QUANTITY	DESCRIPTION	NET
1	Winpower DX-250 Diesel Portable Generator FPT8.7L Turbocharged aftercooled FPT diesel engine 12 lead 1800RPM Revolving field generator Trailer with 500 gallon fuel tank 30hr run time full load, 50 hr run time 1/2 load	\$ 79,934.00 inc inc inc inc
1	Voltage Selector Switch 277/480V 277/480 120/240V 3phase Delta 100% adjustable breaker with cam lock connectors	\$ 3,500.00
5	4/0 50 ft load cables with cam locks both ends (1 per phase,1 gound,1 neutral) \$303 ea. freight to 33154 current lead time in stock (2 weeks)	\$ 1,515.00 included
Does not include Federal, State, Local taxes unless shown		TOTAL: \$ 84,949.00
F.O.B.	TERMS	BY:
33154	Payment with order Electronic funds or check	Greg Seifried
QUOTATION EXPIRES	SHIPMENT AFTER RELEASE OF ORDER	ACCEPTED BY:
30 days	2 weeks	

GSA CONTRACT: GS-07F-6044P

TAX ID: 38-2112404

DUNS: 017077215

CAGE CODE: 0KL03

EXPIRATION DATE: AUG. 2019

SMALL BUSINESS



12 MONTH LIMITED WARRANTY

WINCO, Incorporated warrants to the original purchaser for 12 months or 1000 hours which ever occurs first, that goods manufactured or supplied by it will be free from defects in workmanship and material, provided such goods are installed, operated and maintained in accordance with WINCO written instructions.

WINCO's sole liability, and Purchaser's sole remedy for a failure under this warranty, shall be limited to the repair of the product. At WINCO's option, material found to be defective in material or workmanship under normal use and service will be repaired or replaced. For warranty service, return the product within 12 months or 1000 hours which ever occurs first from the date of purchase, transportation charges prepaid, to your nearest WINCO Authorized Service Center or to WINCO, Inc. at Le Center Minnesota.

THERE IS NO OTHER EXPRESS WARRANTY.

To the extent permitted by law, any and all warranties, including those of merchantability and fitness for a particular purpose, are limited to 12 months or 1000 hours which ever occurs first, from date of purchase. In no event is WINCO liable for incidental or consequential damages.

Note: Some states do not allow limitation on the duration of implied warranty and some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations may not apply in every instance. This warranty gives you specific legal rights which may vary from state to state.

WINCO reserves the right to change or improve its products without incurring any obligations to make such changes or improvement on products purchased previously.

EXCLUSIONS:

WINCO does not warrant Engines. Engines are covered exclusively by the warranties of their respective manufacturers, see enclosed warranties.

WINCO does not warrant Component Parts that are warranted by their respective manufacturers.

WINCO does not warrant modifications or alterations which were not made by WINCO, Inc.

WINCO does not warrant products which have been subjected to misuse and/or negligence or have been involved in an accident.

This warranty does not include travel time, mileage, or labor for removal or re-installation of WINCO product from its application.

Village of Bal Harbour Purchase Agreement

This Purchase Agreement (the "Agreement") is made and entered into as of the ____ day of _____, 2018 (the "Effective Date") by and between Bal Harbour Village, a Florida municipality (the "Village") and Coffman Electrical Equipment Co. ("Contractor") with each being referred to herein as a Party or collectively as the "Parties."

WHEREAS, the Village needs backup generator power to service its Storm Water Pump Stations in the event of an emergency; and

WHEREAS, the Village staff identified cooperative purchasing agreement GS-O7F-6044P to obtain competitive pricing in the amount of eighty four thousand nine hundred forty nine dollars ("84,949") to purchase a Winpower DX-250 Diesel Portable Generator; and

WHEREAS, Contractor's proposal is outlined in the Agreement; and

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the Village and Contractor agree as follows:

- I. EQUIPMENT.** Contractor shall provide a Winpower DX-250 Diesel Portable Generator with cable configuration, as incorporated herein and attached hereto as Exhibit "A." (collectively, the "Equipment")
- II. TERM.** The term of this Agreement (the "Term") shall commence upon execution of this Agreement by all parties hereto, which shall be the Effective Date on page 1 hereof, and shall terminate upon acceptance of the equipment by the Village.
- III. TERMINATION.**
 - A. Termination for Cause.**

If a Party fails to fulfill in a timely manner, or otherwise violates or defaults upon, any of the covenants, agreements, or stipulations material to this Agreement, the non-defaulting Party, shall thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, the non-defaulting Party shall notify the defaulting Party of its violation of the particular term(s) of this Agreement, and shall grant the defaulting Party ten (10) business days to cure such default. If

such default remains uncured after ten (10) business days, the non-defaulting Party may terminate this Agreement without further notice to defaulting Party. Upon termination, the non-defaulting Party shall be fully discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, the Agreement.

Notwithstanding the above, Contractor shall not be relieved of liability to the Village for damages sustained by the Village by virtue of any breach of the Agreement by the Contractor. The Village, at its sole option and discretion, shall be entitled to bring any and all legal or equitable actions that it deems to be in its best interest in order to enforce the Village's rights and remedies against Contractor. The Village shall be entitled to recover all costs of such actions, including reasonable attorney's fees.

B. Termination for Convenience of the Village.

The Village may, through its Village Manager, and for its convenience and without cause, terminate the Agreement at any time during the Term by giving written notice to Contractor of such termination; which shall become effective ten (10) days following receipt by Contractor of such notice. If the Agreement is terminated for convenience by the Village, Contractor shall only be paid for any equipment provided to the Village up to the date of termination; following which the Village shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

IV. TITLE/RISK OF LOSS

The title and risk of loss of equipment shall not pass to Village until Village accepts the equipment at the point of delivery.

V. NO REPLACEMENT OF DEFECTIVE TENDER

Every tender of equipment shall fully comply with the provisions herein. If a tender is made that does not fully conform, it shall constitute a breach of this Agreement and Contractor shall not have the right to substitute a conforming tender. No other equipment other than the equipment listed in Exhibit "A" shall be accepted by the Village.

VI. INSPECTION

All equipment is subject to final inspection and acceptance by the Village, which shall occur within thirty (30) days after delivery at which time equipment will be deemed accepted. Equipment failing to meet the requirements of this Agreement shall be at Contractor's risk and may be

returned to Contractor, at Contractor's sole expense.

VII. INVOICES.

A separate invoice shall be issued for each shipment. No invoice shall be issued prior to shipment of equipment and no payment will be made prior to receipt of equipment and correct invoice. Payment due dates will be computed from date of receipt of equipment or date of receipt of correct invoice, whichever is later. Unless freight and other charges are itemized, any discount provided by Contractor will be taken on full amount of invoice. The Village's obligation is payable solely from funds appropriated for the purpose of acquiring the equipment referred to in this agreement. Payment shall be subject to the provisions of this Agreement. Village's obligation is payable solely from funds appropriated for the purpose of acquiring the equipment stated herein. All invoices issued shall reference this Agreement.

VIII. INSURANCE REQUIREMENTS

Contractor shall maintain general commercial, automobile (where applicable), workers' compensation, and professional liability insurance in an amount acceptable to the Village.

Contractor shall maintain the following required types and minimum limits of insurance coverage during the term of this Agreement

	<u>Per Occurrence</u>	<u>Aggregate</u>
General Liability	\$1,000,000	\$2,000,000
Automobile Liability	\$1,000,000 combined single limit per accident	
Professional Liability	\$500,000	\$1,000,000
Workers' Compensation	Statutory Amount	

This Agreement shall not be deemed approved until the Contractor has obtained all insurance required under this section and has supplied the Village with evidence of such coverage in the form of a Certificate of Insurance and endorsement. The Village shall be named as an additional insured via a blanket endorsement in the endorsement for commercial and automobile liability coverage. The Village shall approve of such Certificates prior to the performance of any Services pursuant to this Agreement.

CERTIFICATE HOLDER MUST READ

Bal Harbour Village
655 95th Street

ALL INSURANCE COMPANIES PROVIDED SHALL: Be rated at least A VII per Best's Key Rating Guide and be licensed to do business in Florida. Contractor's liability insurance shall be primary to any liability insurance policies that may be carried by the Village. Contractor shall be responsible for all deductibles and self-insured retentions on their liability insurance policies.

Contractor agrees to provide at least thirty (30) calendar days written notice of cancellation, material change, or renewal refusal to the Village by certified mail, unless policies are renewed with equal or better coverage.

IX. INDEMNIFICATION.

Contractor agrees to indemnify and hold harmless the Village and its officers, employees, agents, and contractors, from and against any and all actions (whether at law or in equity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or willful or intentional conduct of the Contractor, its officers, employees, agents, subcontractors, or any other person or entity acting under Contractor's control or supervision, in connection with, related to, or as a result of the Contractor's provision of equipment pursuant to this Agreement. To that extent, the Contractor shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the Village in the defense of such claims and losses, including appeals.

The parties agree that one percent (1%) of the total compensation to Contractor for performance of the Services under this Agreement is the specific consideration from the Village to the Contractor for the Contractor's indemnity agreement. The provisions of this Section and this indemnification shall survive termination or expiration of this Agreement.

Nothing in this Agreement shall be deemed or treated as a waiver by the Village of any immunity to which it is entitled by law, including but not

limited to the Village's sovereign immunity as set forth in Section 768.28, Florida Statutes.

X. ENTIRE AGREEMENT.

This Agreement, Contractor's proposal, and any warranties on equipment shall constitute the entire Agreement. In the event of a conflict between the provisions of those documents and this Agreement, the provisions of this Agreement shall prevail. Any amendment to the terms of this Agreement shall be evidenced in writing and executed by both Parties.

XI. WARRANTIES.

Contractor warrants that it will maintain all professional licenses necessary to perform the obligations under this Agreement. The equipment shall be covered by the Contractor's warranty, a copy of which is attached and incorporated hereto as Exhibit "B". Additionally, Contractor warrants as follows:

Contractor warrants that it will maintain all professional licenses necessary to perform the obligations under this Agreement.

Contractor warrants that all equipment sold pursuant hereto will, when delivered, function as intended. In the event of equipment failure or equipment malfunction, or both, Contractor, at its option, will either repair or replace the equipment for the Village, provided Contractor is first given the opportunity to inspect such equipment. Contractor's obligation includes shipping, handling, installation or other incidental or consequential costs related to the equipment unless otherwise agreed to in writing by the Village. This warranty is supplemental and shall continue for one (1) year. This warranty does not limit or displace any implied warranty for merchantability and fitness for a particular purpose or any warranty offered by the manufacturer. In the event that this warranty and the Contractor's or manufacturer's warranty conflict, the provision that is more favorable to the Village prevails.

XII. SEVERABILITY.

The Parties to this Agreement expressly agree that it is not their intention to violate any public policy, statutory or common law rules, regulations, or decisions of any governmental or regulatory body. If any provision of this Agreement is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such

violation will be inoperative (and in lieu thereof there will be inserted such provision, section, sentence, word, clause, or combination thereof as may be valid and consistent with the intent of the Parties under this Agreement) and the remainder of this Agreement, as amended, will remain binding upon the Parties, unless the inoperative provision would cause enforcement of the remainder of this Agreement to be inequitable under the circumstances.

XIII. ANTI-DISCRIMINATION.

Contractor certifies that it does not discriminate in its membership or policies based on race, color, national origin, religion, sex, sexual orientation, familial status or handicap. Contractor further agrees that neither Contractor, nor any parent company, subsidiaries or affiliates of Contractor are currently engaged in, nor will engage in during the term of this Agreement, the boycott of a person or business based in or doing business with a member of the World Trade Organization or any country that falls within the definition of "Open Trade jurisdiction" as defined in section 2-401 of the Village Code of Ordinances.

XIV. NOTICES.

All notices hereunder shall be given in writing by registered or certified mail, return receipt requested, postage prepaid, addressed to the Parties at the following respective addresses, or at such other address as may be designated in writing by either Party to the other, and shall be deemed delivered for all purposes hereunder upon deposit of same into the United States mail:

To Village: Jorge Gonzalez, Village Manager
Bal Harbour Village
655 95th Street
Bal Harbour, FL 33154

Copy To: Susan Trevarthen, Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.
200 E. Broward Blvd. Suite 1900
Fort Lauderdale, FL 33312

To Contractor: Coffman Electrical Equipment Co.
3300 Jefferson Avenue, S.E.

XV. COMPLIANCE WITH LAWS.

Contractor agrees to comply with all laws, ordinances, rules, and regulations that are now or may become applicable to the equipment covered by this Agreement, regardless of the applicable jurisdiction.

XVI. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon the Parties and their respective successors, heirs and assigns. However, the Parties agree that nothing contained herein shall authorize the assignment of this Agreement or the delegation of any duties hereunder by either Party, unless previously set out in this Agreement, without the prior written consent of the other party.

XVII. SURVIVAL OF TERMS.

Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement which (a) the Parties have expressly agreed shall survive any such termination, or (b) remain to be performed and by their nature would be intended to be applicable following any such termination or expiration. Any liabilities which have accrued prior to termination pursuant to the insurance and/or indemnification obligations set forth below shall survive the termination of this Agreement.

XVIII. GOVERNING LAWS.

This Agreement shall be governed by, construed in accordance with, the laws of the State of Florida. The venue for any dispute arising from this Agreement shall be the Circuit Court of Miami-Dade County, Florida. The Parties voluntarily waive any right to trial by jury in the event of litigation between the Parties, which arises out of this Agreement in any way.

XIX. NO CONTINGENT FEES.

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

XX. WAIVER.

No delay or omission by either Party hereto, in the exercise of any right or remedy hereunder, shall impair such right or remedy or be construed to be a waiver thereof. Any waiver of any such right or remedy by any Party must be in writing and signed by the Party against which such waiver is sought. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or any other covenant herein contained. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

XXI. FORCE MAJEURE.

Non-performance of Contractor or Village shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, hurricane, flood, terrorism, governmental acts or orders or restrictions, or other similar reason where failure to perform is beyond the control of and not caused by the negligence of the non-performing Party ("Force Majeure"), provided that the non-conforming Party gives prompt notice of such conditions to the other Party and makes all reasonable efforts to perform.

IN WITNESS WHEREOF, Contractor has signed and delivered this Agreement, and the Village has caused this Agreement to be signed and delivered by its duly authorized officer or representative, all as of the date first set forth above.

CONTRACTOR:

By: _____
President

VILLAGE:

Bal Harbour Village
655 Ninety-Sixth Street
Bal Harbour, FL 33154

By: _____
Jorge M. Gonzalez, Village
Manager

Attest: _____
Village Clerk

Approved as to form and legal
sufficiency for the use and
reliance of the Bal Harbour
Village only.

By: _____
Village Attorney

EXHIBIT "A"

Exhibit "B"

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND TIRONE ELECTRIC, INC. FOR THE PROVISION AND INSTALLATION OF AN AUTOMATIC TRANSFER SWITCH (ATS) WITH OTHER NECESSARY ELECTRICAL EQUIPMENT TO PROVIDE FOR THE USE OF A PORTABLE ELECTRICAL GENERATOR, TO SUPPLY EMERGENCY POWER TO THE VILLAGE HALL AND POLICE ADMINISTRATION BUILDINGS AS DETAILED WITHIN PROPOSAL 6A17-444R1 IN THE AMOUNT NOT TO EXCEED (\$43,500).

Issue:

Should the Village Council approve the agreement with Tirone Electric Inc. to provide and install an (ATS) and other equipment as required as detailed within their proposal in the amount not to exceed (\$43,500)?

In the event of a power interruption to the Village Hall and Police Administration buildings, a larger generator is necessary to provide the required emergency power. In order to connect an emergency portable generator to the Village Hall and Police Administration buildings, the installation of an automatic transfer switch (ATS) and other electrical equipment is required. An (ATS), continuously monitors electric utility power. Fluctuations or serious power quality issues, which might precede an outage, trigger a start command to the generator. After backup voltage and frequency stabilize, the transfer switch brings the generator online. Once electric utility power is restored, the switch goes back to its normal position.

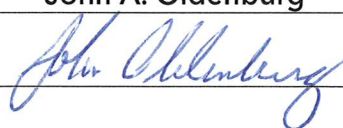
The required work includes the disconnection of the existing forty kilowatt (40 KW), generator and other existing wire feeds and installation of new electrical components as required for the new generator connection. Requests for proposals were sent to five (5) electrical contractors to obtain pricing the require work. Of the five firms contacted, Tirone Electric Inc. was the only contractor to provide a proposal. Tirone Electric Inc. submitted proposal No. 6A17-444R1 in the amount of forty three thousand, five hundred dollars (\$43,500), for the work requested. Tirone Electric Inc., has provided electrical service work for the Village on several occasions with positive results. All work performed will be conducted under a Bal Harbour Village Building Department electrical permit, according to all applicable electrical codes.

THE ADMINISTRATION RECOMMENDS APPROVAL OF THE RESOLUTION.

Financial Information:

	Amount	Account	Account #
1	\$ 43,500	Other Contractual	01-41-503405

Sign Off:

Chief Financial Officer	Director Parks & Public Spaces	Village Manager
Amber Riviere	John A. Oldenburg	Jorge M. Gonzalez
		

AGENDA ITEM _____

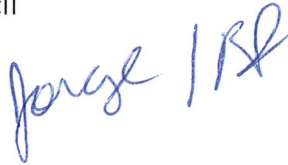
BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: June 12, 2018

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND TIRONE ELECTRIC, INC. FOR PROVISION AND INSTALLATION OF AN AUTOMATIC TRANSFER SWITCH (ATS) WITH OTHER NECESSARY ELECTRICAL EQUIPMENT TO PROVIDE FOR THE USE OF A PORTABLE ELECTRICAL GENERATOR, TO SUPPLY EMERGENCY POWER TO THE VILLAGE HALL AND POLICE ADMINISTRATION BUILDINGS AS DETAILED WITHIN PROPOSAL 6A17-444R1 IN THE AMOUNT NOT TO EXCEED FORTY THREE THOUSAND FIVE HUNDRED DOLLARS (\$43,500); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

I am recommending the approval of this Resolution.

BACKGROUND

This item is being presented in tandem with an additional agenda item approving the purchase of a portable standby generator. In the event of a power interruption to the Village Hall and Police Administration buildings, a larger generator is necessary to provide the required emergency power. In order to connect an emergency portable generator to the Village Hall and Police Administration buildings, the installation of an automatic transfer switch (ATS) and other electrical equipment is required. An (ATS) continuously monitors electric utility power. Fluctuations or serious power quality issues, which might precede an outage, trigger a start command to the generator. After backup voltage and frequency stabilize, the transfer switch brings the generator online. Once electric utility power is restored, with no fluctuations for a predetermined amount of time, the switch goes back to its normal position. After a cooling down interval, the generator is automatically shut down. All of these actions take place without human intervention.

ANALYSIS

The required work includes the disconnection of the existing forty kilowatt (40 KW) generator and other existing wire feeds and the installation of new electrical components as required for the new generator connection. Also, in order to install the ATS, the Village Hall building will require new openings to be cut into the exterior wall to gain access for the new wiring and components.

Requests for proposals were sent to five (5) electrical contractors to obtain pricing the required work: A & A Power Generator; General Power Limited; Lincoln Electrical Contractor Inc.; O & J Electrics; and Tirone Electric Inc.. Additionally, an onsite meeting was conducted with the five firms to review the scope of work and site conditions.

Of the five firms contacted, Tirone Electric Inc. was the only contractor to provide a proposal. Tirone Electric Inc. submitted proposal No. 6A17-444R1 in the amount of forty three thousand, five hundred dollars (\$43,500), for the work requested. The proposal also includes the production of all necessary electrical engineering drawings as needed to obtain the required electrical permits. Tirone Electric Inc., had provided electrical service work for the Village on several occasions with positive results. All work performed will be conducted under a Bal Harbour Village Building Department electrical permit, according to all applicable electrical codes.

CONCLUSION

In order to connect an emergency portable generator to the Village Hall and Police Administration buildings, the installation of an automatic transfer switch (ATS) and other electrical equipment is required. If the purchase of the portable generator is approved, the installation of the (ATS) and other work will be conducted in preparation for the delivery of the portable generator.

I have reviewed the proposal No. 6A17-444R1 received from Tirone Electric Inc. for the work. Based on the price provided and the analysis of need for this equipment to be installed in the event an emergency power generator is required to power Village Hall and the Police Administration buildings, I have determined it to be in the best interest of the Village to approve the proposal from Tirone Electric Inc., to install the (ATS) and other equipment as detailed within their proposal in the amount not to exceed forty three thousand, five hundred dollars (\$43,500), for the work requested. Therefore I recommend your approval of this Resolution.

Attachments:

1. Tirone Electric Inc. Proposal No. 6A17-444R1

RESOLUTION NO. 2018-

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND TIRONE ELECTRIC, INC. FOR THE PROVISION AND INSTALLATION OF AN AUTOMATIC TRANSFER SWITCH (ATS) WITH OTHER NECESSARY ELECTRICAL EQUIPMENT TO PROVIDE FOR THE USE OF A PORTABLE ELECTRICAL GENERATOR, TO SUPPLY EMERGENCY POWER TO THE VILLAGE HALL AND POLICE ADMINISTRATION BUILDINGS AS DETAILED WITHIN PROPOSAL 6A17-444R1 IN THE AMOUNT NOT TO EXCEED FORTY THREE THOUSAND FIVE HUNDRED DOLLARS (\$43,500); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in the event of a power interruption to the Village Hall and Police Administration buildings, a larger generator is necessary to provide the required emergency power; and

WHEREAS, in order to connect an emergency portable generator to the Village Hall and Police Administration buildings, the installation of an automatic transfer switch (ATS) and other electrical equipment is required; and

WHEREAS, requests for proposals were sent to the following five (5) electrical contractors to obtain pricing the required work: A & A Power Generator, General Power Limited, Lincoln Electrical Contractor Inc., O & J Electrics and Tirone Electric Inc.; and

WHEREAS, Tirone Electric Inc. was the only contractor to provide a proposal, No. 6A17-444R1 in the amount of forty three thousand, five hundred dollars (\$43,500), for the work requested; and

WHEREAS, the Council has determined that it is in the best interest of the Village to enter into an agreement with Tirone Electric Inc., for the requested work as detailed within the proposal No. 6A17-444R1 in the amount of forty three thousand, five hundred dollars (\$43,500).

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That the above stated recitals are hereby adopted and confirmed.

Section 2. Agreement Approved. That the agreement with Tirone Electric Inc., as detailed within the proposal No. 6A17-444R1 in the amount of forty three thousand, five hundred dollars (\$43,500), for the requested work, in substantially the form attached hereto as Exhibit "A", is hereby approved and the Village Manager is hereby authorized to execute the agreement on behalf of the Village.

Section 3. Expenditure Approved for (ATS) Provision and Installation. That the expenditure of identified budgeted funds for the provision of the (ATS) and installation services as detailed within the proposal No. 6A17-444R1 in the amount not to exceed forty three thousand, five hundred dollars (\$43,500), is hereby approved.

Section 4. Implementation. That the Village Manager is hereby authorized to take all actions necessary to implement the purposes of this Resolution.

Section 5. Effective Date. That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this 12th day of June, 2018.



Mayor Gabriel Groisman

ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.



6151 PEMBROKE RD
HOLLYWOOD, FL 33023
MIAMI-DADE (305) 625-2600
BROWARD (954) 989-7162
FAX (954) 894-0334

EC0000345 / EC0003059

TIRONE-ELECTRIC.COM

APRIL 02, 2018

PROPOSAL

6A17-444R1

City of Bal Harbour
655 96th Street
Miami, FL

Re: City Hall 70KW Generator.

In accordance with your request, Tirone Electric, Inc. proposes to furnish all necessary labor, tools, materials and supervision for a complete and operational electrical installation to the above referenced project as per our on-site review and as per the following listed qualifications.

- 1) Provide and install 1) 400 AMP MTS Cabinet (service rated).
- 2) Provide and install all new Cam lock connections at the MTS to match Customer supplied Generator.
- 3) The new MTS will be located on the East Side of the building.
- 4) Will disconnect the existing 40KW Generator and ATS.
- 5) Will safe off the existing 40KW Generator feeders.
- 6) The existing ATS component that are inside of the cabinet will be eliminate.
- 7) Will utilize the existing ATS Cabinet as a junction box.
- 8) The new Generator will feed the entire building.
- 9) Core drilling of the block wall is included.
- 10) Will properly seal all penetration made.
- 11) Will prep. As much work to minimize change over to the new generator.
- 12) Furnishing of the Generator will be done by others.
- 13) Generator Cables will be furnish by others.
- 14) Any unforeseen or pre-existing conditions that will alter the scope of work will be an additional cost.
- 15) Engineered drawing fees are included.
- 16) Permits and inspections fees are included.
- 17) Fuel for the new generator is not included.
- 18) All work will be performed in a workmanlike manner per NEC (National Electric Code) 110.12
- 19) All labor is warranted for 12 months of install. Any damage due to Mother Nature or vandalism is Not warranted.

FOURTY THREE THOUSAND FIVE HUNDRED DOLLARS..... \$43,500.00

The above prices, specifications and conditions are accepted. Tirone Electric, Inc. is authorized to do the work as specified. Payments will be made as outlined above. In the event a lien or other legal measures are commended to secure payments on any portion of the contract sum, the prevailing party shall be entitled to receive all costs and reasonable attorney fees.

Signature

Printed Name and Title

PO/Date

Respectfully submitted

Levardo Bain
Project Manager





TERMS AND CONDITIONS

TAXES

The price does not include any taxes. Buyer shall be responsible for the payment of all taxes applicable to, or arising from the transaction, the property, its sale, value or use, or any services regardless of the person or entity actually taxed.

TERMS OF PAYMENT

Unless otherwise agreed, payment terms are net thirty (30) days from the date of invoice.

DELIVERY

Unless otherwise agreed, delivery will be made F.O.B. point of shipment. Shipping dates are approximate and are based on prompt receipt of all necessary information from the Buyer. Risk of loss or damage to the Goods shall pass to the Buyer at the F.O.B. point.

FORCE MAJEURE

Seller shall not be liable for failure to perform or delay in performance due to fire, flood, strike or other labor difficulty, act of God, act of any governmental authority or of the Buyer, riot, embargo, fuel or energy shortage, car shortage, wrecks or delay in transportation, or due to any other cause beyond Seller's reasonable control. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

WARRANTY

Seller warrants that the Goods manufactured by it and delivered hereunder will be free from defects in material and workmanship for a period of twelve (12) months from date of shipment. Buyer shall be obligated to promptly report any failure to conform to this warranty, in writing to Seller, within said period, whereupon Seller shall, at its option, correct such nonconformity by suitable repair to such Goods or furnish a replacement part F.O.B. point of shipment, provided Buyer has stored, installed, maintained and operated such Goods in accordance with good industry practices and has complied with specific recommendations of Seller. **This warranty does not cover reimbursement for labor, gaining access, removal, installation, temporary power or any other expenses, which may be incurred in connection with repair or replacement.** SELLER MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, EXCEPT THAT OF TITLE, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.

Correction by Seller of nonconformities, whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of Seller for such nonconformities whether based on contract, warranty, negligence, indemnity, strict liability or otherwise with respect to arising out of such Goods. The Buyer shall not operate Goods which are considered to be defective, without first notifying Seller in writing of its intention to do so. Any such use of Goods will be the Buyer's sole risk and liability.

WARRANTY FOR ENGINEERING SERVICES

Seller warrants that the Engineering Services performed by it hereunder will be performed in accordance with generally accepted professional standards. The Engineering Services, which do not so conform, shall be corrected by the Seller upon notification in writing by the Buyer within one (1) year after completion of the Engineering Services.

Unless otherwise agreed to in writing by Seller, Seller assumes no responsibility with respect to the suitability of the Buyer's equipment or with respect to any defects in the same. This warranty does not cover damage to Buyer's equipment, components or parts resulting in whole or in part from improper maintenance or operation or from their deteriorated condition. **In no event shall Seller be responsible for gaining access, removal, installation, temporary power, or any other expenses, which may be incurred in connection with correction of the Services.** The conducting of any tests shall be mutually agreed upon and Seller shall be notified of, and may be present at, all tests that may be made.

LIMITATION OF LIABILITY

THE REMEDIES OF THE BUYER SET FORTH HEREIN ARE EXCLUSIVE, AND THE TOTAL LIABILITY OF SELLER WITH RESPECT TO THIS AGREEMENT OR THE GOODS AND SERVICES FURNISHED HEREUNDER, IN CONNECTION WITH THE PERFORMANCE OR BREACH THEREOF, OR FROM THE MANUFACTURE, SALES, DELIVERY, INSTALLATION, REPAIR OR TECHNICAL DIRECTION COVERED BY OR FURNISHED UNDER THIS AGREEMENT, WHETHER BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE SHALL NOT EXCEED THE PURCHASE PRICE OF THE UNIT OF GOODS UPON WHICH SUCH LIABILITY IS BASED.

SELLER AND ITS SUPPLIERS SHALL IN NO EVENT BE LIABLE TO BUYER, ANY SUCCESSORS IN INTEREST OR ANY BENEFICIARY OR ASSIGNEE OF THIS CONTRACT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR ANY BREACH THEREOF, OR ANY DEFECT IN, OR FAILURE OF, OR MALFUNCTION OF THE GOODS AND SERVICES HEREUNDER, WHETHER BASED UPON, BUT NOT LIMITED TO, LOSS OF USE, LOST PROFITS OR REVENUE, INTEREST, LOST GOODWILL, WORK STOPPAGE, IMPAIRMENT OF OTHER GOODS, LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, INCREASED EXPENSES OF OPERATION, COST OF PURCHASE OF REPLACEMENT POWER OR CLAIMS OF BUYER OR CUSTOMERS OF BUYER FOR SERVICE INTERRUPTION WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED ON CONTRACT

TERMINATION

Any order may be terminated by the Buyer only by written notice and upon payment of reasonable termination charges, including all costs plus profit. Seller shall have the right to cancel at any time by written notice for any material breach of the order by the Buyer.

Notice of objection to any additional terms and conditions furnished by Buyer is hereby given.

January 1, 2016

Purchase and Installation Agreement with Tirone Electric Data, Inc.

This Purchase and Installation Agreement (the "Agreement") is made and entered into as of the ____ day of _____, 2018 (the "Effective Date") by and between Bal Harbour Village, a Florida municipality (the "Village") and Tirone Electric Data, Inc. ("Contractor") with each being referred to herein as a Party or collectively as the "Parties."

WHEREAS, the Village is purchasing a large generator to mitigate power interruptions in the Village Police Department and Village Hall; and

WHEREAS, in order to connect an emergency portable generator to the Village Hall and Police Administration buildings, the Village requires the installation of an Automatic Transfer Switch; and

WHEREAS, the Village solicited proposals from five (5) vendors, and Contractor was the sole response with a proposal, No. 6A17-444R1, in the amount of forty three thousand five hundred dollars (\$43,500); and

WHEREAS, Contractor will supply the required equipment to perform the scope of services; and

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the Village and Contractor agree as follows:

I. SCOPE OF SERVICES.

Contractor shall provide the materials and accompanying scope of services incorporated herein and attached hereto as Exhibit "A" ("Work")

II. TERM.

The term of this Agreement (the "Term") shall commence upon execution of this Agreement by all parties hereto, which shall be the Effective Date on page 1 hereof, and shall terminate upon the Village acceptance of the scope of services.

A. Pricing

The Village shall pay an amount not to exceed forty three thousand five hundred dollars (\$43,500).

III. PAYMENT

A. Village shall make payment to Contractor within forty-five (45) days after approval by the Village Manager or designee.

B. Ten percent (10%) of all monies earned by Contractor shall be retained by Village until final Completion and acceptance by Village in accordance with scope of Services. Any interest earned on retainage shall accrue to the benefit of Village.

C. When determined to be necessary by the Village, and based upon the certification of the appropriate monetary amount to be withheld as determined by the Village, Village may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

1. Defective Work not remedied.
2. Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor.
3. Failure of Contractor to make payments properly to Subcontractors or for material or labor.
4. Damage to another contractor not remedied.
5. Liquidated damages and costs incurred by Consultant for extended construction administration.

When the above grounds are removed or resolved or Contractor provides a Surety Bond or a consent of Surety, satisfactory to Village which will protect Village in the amount withheld, payment may be made in whole or in part to the Contractor.

IV. DURATION.

The scope of work shall be completed within 60 days of receipt of the materials included in the scope of services included in "Exhibit A". Completion shall mean an inspection resulting in approval of all required permits necessary to complete the scope of work. Any extensions shall be granted at the Village Manager's sole discretion, and shall be included in this agreement as an Addendum.

V. TERMINATION.

A. Termination for Cause.

If a Party fails to fulfill in a timely manner, or otherwise violates or defaults upon, any of the covenants, agreements, or stipulations material to this

Agreement, the non-defaulting Party, shall thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, the non-defaulting Party shall notify the defaulting Party of its violation of the particular term(s) of this Agreement, and shall grant the defaulting Party ten (10) business days to cure such default. If such default remains uncured after ten (10) business days, the non-defaulting Party may terminate this Agreement without further notice to defaulting Party. Upon termination, the non-defaulting Party shall be fully discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, the Agreement.

Notwithstanding the above, Contractor shall not be relieved of liability to the Village for damages sustained by the Village by virtue of any breach of the Agreement by the Contractor. The Village, at its sole option and discretion, shall be entitled to bring any and all legal or equitable actions that it deems to be in its best interest in order to enforce the Village's rights and remedies against Contractor. The Village shall be entitled to recover all costs of such actions, including reasonable attorney's fees.

B. Termination for Convenience of the Village.

The Village may, through its Village Manager, and for its convenience and without cause, terminate the Agreement at any time during the Term by giving written notice to Contractor of such termination; which shall become effective ten (10) days following receipt by Contractor of such notice. If the Agreement is terminated for convenience by the Village, Contractor shall only be paid for any services satisfactorily performed up to the date of termination; following which the Village shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

VI. INSURANCE REQUIREMENTS

Contractor shall maintain general commercial, automobile (where applicable), workers' compensation, and professional liability insurance in an amount acceptable to the Village.

Contractor shall maintain the following required types and minimum limits of insurance coverage during the term of this Agreement

	<u>Per Occurrence</u>	<u>Aggregate</u>
General Liability	\$1,000,000	\$2,000,000
Automobile Liability	\$1,000,000 combined single limit per accident	

Professional Liability \$500,000 \$1,000,000
Workers' Compensation Statutory Amount

This Agreement shall not be deemed approved until the Contractor has obtained all insurance required under this section and has supplied the Village with evidence of such coverage in the form of a Certificate of Insurance and endorsement. The Village shall be named as an additional insured via a blanket endorsement in the endorsement for commercial and automobile liability coverage. The Village shall approve of such Certificates prior to the performance of any Services pursuant to this Agreement.

CERTIFICATE HOLDER MUST READ

Bal Harbour Village
655 95th Street
Bal Harbour, FL 33154

ALL INSURANCE COMPANIES PROVIDED SHALL: Be rated at least A VII per Best's Key Rating Guide and be licensed to do business in Florida. Contractor's liability insurance shall be primary to any liability insurance policies that may be carried by the Village. Contractor shall be responsible for all deductibles and self-insured retentions on their liability insurance policies.

Contractor agrees to provide at least thirty (30) calendar days' written notice of cancellation, material change, or renewal refusal to the Village by certified mail, unless policies are renewed with equal or better coverage.

VI. INDEMNIFICATION.

Contractor agrees to indemnify and hold harmless the Village and its officers, employees, agents, and contractors, from and against any and all actions (whether at law or in equity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or willful or intentional conduct of the Contractor, its officers, employees, agents, subcontractors, or any other person or entity acting under Contractor's control or supervision, in connection with, related to, or as a result of the Contractor's performance of the Services pursuant to this Agreement. To that extent, the Contractor

shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the Village in the defense of such claims and losses, including appeals.

The parties agree that one percent (1%) of the total compensation to Contractor for performance of the Services under this Agreement is the specific consideration from the Village to the Contractor for the Contractor's indemnity agreement. The provisions of this Section and this indemnification shall survive termination or expiration of this Agreement.

Nothing in this Agreement shall be deemed or treated as a waiver by the Village of any immunity to which it is entitled by law, including but not limited to the Village's sovereign immunity as set forth in Section 768.28, Florida Statutes.

VII. NO DAMAGES FOR DELAY.

No claim for damages or any claim, other than for an extension of time shall be made or asserted against Village by reason of any delays. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Village for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay.

VIII. RESPONSIBILITY FOR DAMAGES

A. Contractor shall accept full responsibility for the Work against all loss or damage of any nature sustained until final acceptance by Village, and shall promptly repair any damage done from any cause.

B. Contractor shall be responsible for all materials, equipment and supplies pertaining to the Work. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by Village, Contractor shall replace same without cost to Village.

IX. DEFECTIVE WORK/GUARANTEES

- B.** Village shall have the authority to reject or disapprove Work which the Village finds to be defective. If required by the Village, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with nondefective Work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.
- B.** Should Contractor fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of the Agreement within the time indicated in writing by the Village, Village shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by Village in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor. In the event of failure of Contractor to make all necessary repairs promptly and fully, Village may declare Contractor in default.
- B.** The Contractor shall unconditionally guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of substantial completion. If, within one (1) year after the date of substantial completion, any of the Work is found to be defective or not in accordance with the Agreement, Contractor, after receipt of written notice from Village, shall promptly correct such defective or nonconforming Work within the time specified by Village without cost to Village. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Agreement including but not limited to any claim regarding latent defects.
- B.** Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered.

X. VERIFICATION OF PLANS, SPECIFICATIONS, AND DATA

Contractor shall verify all dimensions, quantities and details shown on the plans, specifications or other data received from Village, and shall notify Village in writing of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery and Village will promptly review the same. Any Work done after such discovery, but prior to written authorization of the Village, will be done at the Contractor's sole risk.

XI. SAFETY AND PROTECTION

Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Village or Consultant's observations and reporting of unsafe conditions shall not relieve the Contractor of this sole responsibility. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

A. All employees on the Work and other persons who may be affected thereby;

B. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Work site; and;

C. Other property at the Work site or adjacent thereof, including trees, shrubs, lawns, walks, pavements, roadways, existing buildings, structures and utilities not designated for removal, relocation or replacement in the course of construction.

D. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property caused directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed.

E. Contractor shall designate a responsible member of its organization at the Work site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Village.

XII. ENTIRE AGREEMENT.

This Agreement, Contractor's proposal, estimates, and any warranties on materials and labor shall constitute the entire Agreement. The order of interpretation shall be: 1) any amendments to this Agreement 2) this Agreement 3) Contractor's Proposals 4) any additional warranties from Contractor or manufacturers. In the event of a conflict between the provisions of those documents and this Agreement, the provisions of this Agreement shall prevail. Any amendment to the terms of this Agreement shall be evidenced in writing and executed by both Parties.

XIII. WARRANTIES.

Contractor warrants that it will maintain all professional licenses necessary to perform the Services for the duration of this Agreement. Contractor warrants that all equipment sold pursuant hereto will, when delivered, function as intended. For the purpose of this section, "equipment" means the tangible property that Contractor is obligated to install upon execution of this Agreement. In the event of equipment failure or equipment malfunction, or both, Contractor, at its option, will either repair or replace the equipment for the Village, provided Contractor is first given the opportunity to inspect such equipment. Contractor's obligation includes shipping, handling, installation or other incidental or consequential costs related to the equipment unless otherwise agreed to in writing by the Village. This warranty is supplemental and does not limit or displace any implied warranty for merchantability and fitness for a particular purpose or any warranty offered by the manufacturer. Contractor's warranty is attached and incorporated hereto as Exhibit "B". In the event that this warranty and the Contractor's or manufacturer's warranty conflict, the provision that is more favorable to the Village prevails. The duration of this warranty period shall be one (1) year from the date of the Village's approval of the scope of services.

XIV. NON-EXCLUSIVITY.

This Agreement is non-exclusive. The Village retains the right to engage the services of additional third party contractors or assign responsibilities to an employee of the Village to perform the same or similar services provided by Contractor under this Agreement and to assign work to such parties in its sole discretion.

XV. SEVERABILITY.

The Parties to this Agreement expressly agree that it is not their intention to violate any public policy, statutory or common law rules, regulations, or

decisions of any governmental or regulatory body. If any provision of this Agreement is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such violation will be inoperative (and in lieu thereof there will be inserted such provision, section, sentence, word, clause, or combination thereof as may be valid and consistent with the intent of the Parties under this Agreement) and the remainder of this Agreement, as amended, will remain binding upon the Parties, unless the inoperative provision would cause enforcement of the remainder of this Agreement to be inequitable under the circumstances.

XVI. ANTI-DISCRIMINATION.

Contractor certifies that it does not discriminate in its membership or policies based on race, color, national origin, religion, sex, sexual orientation, familial status or handicap. Contractor further agrees that neither Contractor, nor any parent company, subsidiaries or affiliates of Contractor are currently engaged in, nor will engage in during the term of this Agreement, the boycott of a person or business based in or doing business with a member of the World Trade Organization or any country with which the United States has free trade.

XVII. NOTICES.

All notices hereunder shall be given in writing by registered or certified mail, return receipt requested, postage prepaid, addressed to the Parties at the following respective addresses, or at such other address as may be designated in writing by either Party to the other, and shall be deemed delivered for all purposes hereunder upon deposit of same into the United States mail:

To Village: Jorge Gonzalez, Village Manager
Bal Harbour Village
655 95th Street
Bal Harbour, FL 33154

Copy To: Susan Trevarthen, Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.
200 E. Broward Blvd. Suite 1900
Fort Lauderdale, FL 33312

To Contractor: Levarado Bain

Tirone Electric Data
6151 Pembroke Road
Hollywood, FL 33023

XVIII. COMPLIANCE WITH LAWS.

Contractor agrees to comply with all laws, ordinances, rules, and regulations that are now or may become applicable to the Services covered by this Agreement, regardless of the applicable jurisdiction.

XIX. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon the Parties and their respective successors, heirs and assigns. However, the Parties agree that nothing contained herein shall authorize the assignment of this Agreement or the delegation of any duties hereunder by either Party, unless previously set out in this Agreement, without the prior written consent of the other party.

XX. SURVIVAL OF TERMS.

Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement which (a) the Parties have expressly agreed shall survive any such termination, or (b) remain to be performed and by their nature would be intended to be applicable following any such termination or expiration. Any liabilities which have accrued prior to termination pursuant to the insurance and/or indemnification obligations set forth below shall survive the termination of this Agreement.

XXI. GOVERNING LAWS.

This Agreement shall be governed by, construed in accordance with, the laws of the State of Florida. The venue for any dispute arising from this Agreement shall be the Circuit Court of Miami-Dade County, Florida. The Parties voluntarily waive any right to trial by jury in the event of litigation between the Parties, which arises out of this Agreement in any way.

XXII. NO CONTINGENT FEES.

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other

than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

XXIII. WAIVER.

No delay or omission by either Party hereto, in the exercise of any right or remedy hereunder, shall impair such right or remedy or be construed to be a waiver thereof. Any waiver of any such right or remedy by any Party must be in writing and signed by the Party against which such waiver is sought. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or any other covenant herein contained. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

XXIV. FORCE MAJEURE.

Non-performance of Contractor or Village shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, hurricane, flood, terrorism, governmental acts or orders or restrictions, or other similar reason where failure to perform is beyond the control of and not caused by the negligence of the non-performing Party ("Force Majeure"), provided that the non-conforming Party gives prompt notice of such conditions to the other Party and makes all reasonable efforts to perform.

XXV. CONTRACTOR'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW

Pursuant to Section 119.0701 of the Florida Statutes, Contractor agrees to:

- A.** Keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Village.
- B.** Upon request from the Village's custodian of public records, Contractor shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost

that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

- C. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village. Notwithstanding, it is understood that at all times Contractor's work papers shall remain the sole property of Contractor, and are not subject to the terms of this Agreement.
- D. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of Contractor shall be delivered by Contractor to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Village in a format that is compatible with the Village's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, Contractor shall destroy any and all duplicate records that are exempt or confidential and exempt from public records disclosure requirements. Notwithstanding the terms of this Section, the Parties agree and it is understood that Contractor will maintain a copy of any information, confidential or otherwise, necessary to support its work product generated as a result of its engagement for services, solely for reference and archival purposes in accordance with all applicable professional standards, which will remain subject to the obligations of confidentiality herein.
- E. Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- F. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-866-4633 clerk@balharbourfl.gov OR BY MAIL: Village of Bal Harbour - Village Clerk's Office, 655 96th Street, Bal Harbour, FL 33154.

IN WITNESS WHEREOF, Contractor has signed and delivered this Agreement, and the Village has caused this Agreement to be signed and delivered by its duly authorized officer or representative, all as of the date first set forth above.

CONTRACTOR:

VILLAGE:

Bal Harbour Village
655 Ninety-Sixth Street
Bal Harbour, FL 33154

By: _____
President

By: _____
Jorge M. Gonzalez
Village Manager

Attest: _____
Dwight S. Danie
Village Clerk

Approved as to form and legal
sufficiency for the use and reliance of
the Bal Harbour Village only.

By: _____
Weiss Serota Helfman Cole & Bierman P.L.
Village Attorney

EXHIBIT "A"

EXHIBIT "B"

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

A RESOLUTION OF BAL HARBOUR VILLAGE, FLORIDA, RELATING TO THE COLLECTION AND DISPOSAL OF SOLID WASTE AND RECYCLABLE MATERIALS IN BAL HARBOUR VILLAGE, FLORIDA; DESCRIBING THE METHOD OF ASSESSING SOLID WASTE COSTS AGAINST ASSESSED PROPERTY LOCATED WITHIN BAL HARBOUR, FLORIDA.

Issue:

Should the Village Council direct the preparation of the Solid Waste Assessment Roll and approve the initial Solid Waste Assessment for FY 2018-19?

Item Summary/Recommendation:

It is recommended that the Council approve the initial Solid Waste Assessment for FY 2018-19 at a rate of assessment equal to \$224.74 for each Dwelling Unit with a Multifamily Residential Establishment and \$480.32 for each Single Family Residential Unit; no rate adjustment is proposed. This rate provides for Solid Waste and Recyclable Materials collection and disposal services to residential customers and remains unchanged from our current year rate.

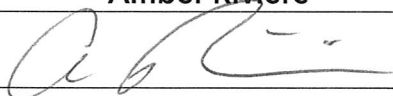
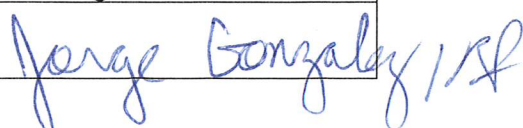
Advisory Board Recommendation:

N/A

Financial Information:

	Amount	Account	Account #
		Solid Waste Assessment	01-34-325200

Sign Off:

	Chief Financial Officer	Village Manager
	Amber Riviere	Jorge M. Gonzalez
		

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: June 12, 2018

SUBJECT: **A RESOLUTION OF BAL HARBOUR VILLAGE, FLORIDA, RELATING TO THE COLLECTION AND DISPOSAL OF SOLID WASTE AND RECYCLABLE MATERIALS IN BAL HARBOUR VILLAGE, FLORIDA; DESCRIBING THE METHOD OF ASSESSING SOLID WASTE COSTS AGAINST ASSESSED PROPERTY LOCATED WITHIN BAL HARBOUR VILLAGE, FLORIDA; DETERMINING THE SOLID WASTE COST AND THE INITIAL SOLID WASTE SERVICE ASSESSMENTS; DIRECTING THE PREPARATION OF AN ASSESSMENT ROLL; AUTHORIZING A PUBLIC HEARING AND DIRECTING THE PROVISION OF NOTICE THEREOF; AND PROVIDING AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

It is recommended that the Council direct the preparation of an initial Solid Waste Assessment Roll for the FY 2018-19 and approve the Solid Waste Assessment at a rate equal to \$224.74 for each Dwelling Unit with a Multifamily Residential Establishment and \$480.32 for each Single Family Residential Unit; no rate adjustment is proposed. This rate provides for Solid Waste and Recyclable Materials collection and disposal services to residential customers.

BACKGROUND

To provide solid waste and recyclable materials collection and disposal services, the imposition of an annual Solid Waste Service Assessment was implemented as an equitable and efficient method of allocating and apportioning solid waste costs among parcels of assessed property. Adoption of this initial assessment resolution provides for the determination of Solid Waste Costs, and the identification of the assessed property for inclusion in the assessment roll, for the provision of solid waste services. Based on 2,940.50 units the rate of \$224.74 for each Dwelling Unit with a Multifamily Residential Establishment and \$480.32 for each Single Family Residential Unit will generate approximately \$678,810 to provide for solid waste collection services through FY 2018-19 using the tax bill method of collection.

In September of 2017, a renewed agreement between Bal Harbour Village and Progressive Waste Solutions of FL, Inc., was approved by Council extending through 2025. This agreement provided for the delivery of solid waste services, inclusive of service improvements, at rates fixed to the 2012 agreement through September 30, 2019, and

adjustments consistent Consumer Price Index ("CPI") beginning October 1, 2020 and each year thereafter. This provides certainty for solid waste service delivery and future year costs for the Village.

The Final Assessment Resolution must be adopted no later than September 15, 2017. The required public hearing for the final solid waste assessment will coincide with the Village's first public budget hearing prior to September 15, 2018.

CONCLUSION

Adoption of this resolution is recommended to direct the preparation of an initial Solid Waste Assessment Roll for FY 2018-19 and approve an initial assessment rate equal to \$224.74 for each Dwelling Unit with a Multifamily Residential Establishment and \$480.32 for each Single Family Residential Unit, an amount sufficient to provide for solid waste and recyclable materials collection and disposal services for the coming fiscal year.

BAL HARBOUR VILLAGE, FLORIDA

**INITIAL ASSESSMENT RESOLUTION
FOR SOLID WASTE SERVICE ASSESSMENTS**

ADOPTED June 12, 2018

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RESOLUTION NO. 2018-_____

A RESOLUTION OF BAL HARBOUR VILLAGE, FLORIDA, RELATING TO THE COLLECTION AND DISPOSAL OF SOLID WASTE AND RECYCLABLE MATERIALS IN BAL HARBOUR VILLAGE, FLORIDA; DESCRIBING THE METHOD OF ASSESSING SOLID WASTE COSTS AGAINST ASSESSED PROPERTY LOCATED WITHIN BAL HARBOUR VILLAGE, FLORIDA; DETERMINING THE SOLID WASTE COST AND THE INITIAL SOLID WASTE SERVICE ASSESSMENTS; DIRECTING THE PREPARATION OF AN ASSESSMENT ROLL; AUTHORIZING A PUBLIC HEARING AND DIRECTING THE PROVISION OF NOTICE THEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village Council (the "Council") of Bal Harbour Village, Florida (the "Village"), currently provides for the imposition of annual Solid Waste Service Assessments for Solid Waste and Recyclable Materials collection and disposal services, facilities or programs against certain Assessed Property within the Village; and

WHEREAS, the continued imposition of a Solid Waste Service Assessment for Solid Waste and Recyclable Materials collection and disposal services, facilities or programs for Residential Properties is an equitable and efficient method of allocating and apportioning Solid Waste Costs among parcels of Assessed Property located in the Village; and

WHEREAS, the Council desires, as provided herein, to continue, an annual Solid Waste and Recyclable Materials assessment program within the Village, using the tax bill collection method for the Fiscal Year which commences on October 1, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

SECTION 1. AUTHORITY. This resolution is adopted pursuant to the provisions of Section 16-5 of the Village Code, and Article IX of Chapter 2 of the Village Code (collectively, the “Ordinance”), and sections 166.021 and 166.041, Florida Statutes, and other applicable provisions of law.

SECTION 2. PURPOSE AND DEFINITIONS. This resolution constitutes the Initial Assessment Resolution as defined in the Ordinance. All capitalized words and terms not otherwise defined herein shall have the meanings set forth in the Ordinance. Unless the context indicates otherwise, words imparting the singular number, include the plural number, and vice versa. As used in this Initial Assessment Resolution, the following terms shall have the following meanings, unless the context hereof otherwise requires:

"Assessed Property" means all parcels of land included on the Assessment Roll that receive a special benefit from the delivery of the service, facility or program identified in the Initial Assessment Resolution.

"Biohazardous Waste" means any waste which may present a threat of infection to humans. The term includes, but is not limited to, non-liquid human tissue and body parts, laboratory and veterinary waste which contains human disease-causing agents, used disposable sharps, human blood, and human blood products and body fluids, and other materials which represent a significant risk of infection to persons outside of the generating facility.

"Building" means any structure, whether temporary or permanent, built for support, shelter or enclosure of persons, chattel, or property of any kind. This term shall include mobile homes or any vehicles serving in any way the function of a Building.

"Commercial Establishment" means any structure used or constructed for use for business operations. For purposes of this article, hotels, hotel-condominiums and

motels are commercial establishments. The term "commercial establishment" shall not include any residential unit or multifamily residential establishment.

"Construction Debris" means materials generally not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, or roofing material, pipe, gypsum wallboard, and lumber. Construction Debris shall include materials from the construction or destruction of a structure as part of a construction or demolition project, and including rocks, soils, stumps, and other vegetative matter which normally results from land clearing or land development operations for a construction or home improvement project.

"Dwelling Unit" means a Building, or a portion thereof, which is located upon Residential Property and lawfully used for residential purposes, consisting of one or more rooms arranged, designed, used, or intended to be used as living quarters for one family unit only. The term Dwelling Unit shall include individual units located within Multifamily Residential Establishments.

"Garbage" means every refuse accumulation of animal, fruit, or vegetable matter that attends the preparation, use, cooking and dealing in, or storage of, meats, fish, fowl, fruit or vegetables, and decay, putrefaction and the generation of noxious or offensive gases or odors, or which, during or after decay, may serve as breeding or feeding material for flies or other germ carrying insects.

"Hazardous Waste" means waste which requires special handling, including, but not limited to explosives, wet cell lead acid batteries, pathological wastes, radioactive materials, acidic, caustic, toxic, highly flammable chemicals, paints, petroleum products or cleaning fluids.

"Improved Property" means all Residential Property within the incorporated area of the Village on which a Building or other improvements have been placed or constructed, which improvements result in such property generating Solid Waste or being capable of generating Solid Waste.

"Multifamily Residential Establishment" means any structure, other than a Single Family Residential Unit, which is used, or constructed for use, as a multiple dwelling facility. Multifamily residential establishments shall include, without limitation, roominghouses, tourist courts, trailer parks, apartment buildings with rental or cooperative apartments, or multiple-story condominiums with common means of ingress and egress. The term Multifamily Residential Establishments shall not include buildings operated as hotel-condominiums. Hotel-condominiums constitute Commercial Establishments hereunder.

"Noncombustible Refuse" means refuse materials that are unburnable at ordinary incinerator temperature, eight hundred (800) degrees to eighteen hundred (1800) degrees, such as metals, mineral matter, large quantities of glass or crockery, metal furniture, auto bodies or parts and other similar material or refuse not usual to housekeeping or to operation of stores or offices.

"Prohibited Waste" means any Noncombustible Refuse, Hazardous Waste, Biohazardous Waste, or Special Waste.

"Recyclable Materials" means materials which would be Garbage, commercial refuse, industrial refuse or rubbish but for the fact that it is usable and/or has commercial value.

"Residential Property" means all Improved Property containing a Single Family Residential Unit or Multifamily Residential Establishment.

"Single Family Residential Unit" means any structure which is used, or constructed for use, as a single-family dwelling, duplex or townhouse, and which is located on a single lot, parcel or tract of land. The term "Single Family Residential Unit" shall not include any Multifamily Residential Establishment.

"Solid Waste" includes Garbage, Trash, Yard and Garden Waste, White Goods, or other discarded material resulting from normal housekeeping activities, and shall exclude Prohibited Waste. The term Solid Waste shall also include debris that accumulates on property within the Village during hurricanes and other extreme storm events.

"Solid Waste Assessment Roll" means the Assessment Roll as defined in the Ordinance relating to the Solid Waste Service Assessments.

"Solid Waste Service Assessment" means an Assessment, as defined in the Ordinance, lawfully imposed by the Village against Assessed Property to fund all or any portion of the cost of the provision of Solid Waste and Recyclable Materials collection and disposal services, facilities, or programs providing a special benefit to property as a consequence of possessing a logical relationship to the value, use, or characteristics of the Assessed Property.

"Solid Waste Cost" means the amount necessary to fund the Village's collection and disposal of Solid Waste and the recycling activities of Recyclable Materials that are allocable to Assessed Property during a Fiscal Year and shall include, but not be limited to: (A) the cost, whether direct or indirect, of all services, programs or facilities provided by the Village, or through contractual arrangements with the Village relating to Solid Waste and Recyclable Materials collection and disposal services, facilities or programs; (B) the cost of any indemnity or surety bonds and premiums for insurance; (C) the cost of

salaries, volunteer pay, workers' compensation insurance, or other employment benefits; (D) the cost of computer services, data processing, and communications; (E) the cost of training, travel and per diem; (F) the recovery of unpaid or delinquent fees or charges advanced by the Village and due for Solid Waste and Recyclable Materials management and disposal services, programs or facilities allocable to specific parcels; (G) the cost of engineering, financial, legal or other professional services; (H) all costs associated with the structure, implementation, collection, and enforcement of the Solid Waste Service Assessments or a prior year's assessment for a comparable service, facility or program, including any service charges of the Tax Collector or Property Appraiser; (I) all other costs and expenses necessary or incidental to the acquisition, provision, or delivery of the services, programs or facilities funded by the Solid Waste Service Assessment, and such other expenses as may be necessary or incidental to any related financing authorized by the Village Council; (J) a reasonable amount for contingency to provide for clearing, removing and disposal of debris accumulated on property within the Village during hurricanes or other extreme weather events; (K) a reasonable amount for contingency and anticipated delinquencies and uncollectible Solid Waste Service Assessments; and (L) reimbursement to the Village or any other Person for any monies advanced for any costs incurred by the Village or such Person in connection with any of the foregoing items of Solid Waste Cost.

"Special Waste" means Solid Waste that requires special handling and management, including, but not limited to, asbestos, whole tires, used tires, used oil, lead-acid batteries, and Biohazardous Wastes and shall include items that exceed any size limitations for Yard and Garden Waste or other bulk trash.

"Trash" means refuse, accumulations of paper, excelsior, rags or wooden or paper boxes or containers, sweepings and all other accumulations of a nature other than garbage, which are usual to housekeeping and to the operation of stores, offices and other business places; and any bottles, cans or other containers which, due to their ability to retain water, may serve as breeding places for mosquitoes or other water breeding insects. Trash shall not include Noncombustible Refuse.

"Unimproved Property" means any vacant lot located within the Village.

"White Goods" means discarded appliances, including but not limited to stoves, refrigerators, dish washers, washing machines, dryers, water heaters, air conditioners, and heating units.

"Yard and Garden Waste" means grass, leaves, tree or shrubbery cuttings incidental to the care of lawns and gardens. This includes large tree or shrubbery cuttings including tree limbs and logs less than four (4) inches in diameter and no more than five (5) feet in length, stumps less than fifteen (15) inches in diameter or fifty (50) pounds in weight and palm fronds, but excluding debris from unimproved lots, soil and sod.

SECTION 3. LEGISLATIVE DETERMINATIONS OF SPECIAL BENEFIT AND FAIR APPORTIONMENT. It is hereby ascertained, declared and determined that the Solid Waste Costs provide a special benefit to the Assessed Property based upon the following legislative determinations:

General

(A) Upon the adoption of this Initial Assessment Resolution determining the Solid Waste Costs and identifying the Assessed Property to be included in the

Assessment Roll, the legislative determinations of special benefit ascertained and declared in Section 2-372 of the Village Code are hereby ratified and confirmed.

(B) Pursuant to Section 16-5 of the Village Code, the Village has the general authority to impose fees for the collection and transport of Solid Waste and Recyclable Materials generated within its jurisdiction to appropriate disposal facilities.

(C) The existence of any Building or other improvement on Improved Property results in such property generating Solid Waste and Recyclable Materials or being capable of generating Solid Waste and Recyclable Materials.

(D) The imposition of a recurring annual Solid Waste Service Assessment is an alternative, equitable and efficient method to fairly and reasonably apportion and recover the Solid Waste Costs experienced by the Village for the provision of Solid Waste collection services to Residential Property within the area assessed.

Special Benefit

(E) The Solid Waste and Recyclable Materials collection and disposal services, facilities, and programs furnished by the Village possess a logical relationship to the use and enjoyment of Assessed Property by providing: (1) Solid Waste and Recyclable Materials collection and disposal services, facilities, and programs to the Owners and occupants of Residential Property for proper, safe, and cost effective disposal of Solid Waste and Recyclable Materials generated on such property, (2) better service to Owners and tenants, (3) the enhancement of environmentally responsible use and enjoyment of Residential Property, and (4) the protection of property values and the health and safety of the Owners and occupants of Residential Property resulting from the uniform delivery and availability of such services, facilities, and programs.

(F) The provision of comprehensive Solid Waste and Recyclable Materials collection and disposal services and programs furnished by or through the Village to Assessed Property enhances and strengthens the relationship of such services and programs to the use and enjoyment of Assessed Property within the Village.

Apportionment

(G) The size or value of Assessed Property does not determine the scope and cost of Solid Waste and Recyclable Materials collection and disposal services to be provided to such property. The use of Solid Waste and Recyclable Materials collection and disposal services, facilities, and programs is driven by the existence of a Dwelling Unit.

(H) Apportioning the Solid Waste Costs for Solid Waste and Recyclable Materials collection and disposal services provided to Single Family Residential Units within the incorporated area of the Village on a per Dwelling Unit basis to single family residential properties as identified in Tax Roll data base, is required to avoid cost inefficiency and unnecessary administration, and is a fair and reasonable method of apportioning Solid Waste Costs.

(I) Apportioning the Solid Waste Costs for Solid Waste and Recyclable Materials collection and disposal services provided to Multifamily Residential Establishments within the incorporated area of the Village on a Dwelling Unit basis as identified in the Tax Roll data base, is required to avoid cost inefficiency and unnecessary administration, and is a fair and reasonable method of apportioning Solid Waste Costs.

(J) The owners of Commercial Properties shall obtain Solid Waste and Recyclable Materials collection services from an authorized franchisee of the Village at

their own expense. The Village shall not provide for the collection of Solid Waste and Recyclable Materials from Commercial Properties located within the Village. Accordingly, Commercial Properties shall not be assessed pursuant to this Resolution.

SECTION 4. SOLID WASTE AND RECYCLABLE MATERIALS COLLECTION AND DISPOSAL SERVICES.

(A) Upon the imposition of Solid Waste Service Assessments for Solid Waste and Recyclable Materials collection and disposal services, facilities or programs against Assessed Property located within the Village, the Village shall cause Solid Waste and Recyclable Materials collection and disposal services, facilities or programs to be provided to such Assessed Property. Solid Waste Costs shall be paid from proceeds of the Solid Waste Service Assessments.

(B) It is hereby ascertained, determined, and declared that each parcel of Assessed Property will be benefited by the Village's provision of Solid Waste and Recyclable Materials collection and disposal services, facilities or programs in an amount not less than the Solid Waste Service Assessment upon such parcel computed in the manner set forth in this Initial Assessment Resolution.

SECTION 5. DETERMINATION OF SOLID WASTE COST; ESTABLISHMENT OF INITIAL SOLID WASTE SERVICE ASSESSMENTS.

(A) The Solid Waste Cost to be assessed and apportioned among benefited parcels for the Fiscal Year beginning October 1, 2018, is \$678,810.50. The approval of this Initial Assessment Resolution determines the amount of the Solid Waste Cost.

(B) For the Fiscal Year in which Solid Waste Service Assessments for Solid Waste and Recyclable Materials collection and disposal services, facilities or programs

are imposed, the Solid Waste Cost shall be allocated among all Assessed Property within the Village, based upon each parcels' classification as Residential Property and the number of Dwelling Units for such parcels. A rate of assessment equal to \$224.74 for each Dwelling Unit within a Multifamily Residential Establishment and \$480.32 for each Single Family Residential Unit for Solid Waste and Recyclable Materials collection and disposal services is hereby approved for the Fiscal Year beginning October 1, 2018.

(C) The rate of the Solid Waste Service Assessments established in this Initial Assessment Resolution shall be the rates applied by the Village Manager in the preparation of the initial Solid Waste Assessment Roll for the Fiscal Year commencing October 1, 2018, as provided in Section 6 of this Initial Assessment Resolution.

SECTION 6. SOLID WASTE ASSESSMENT ROLL.

(A) The Village Manager is hereby directed to prepare, or cause to be prepared, an initial Solid Waste Assessment Roll for the Fiscal Year beginning October 1, 2018. Such initial Solid Waste Assessment Roll shall contain the following: (1) a summary description of all Assessed Property within the Village conforming to the description contained on the Tax Roll, (2) the name and address of the owner of record of each Assessed Property as shown on the Tax Roll, and (3) the amount of the initial Solid Waste Service Assessment for Solid Waste and Recyclable Materials collection and disposal services, facilities or programs. The initial Solid Waste Assessment Roll shall be open to public inspection. The foregoing shall not be construed to require that the initial Solid Waste Assessment Roll be in printed form if the amount of the Solid Waste Service Assessment for each parcel of property can be determined by use of a computer terminal available to the public. Such Solid Waste Service Assessment for each parcel of Assessed Property shall be computed by multiplying the applicable assessment rate by

the number of Dwelling Units on the Assessed Property in accordance with Section 5 (B) above.

(B) It is hereby ascertained, determined, and declared that the foregoing method of determining the Solid Waste Service Assessments for Solid Waste and Recyclable Materials collection and disposal services, facilities or programs (1) is a fair and reasonable method of apportioning the Solid Waste Cost among parcels of Assessed Property and (2) is an equitable and efficient mechanism to address payment delinquencies and recover funds advanced for Solid Waste and Recyclable Materials collection and disposal services, facilities or programs which are allocable to specific parcels of Assessed Property.

SECTION 7. AUTHORIZATION OF PUBLIC HEARING. There is hereby established a public hearing to be held at P.M., on _____, the _____ day of September 2018, in the Village Council Chambers, Village Hall, 655 – 96th Street, Bal Harbour, Florida, for the purpose of (A) receiving and considering any comments on the Solid Waste Service Assessments from affected property owners and (B) authorizing the imposition of such Solid Waste Service Assessments for Solid Waste and Recyclable Materials collection and disposal services, facilities or programs and collection on the same bill as ad valorem taxes as a non-ad valorem assessment.

SECTION 8. NOTICE BY PUBLICATION. The Village Clerk shall publish a notice, as required by Section 2-384 of the Village Code, in substantially the form attached hereto as Appendix A. Such notice shall be published not later than _____, 2018 in a newspaper generally circulated in the Village.

SECTION 9. NOTICE BY MAIL. The Village Manager shall provide notice by first class mail to the Owners of Assessed Property, as required by Section 2-385 of the

Village Code, in substantially the form attached hereto as Appendix B. Such notices shall be mailed not later than _____, 2018. However, notice furnished by the Property Appraiser pursuant to the requirements of Section 200.069, Florida Statutes, shall satisfy this Section and may be used in lieu of Appendix B.

SECTION 10. ADJUSTMENT OF PUBLIC HEARING DATE. In the event that the public hearing date or time which is provided for herein is revised because of scheduling or other conflicts, the Village Manager shall revise or direct the revision of the required public notices to conform to the revised date and time of the public hearing.

SECTION 11. EFFECTIVE DATE. This Initial Assessment Resolution shall take effect immediately upon its passage and adoption and shall serve to ratify any action earlier taken by the Village in furtherance of the purposes of this Resolution.

PASSED, ADOPTED AND APPROVED THIS 12th day of June, 2018.

Mayor Gabriel Groisman

ATTEST:

Dwight Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Village Attorney

Bal Harbour Village – Resolution No. 2018-____
Initial Assessment for Solid Waste Service
Assessments

Weiss Serota Helfman Cole & Bierman, P.L.

Reviewed and Approved by Village Attorney David Wolpin

APPENDIX A

FORM OF NOTICE TO BE PUBLISHED

To Be Published by _____, 2018

**NOTICE OF HEARING TO IMPOSE AND PROVIDE FOR COLLECTION OF
SOLID WASTE AND RECYCLABLE MATERIALS SERVICE SPECIAL
ASSESSMENTS**

Notice is hereby given that the Village Council of Bal Harbour Village, Florida, will conduct a public hearing to consider continuing to impose solid waste and recyclable materials special assessments against residential properties located within the incorporated area of the Village and to authorize the continued collection of such assessments on the tax bill for the fiscal year which commences on October 1, 2018 and future fiscal years.

The solid waste service assessments will be imposed to fund the cost of solid waste and recyclable materials collection and disposal services, facilities and programs provided to such properties. The solid waste cost to be assessed and apportioned among benefited parcels for the Fiscal Year beginning on October 1, 2018 is \$678,810.50.

The hearing will be held at _____ **P.M.**, on _____, the _____ day of **September, 2018**, in **Council Chambers**, Village Hall, 655 – 96th Street, Bal Harbour, Florida, for the purpose of receiving public comment on the proposed assessments and to impose the assessment. All affected property owners have a right to appear at the hearing and to file written objections with the Village Council within 20 days of this notice. If a person decides to appeal any decision made by the Village Council with respect to any matter considered at the hearing, such person will need a record of the proceedings and may need to ensure that a verbatim record is made, including the testimony and evidence upon which the appeal is to be made. In accordance with the Americans with Disabilities Act, persons needing a special accommodation or an interpreter to participate in this proceeding should contact the Village Clerk at (305)866-4633, at least two days prior to the date of the hearing.

Unless proper steps are initiated in a court of competent jurisdiction to secure relief within 20 days from the date of Village Council action at the above hearing (including the

method of apportionment, the rate of assessment and the imposition of assessments), such action shall be the final adjudication of the issues presented.

The solid waste service assessments will be computed by multiplying the number of dwelling units on each parcel by the applicable rate of assessment. The annual rate of assessment for the upcoming fiscal year and future fiscal years shall be \$224.74 for each Multifamily Residential Establishment's Dwelling Unit within a multifamily residential building and \$480.32 for each Single Family Residential Unit Dwelling Unit on each parcel. Copies of the assessment roll, showing the amount of the assessment to be imposed against each parcel of property, and the legal documentation relating to the assessments are available for inspection at the office of the Village Clerk, located at Village Hall, 655 – 96th Street, Bal Harbour, Florida.

The assessments will be collected on the ad valorem tax bill to be mailed in November 2018, as authorized by section 197.3632, Florida Statutes. Failure to pay the assessments will cause a tax certificate to be issued against the property which may result in a loss of title.

If you have any questions, please contact the Village at (305) 866-4633, Monday through Friday between 9:00 a.m. and 5:00 p.m.

[INSERT MAP OF VILLAGE]

**VILLAGE CLERK
BAL HARBOUR VILLAGE, FLORIDA**

APPENDIX B

FORM OF NOTICE TO BE MAILED

FORM OF NOTICE TO BE MAILED

● * * * * NOTICE TO PROPERTY OWNER * * * * *

Bal Harbour Village
655-96th Street
Bal Harbour, Florida 33154

BAL HARBOUR Village, FLORIDA
NOTICE OF HEARING TO IMPOSE AND PROVIDE
FOR COLLECTION OF SOLID WASTE AND
RECYCLABLE MATERIALS THROUGH NON-AD
VALOREM ASSESSMENTS
NOTICE DATE: _____, 2018

Owner Name
Address
Bal Harbour, FL 33154

Tax Parcel # _____
Legal Description _____

As required by Section 197.3632, Florida Statutes, notice is given by Bal Harbour Village (the "Village"), that an annual assessment for solid waste and recyclable materials collection and disposal services, facilities, and programs using the tax bill collection method, may continue to be levied on your property for the fiscal year October 1, 2018 - September 30, 2019 (FY2018-19) and future fiscal years.

The purpose of the solid waste services assessment is to fund solid waste and recyclable materials collection and disposal services, facilities, and programs benefiting residential property located within the Village. It is estimated that the Village will collect, via the tax bill collection method, \$678,810.50 from the solid waste service assessments for FY2018-19. The annual solid waste service assessment is based on the number of residential dwelling units contained on each parcel of property. The annual solid waste service assessment rate for FY2018-19 is \$480.32 per single family residential dwelling unit and \$224.74 per dwelling unit within a multifamily residential building.

Your property has been classified as (single family or multifamily). The number of dwelling units on your property has been determined to be_____ (number of units). Based upon this information, the annual solid waste service assessment for your property for FY2018-19 is \$_____.

A public hearing will be held at _____ P.M. on_____, the ____ **day of September, 2018, in Council Chambers**, Village Hall, 655 – 96th Street Bal Harbour, Florida 33154 for the purpose of receiving public comment on the proposed assessments. You and all other affected property owners have a right to appear at the hearing and to file written objections with the Village Council within 20 days of this notice. If you decide to appeal any decision made by the Village Council with respect to any matter considered at the hearing, you will need a record of the proceedings and may need to ensure that a verbatim record is made, including the testimony and evidence upon which the appeal is to be made. In accordance with the Americans with Disabilities Act, persons needing a special accommodation or an interpreter to participate in this proceeding should contact the Village Clerk at (305) 866-4633, at least two days prior to the date of the hearing.

Unless proper steps are initiated in a court of competent jurisdiction to secure relief within 20 days from the date of Village Council action at the above hearing (including the method of apportionment, the rate of assessment and the imposition of assessments), such action shall be the final adjudication of the issues presented.

Copies of the enabling Ordinance, the Initial Assessment Resolution and the preliminary assessment roll are available for inspection at the Village Clerk's office located at Village Hall, 655 – 96th Street, Bal Harbour, Florida 33154.

The non-ad valorem assessments amounts shown on this notice and the ad valorem taxes for the above parcel will be collected on the ad valorem tax bill mailed in November 2018. Failure to pay the assessments will cause a tax certificate to be issued against the property which may result in a loss of title.

If there is a mistake on this notice, please advise us so that it will be corrected. If you have any questions regarding your assessment, please contact the Village at (305) 866-4633, Monday through Friday between 9:00 a.m. and 5:00 p.m.

*****THIS IS NOT A BILL*****

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

A RESOLUTION OF BAL HARBOUR VILLAGE, FLORIDA, RELATING TO THE PROVISION OF SECURITY AND LANDSCAPE SERVICES, FACILITIES AND PROGRAMS IN THE GATED RESIDENTIAL SECTION OF BAL HARBOUR VILLAGE, FLORIDA.

Issue:

Should the Village Council direct the preparation of the Security and Landscape Assessment Roll and approve the initial assessment for FY 2018-19?

Item Summary/Recommendation:

It is recommended that the Council approve the initial Assessment for FY 2018-19, at a proposed rate of \$2,639.53 for each Single Family Residential Unit, \$1,319.76 for each Unimproved Property, and \$10,558.12 for each Private Recreational Facility.

THE ADMINISTRATION RECOMMENDS APPROVAL OF THE RESOLUTION.

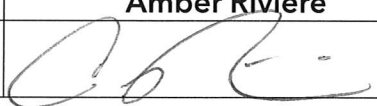
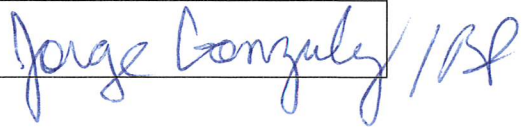
Advisory Board Recommendation:

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Financial Information:

	Amount	Account	Account #
1		Security & Landscape Assessments	11-29-325200

Sign Off:

	Chief Financial Officer	Village Manager
	Amber Riviere	Jorge M. Gonzalez
		

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: June 12, 2018

SUBJECT: **A RESOLUTION OF BAL HARBOUR VILLAGE, FLORIDA, RELATING TO THE PROVISION OF SECURITY AND LANDSCAPE SERVICES, FACILITIES AND PROGRAMS IN THE GATED RESIDENTIAL SECTION OF BAL HARBOUR VILLAGE, FLORIDA; DESCRIBING THE METHOD OF ASSESSING SECURITY AND LANDSCAPE COSTS AGAINST ASSESSED PROPERTY LOCATED WITHIN THE GATED RESIDENTIAL SECTION OF BAL HARBOUR, FLORIDA; DETERMINING THE COST OF SECURITY AND LANDSCAPE SERVICES, FACILITIES AND PROGRAMS AND THE INITIAL SECURITY AND LANDSCAPE ASSESSMENTS; DIRECTING THE PREPARATION OF AN ASSESSMENT ROLL; AUTHORIZING A PUBLIC HEARING AND DIRECTING THE PROVISION OF NOTICE THEREOF; AND PROVIDING AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

It is recommended that the Council direct the preparation of an initial Security and Landscape Assessment Roll for the FY 2018-19, and approve the Security and Landscape Assessment Rate sufficient to provide services within the gated community throughout the coming fiscal year. The current assessment rate for FY 2018 is a rate of \$2,639.53 for each Single Family Residential Unit, half that number, \$1,319.76, for each Unimproved Property and \$10,558.12 for each Private Recreational Facility. Budgeted at ninety-five percent, for 234.75 units it is estimated that the current rates will generate approximately \$587,946.

BACKGROUND

In FY 2012, the Village began the use of the tax bill method of collection for the imposition and collection of annual Security and Landscape Assessments for the provision of security and landscape services, facilities or programs against certain properties located within the gated residential section of the Village. As authorized by Section 18-121 of the Village Code, the Uniform Method of Collection is used to facilitate collection through the tax bills for the assessment.

On January 30, 2018, the Village Council approved a Settlement Agreement between the Village and Bal Harbour Yacht Club, Inc.; Flamingo Way Enterprises, LLC; Park Preservation, LLC; Bal Harbour Civic Association, Inc.; and FSH Bal Harbour, LLC. In this agreement, the Village committed to continue to assess and collect the Village's security and landscape assessments for the gated portion of the residential section of Bal Harbour (the "Gated Community") to October 1, 2019, and for an additional period of eight years if the Bal Harbour Civic Association ("BHCA") proffered an executed written agreement to the Village committing to a calendar of enforceable milestones towards BHCA's readiness to administer the Village's security and landscape assessments. The Milestone Agreement, also approved in January 2018, encourages the owners in the gated community to form a functioning homeowners association and to take control of their community and their privately-owned common areas over a period of 10 years, while the Village continues to provide the financial support of the landscape and security assessment.

MEETING WITH COMMUNITY REPRESENTATIVES

Staff met with representatives from the gated community on May 23, 2018 to discuss the draft budget and appropriate rate for the assessments for FY 2019. Staff and the representatives discussed the current year expenditures and progress toward the year end. We also discussed the next Fiscal Year and anticipated expenses for that year. In addition, discussions were held regarding possible security improvements and potential reimbursements of legal expense incurred by the Bal Harbour Civic Association. Staff is working with the contracted security service provider to obtain estimated costs for desired improvements, and \$50,000 was added as a placeholder within the draft security and landscape budget to accommodate proposed improvements. In addition, the community representatives requested the addition of \$50,000 to the draft budget for potential legal reimbursements related to defending the private streets and parks within the Assessment district. Any shortfall to balance the operating budget for the assessment area will come from the current available fund balance of \$1.1 million; as presently drafted an allocation of \$73,200 will be required. The FY 2018-19 proposed budget for the Security and Landscape Assessment Fund, will be presented for approval with the September budget hearings.

Consensus was achieved among the representatives present to maintain the current year Security and Landscape Assessment rate for the coming 2018-19 fiscal year, beginning October 01, 2018. The proposed FY 2018-19 assessment rate remains the same as the current fiscal year at a rate of \$2,639.53 for each Single Family Residential Unit, \$1,319.76 for each Unimproved Property, and \$10,558.12 for each Private Recreational Facility.

The action before you now is to approve the assessment rate sufficient to provide for services, for the coming fiscal year, and if so desired, a transfer of funds from existing Security and Landscape Assessment Fund Balance. The Proposed FY 2018-19 Budget for the Security and Landscape assessment will be presented in conjunction with the items at the first budget hearing in September. The Final Assessment Resolution must be adopted no later than September 15, 2018.

CONCLUSION

Adoption of this resolution is recommended to direct the preparation of an initial Security and Landscape Assessment Roll Waste Assessment Roll for FY 2018-19 and approve an

initial assessment rate equal to \$2,639.53 for each Single Family Residential Unit, \$1,319.76 for each Unimproved Property, and \$10,558.12 for each Private Recreational Facility, an amount sufficient to provide for security and landscape program services for the coming fiscal year.

BAL HARBOUR VILLAGE, FLORIDA

**INITIAL ASSESSMENT RESOLUTION
FOR SECURITY AND LANDSCAPE SPECIAL ASSESSMENTS**

ADOPTED June 12, 2018

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RESOLUTION NO. 2018-_____

A RESOLUTION OF BAL HARBOUR VILLAGE, FLORIDA, RELATING TO THE PROVISION OF SECURITY AND LANDSCAPE SERVICES, FACILITIES AND PROGRAMS IN THE GATED RESIDENTIAL SECTION OF BAL HARBOUR VILLAGE, FLORIDA; DESCRIBING THE METHOD OF ASSESSING SECURITY AND LANDSCAPE COSTS AGAINST ASSESSED PROPERTY LOCATED WITHIN THE GATED RESIDENTIAL SECTION OF BAL HARBOUR, FLORIDA; DETERMINING THE COST OF SECURITY AND LANDSCAPE SERVICES, FACILITIES AND PROGRAMS AND THE INITIAL SECURITY AND LANDSCAPE ASSESSMENTS; DIRECTING THE PREPARATION OF AN ASSESSMENT ROLL; AUTHORIZING A PUBLIC HEARING AND DIRECTING THE PROVISION OF NOTICE THEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village Council (the “Council”) of Bal Harbour Village, Florida (the “Village”), via Ordinance No. 2012-562, previously adopted Section 18-121 “Uniform Method of Collection of Security and Landscape Special Assessments” of Chapter 18 of the Village Code, which authorizes the use of the uniform tax bill method of collection for the imposition and collection of annual Security and Landscape Assessments for the provision of security and landscape services, facilities or programs against certain properties located within the gated residential section of the Village (the “Assessment Area”) , as described in Exhibit “A” , a copy of which is attached hereto and incorporated herein); and

WHEREAS, the imposition of Security and Landscape Assessments for the provision of security and landscape services, facilities or programs is an equitable and efficient method of allocating and apportioning Security and Landscape Costs among parcels located in the Assessment Area; and

WHEREAS, the Council desires to continue the use of the uniform tax bill method of collection of the annual Security and Landscape Assessments within the Assessment Area, in accordance with Village Ordinance No. 552, which is codified as Article IX (“Assessments” of Chapter 2) “Administration” of the Village Code (the “Master Assessment Ordinance”), and Section 18-121 “Uniform Method of Collection of Security and Landscape Special Assessments” of Chapter 18 of the Village Code, for the Fiscal Year beginning on October 1, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

SECTION 1. AUTHORITY. This resolution is adopted pursuant to the provisions of Article IX of Chapter 2 and Section 18-121 of Chapter 18 of the Village Code, and Sections 166.021 and 166.041, Florida Statutes, and other applicable provisions of law.

SECTION 2. PURPOSE AND DEFINITIONS. This resolution constitutes the Initial Assessment Resolution as defined in the Master Assessment Ordinance. All capitalized words and terms not otherwise defined herein shall have the meanings set forth in the Master Assessment Ordinance. Unless the context indicates otherwise, words imparting the singular number, include the plural number, and vice versa. As used in this Initial Assessment Resolution, the following terms shall have the following meanings, unless the context hereof otherwise requires:

“Assessed Property” means all parcels of land included on the Assessment Roll that receive a special benefit from the delivery of the service, facility or program identified in the Initial Assessment Resolution.

“Assessment Area” means the gated residential section of the Village as described in Exhibit “A”, attached hereto.

“Building” means any structure, whether temporary or permanent, built for support, shelter or enclosure of persons, chattel, or property of any kind.

“Dwelling Unit” means a Building, or a portion thereof, which is located upon Residential Property and lawfully used for residential purposes, consisting of one or more rooms arranged, designed, used, or intended to be used as living quarters for one family unit only. The term Dwelling Unit shall include individual units located within Multifamily Residential Establishments.

“Improved Property” means all property within the Assessment Area on which a Building or other improvements have been placed or constructed.

“Multifamily Residential Establishment” means any structure other than a Single Family Residential Unit which is used, or constructed for use, as a multiple dwelling facility. Multifamily Residential Establishments shall include, without limitation, roominghouses, tourist courts, trailer parks, apartment buildings with rental or cooperative apartments, or multiple-story condominiums with common means of ingress and egress.

“Private Recreational Facility” means a privately owned facility located within the Assessment Area that is designed to provide recreational and social activities for its users and may include boat docks, tennis courts, swimming pools and buildings directly related to and supportive of the recreational activities.

“Residential Property” means all Improved Property containing a Single Family Residential Unit or Multifamily Residential Establishment.

“Single Family Residential Unit” means any structure which is used, or constructed for use, as a single-family dwelling, duplex or townhouse, and which is located on a single lot, parcel or tract of land. The term “Single Family Residential Unit” shall not include any Multifamily Residential Establishment.

“Security and Landscape Program Assessment Roll” means the Assessment Roll as defined in the Ordinances (Master Assessment Ordinance and Village Code Section 18-121) relating to the Security and Landscape Program Assessments.

“Security and Landscape Program Assessment” means an Assessment, as defined in the Master Assessment Ordinance, lawfully imposed by the Village against Assessed Property to fund all or any portion of the cost of the provision of Security and Landscape services, facilities, or programs (the “Security and Landscape Program”) providing a special benefit to property as a consequence of possessing a logical relationship to the value, use, or characteristics of the Assessed Property.

“Security and Landscape Program Cost” means the amount necessary to fund the Village’s provision of the Security and Landscape Program that are allocable to Assessed Property during a Fiscal Year and shall include, but not be limited to: (A) the cost, whether direct or indirect, of all services, programs or facilities provided by the Village, or through contractual arrangements with the Village relating to the provision of security services, facilities or programs within the Assessed Area; (B) the cost, whether direct or indirect, of all services, programs or facilities provided by the Village or through contractual arrangements with the Village relating to the provision of landscaping services (including the care, maintenance, replacement, and installation of landscape materials on swales, medians, open space and parks) within the Assessed Area; (C) the cost of any

indemnity or surety bonds and premiums for insurance; (D) the cost of salaries, volunteer pay, workers' compensation insurance, or other employment benefits; (E) the cost of computer services, data processing, and communications; (F) the cost of training, travel and per diem; (G) the recovery of unpaid or delinquent fees or charges advanced by the Village and due to the provision of Security and Landscape services, programs or facilities allocable to specific parcels; (H) the cost of engineering, financial, legal or other professional services; (I) all costs associated with the structure, implementation, collection, and enforcement of the Security and Landscape Program Assessments or a prior year's assessment for a comparable service, facility or program, including any service charges of the Tax Collector or Property Appraiser; (J) all other costs and expenses necessary or incidental to the acquisition, provision, or delivery of the services, programs or facilities funded by the Security and Landscape Program Assessment, and such other expenses as may be necessary or incidental to any related financing authorized by the Village Council; (K) a reasonable amount for contingency to provide for Security and Landscaping services within the Assessed Area of the Village during hurricanes or other extreme weather events; (L) a reasonable amount for contingency and anticipated delinquencies and uncollectible Security and Landscape Program Assessments; (M) expenditures made in the defense or support of the Security and Landscape Program and (N) reimbursement to the Village or any other person for any monies advanced for any costs incurred by the Village or such person in connection with any of the foregoing items of Security and Landscape Cost.

“Security and Landscape Program” means the maintenance of the security wall surrounding the Assessment Area, the maintenance and operation of the security gate;

the provision, whether direct or indirect, of security personnel to operate the security gate; the provision, whether direct or indirect, of landscaping services (including the care, maintenance, replacement, and installation of landscape materials on swales, medians, open space and parks) within the Assessment Area.

“Unimproved Property” means any vacant lot located within the Assessment Area of the Village.

SECTION 3. LEGISLATIVE DETERMINATIONS OF SPECIAL BENEFIT AND FAIR APPORTIONMENT. It is hereby ascertained, declared and determined that the Security and Landscape Program provides a special benefit to the Assessed Property based upon the following legislative determinations:

General

(A) Upon the adoption of this Initial Assessment Resolution determining the Security and Landscape Costs and identifying the Assessed Property to be included in the Assessment Roll, the legislative determinations of special benefit ascertained and declared in Section 2-372 of the Village Code are hereby ratified and confirmed.

(B) Pursuant to Section 18-121 of the Village Code, the Village has the general authority to impose fees for the provision of the Security and Landscape Program within its jurisdiction.

(C) The imposition of a recurring annual Security and Landscape Program Assessments is an alternative, equitable and efficient method to fairly and reasonably apportion and recover the Security and Landscape Costs experienced by the Village for the provision of the Security and Landscape Program within the Assessment Area.

Special Benefit

(D) The Security and Landscape services, facilities, and programs furnished by the Village possess a logical relationship to the use and enjoyment of the Assessed Property by providing: (1) Security and Landscaping services, facilities, and programs to the Owners and occupants of Assessed Property, (2) better service to Owners and tenants, (3) the enhancement of the aesthetic appeal and enjoyment of Assessed Property, and (4) the protection of property values and the health and safety of the Owners and occupants of Assessed Property resulting from the uniform delivery and availability of such services, facilities, and programs.

(E) The provision of comprehensive Security and Landscape services, facilities and programs furnished by or through the Village to Assessed Property enhances and strengthens the relationship of such services and programs to the use and enjoyment of Assessed Property within the Village.

Apportionment

(F) The size or value of Assessed Property does not determine the scope and cost of the Security and Landscape Program to be provided to such property. The use of Security and Landscape services, facilities, and programs is primarily driven by the existence of a Dwelling Unit or Private Recreational Facility, but also applies to Unimproved Property to a lesser extent.

(G) Apportioning the Security and Landscape Costs for Security and Landscape services provided to Residential Units within the Assessment Area on a per Dwelling Unit

basis to Single Family Residential Properties as identified in Tax Roll data base, is required to avoid cost inefficiency and unnecessary administration, and is a fair and reasonable method of apportioning Security and Landscape Costs. Unimproved Property shall be assessed at 50% of the rate established for Single Family Residential Properties. Private Recreational Facilities shall be assessed at 400% of the rate established for Single Family Residential Properties.

(H) Apportioning the Security and Landscape Costs for Security and Landscape Services provided to Multifamily Residential Establishments within the Assessment Area on a Dwelling Unit basis as identified in the Tax Roll data base, is required to avoid cost inefficiency and unnecessary administration, and is a fair and reasonable method of apportioning Security and Landscape Costs. Unimproved Property shall be assessed at 50% of the rate established for Single Family Residential Properties and Private Recreational Facilities shall be assessed at 400% of the rate established for Single Family Residential Properties in order to ensure there is a fair and reasonable apportionment of Security and Landscape Costs. Each Multifamily Residential Establishment shall be assessed at a rate which is the sum of (a) the Single Family Residential Unit rate for the first unit in the Multifamily Residential Establishment and (b) the product of 40% of the Single Family Residential Unit Rate multiplied by the number of remaining units in the Multifamily Residential Establishment. Each Dwelling Unit within a Multifamily Residential Establishment shall be apportioned an equal share of the Multifamily Residential Establishment rate.

SECTION 4. SECURITY AND LANDSCAPE SERVICES, FACILITIES AND PROGRAMS.

(A) Upon the imposition of Security and Landscape Program Assessments for the provision of Security and Landscape services, facilities or programs against Assessed Property located within the Assessment Area, the Village shall cause Security and Landscape services, facilities or programs to be provided to such Assessed Property. Security and Landscape Costs shall be paid from proceeds of the Security and Landscape Program Assessments.

(B) It is hereby ascertained, determined, and declared that each parcel of Assessed Property will be benefited by the Village's provision of Security and Landscape services, facilities or programs in an amount not less than the Security and Landscape Program Assessment upon such parcel computed in the manner set forth in this Initial Assessment Resolution.

SECTION 5. DETERMINATION OF SECURITY COST AND LANDSCAPE COST; ESTABLISHMENT OF INITIAL SECURITY AND LANDSCAPE PROGRAM ASSESSMENTS.

(A) The Security and Landscape Cost to be assessed and apportioned among benefited parcels for the Fiscal Year beginning October 1, 2018, is \$618,890.40. The approval of this Initial Assessment Resolution determines the amount of the Security and Landscape Cost.

(B) For the Fiscal Year in which Security and Landscape Service Assessments for the provision of Security and Landscape services, facilities or programs are imposed, the Security and Landscape Cost shall be allocated among all Assessed Property within the Assessment Area, based upon the number of Dwelling Units for such parcels. The portion of the Security and Landscape Service Assessment attributable to the cost of

providing security and landscape services is \$2,639.53 for each Single Family Residential Unit, \$1,319.76 for each Unimproved Property and \$10,558.12 for each Private Recreational Facility. Each Multifamily Residential Establishment shall be assessed at a rate which is the sum of (a) the Single Family Residential Unit rate for the first unit in the Multifamily Residential Establishment and (b) the product of 40% of the Single Family Residential Unit Rate multiplied by the number of remaining units in the Multifamily Residential Establishment. Each Dwelling Unit within a Multifamily Residential Establishment shall be apportioned an equal share of the Multifamily Residential Establishment rate.

(C) The rate of the Security and Landscape Program Assessments established in this Initial Assessment Resolution shall be the rates applied by the Village Manager in the preparation of the initial Security and Landscape Program Assessment Roll for the Fiscal Year commencing October 1, 2018, as provided in Section 6 of this Initial Assessment Resolution.

SECTION 6. SECURITY AND LANDSCAPE PROGRAM ASSESSMENT ROLL.

(A) The Village Manager is hereby directed to prepare, or cause to be prepared, an initial Security and Landscape Program Assessment Roll for the Fiscal Year beginning October 1, 2018. Such initial Security and Landscape Program Assessment Roll shall contain the following: (1) a summary description of all Assessed Property within the Village conforming to the description contained on the Tax Roll, (2) the name and address of the owner of record of each Assessed Property as shown on the Tax Roll, (3) the amount of the initial Security and Landscape Program Assessment for Security and Landscape services, facilities or programs, and (4) an accounting demonstrating the

amount of the Security and Landscape Program Assessment attributable to the cost of providing security and landscaping services, facilities and programs. The initial Security and Landscape Program Assessment Roll shall be open to public inspection. The foregoing shall not be construed to require that the initial Security and Landscape Program Assessment Roll be in printed form if the amount of the Security and Landscape Program Assessment for each parcel of property can be determined by use of a computer terminal available to the public. Such Security and Landscape Program Assessment for each parcel of Assessed Property shall be computed by multiplying the applicable assessment rate by the number of Dwelling Units on the Assessed Property in accordance with Section 5 (B) above.

(B) It is hereby ascertained, determined, and declared that the foregoing method of determining the Security and Landscape Program Assessments for the provision of Security and Landscape services, facilities or programs (1) is a fair and reasonable method of apportioning the Security and Landscape Cost among parcels of Assessed Property and (2) is an equitable and efficient mechanism to address payment delinquencies and recover funds advanced for Security and Landscape services, facilities or programs which are allocable to specific parcels of Assessed Property.

SECTION 7. AUTHORIZATION OF PUBLIC HEARING. There is hereby established a public hearing to be held at _____ P.M., on _____, the _____ day of **September 2018**, in the Village Council Chambers, Village Hall, 655 – 96th Street, Bal Harbour, Florida, for the purpose of (A) receiving and considering any comments on the Security and Landscape Program Assessments from affected property owners and (B) authorizing the imposition of such Security and Landscape Program Assessments for

Security and Landscape services, facilities or programs and collection on the same bill as ad valorem taxes as a non ad valorem assessment.

SECTION 8. NOTICE BY PUBLICATION. The Village Clerk shall publish a notice, as required by Section 2-384 of the Village Code, in substantially the form attached hereto as Appendix A. Such notice shall be published not later than _____, 2018 in a newspaper generally circulated in the Village.

SECTION 9. NOTICE BY MAIL. The Village Manager shall provide notice, or direct the provision of notice, by first class mail to the Owners of Assessed Property, as required by Section 2-385 of the Village Code, in substantially the form attached hereto as Appendix B. Such notices shall be mailed not later than _____, 2018. Notice furnished by the Property Appraiser pursuant to the requirements of Section 200.069, Florida Statutes, shall satisfy this Section and may be used in lieu of Appendix B.

SECTION 10. ADJUSTMENT OF PUBLIC HEARING DATE. In the event that the public hearing date or time which is provided for herein is revised because of scheduling or other conflicts, the Village Manager shall revise or direct the revision of the required public notices to conform to the revised date and time of the public hearing.

SECTION 11. EFFECTIVE DATE. This Initial Assessment Resolution shall take effect immediately upon its passage and adoption and shall serve to ratify any action earlier taken by the Village in furtherance of the purposes of this Resolution.

PASSED, ADOPTED AND APPROVED THIS 12th day of June, 2018.

Mayor Gabriel Groisman

ATTEST:

Dwight Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Weiss Serota Helfman Cole & Bierman, P.L.
Village Attorney

Reviewed and Approved by Village Attorney David Wolpin

APPENDIX A
FORM OF NOTICE TO BE PUBLISHED

To Be Published by _____, 2018

**NOTICE OF HEARING TO IMPOSE AND PROVIDE FOR SECURITY AND
LANDSCAPE PROGRAM SPECIAL ASSESSMENTS**

Notice is hereby given that the Village Council of Bal Harbour Village, Florida, will conduct a public hearing to consider continuing to impose security and landscape special assessments against residential properties located within the Gated Residential Section of the Village, as described in Exhibit "A" attached hereto, and to authorize the continued collection of such assessments on the tax bill for the fiscal year beginning October 1, 2018, and future fiscal years.

The security and landscape special assessments will be imposed to fund the cost of providing security and landscaping services, facilities and programs provided to such properties. The Security and Landscape Cost to be assessed and apportioned among benefited parcels for the Fiscal Year beginning on October 1, 2018 is \$618,890.40.

The hearing will be held at **P.M., on _____, the ____ day of September, 2018, in Council Chambers**, Village Hall, 655 – 96th Street, Bal Harbour, Florida, for the purpose of receiving public comment on the proposed assessments, and to impose the assessments. All affected property owners have a right to appear at the hearing and to file written objections with the Village Council within 20 days of this notice. If a person decides to appeal any decision made by the Village Council with respect to any matter considered at the hearing, such person will need a record of the proceedings and may need to ensure that a verbatim record is made, including the testimony and evidence upon which the appeal is to be made. In accordance with the Americans with Disabilities Act, persons needing a special accommodation or an interpreter to participate in this proceeding should contact the Village Clerk at (305)866-4633, at least two days prior to the date of the hearing.

Unless proper steps are initiated in a court of competent jurisdiction to secure relief within 20 days from the date of Village Council action at the above hearing (including the method of apportionment, the rate of assessment and the

imposition of assessments), such action shall be the final adjudication of the issues presented.

The security and landscape assessments will be computed by multiplying the number of dwelling units on each parcel by the applicable rate of assessment. The annual rate of assessment for the upcoming fiscal year and future fiscal years shall be \$2,639.53 for each Single Family Residential Unit, \$1,319.76 for each Unimproved Property and \$10,558.12 for each Private Recreational Facility. Each Multifamily Residential Establishment shall be assessed at a rate which is the sum of (a) the Single Family Residential Unit rate for the first unit in the Multifamily Residential Establishment and (b) the product of 40% of the Single Family Residential Unit Rate multiplied by the number of remaining units in the Multifamily Residential Establishment. Each Dwelling Unit within a Multifamily Residential Establishment shall be apportioned an equal share of the Multifamily Residential Establishment rate. Copies of the assessment roll, showing the amount of the assessment to be imposed against each parcel of property, and the legal documentation relating to the assessments are available for inspection at the office of the Village Clerk, located at Village Hall, 655 – 96th Street, Bal Harbour, Florida.

The assessments will be collected on the ad valorem tax bill to be mailed in November 2018, as authorized by section 197.3632, Florida Statutes. Failure to pay the assessments will cause a tax certificate to be issued against the property which may result in a loss of title.

If you have any questions, please contact the Village at (305) 866-4633, Monday through Friday between 9:00 a.m. and 5:00 p.m.

[INSERT MAP OF VILLAGE WHICH DEPICTS THE GATED RESIDENTIAL SECTION]

**VILLAGE CLERK
BAL HARBOUR VILLAGE, FLORIDA**

APPENDIX B
FORM OF NOTICE TO BE MAILED

FORM OF NOTICE TO BE MAILED

• ***** NOTICE TO PROPERTY OWNER *****

Bal Harbour Village
655-96th Street
Bal Harbour, Florida 33154

BAL HARBOUR VILLAGE, FLORIDA
NOTICE OF HEARING TO IMPOSE AND PROVIDE
FOR THE PROVISION OF SECURITY AND
LANDSCAPE SERVICES THROUGH NON-AD
VALOREM ASSESSMENTS
NOTICE DATE: _____, 2018

Owner Name
Address
Bal Harbour, FL 33154

Tax Parcel # _____
Legal Description _____

As required by Section 197.3632, Florida Statutes, notice is given by Bal Harbour Village (the "Village"), that an annual assessment for the provision of security and landscape services, facilities, and programs using the tax bill collection method, may continue to be levied on your property for the fiscal year October 1, 2018 - September 30, 2019 (FY2018-19) and future fiscal years.

The purpose of the security and landscape services assessment is to fund security and landscape services, facilities, and programs benefiting property located within the Gated Residential Section of the Village as described in Section 18-111(a)(3) of the Village Code. It is estimated that the Village will collect, via the tax bill collection method, \$618,890.40 from the security and landscape service assessments for FY 2018- 19. The annual security and landscape service assessment is based on the number of residential dwelling units contained on each parcel of property. The annual security and landscape service assessment rate for FY 2018-19 is \$2,639.53 per single family residential dwelling unit, \$1,319.76 for Unimproved Parcels, and \$10,558.12 for Private Recreational Facilities. Each Multifamily Residential Establishment shall be assessed at a rate which is the sum of (a) the Single Family Residential Unit rate for the first unit in the Multifamily Residential Establishment and (b) the product of 40% of the Single Family Residential Unit Rate multiplied by the number of remaining units in the Multifamily Residential Establishment. Each Dwelling Unit within a Multifamily Residential Establishment shall be apportioned an equal share of the Multifamily Residential Establishment rate.

Your property has been classified as (single family, multifamily or private recreational facility). The number of dwelling units on your property has been determined to be _____ (number of units). Based upon this information, the annual security and landscape service assessment for your property for FY2018-19 is \$ _____.

A public hearing will be held at _____ P.M. on _____, the _____ day of September, 2018, in Council Chambers, Village Hall, 655 – 96th Street Bal Harbour, Florida 33154 for the purpose of receiving public comment on the proposed assessments, and to impose assessments. You and all other affected property owners have a right to appear at the hearing and to file written objections with the Village Council within 20 days of this notice. If you decide to appeal any decision made by the Village Council with respect to any matter considered at the hearing, you will need a record of the proceedings and may need to ensure that a verbatim record is made, including the testimony and evidence upon which the appeal is to be made. In accordance with the Americans with Disabilities Act, persons needing a special accommodation or an interpreter to participate in this proceeding should contact the Village Clerk at (305) 866-4633, at least two days prior to the date of the hearing.

Unless proper steps are initiated in a court of competent jurisdiction to secure relief within 20 days from the date of Village Council action at the above hearing (including the method of apportionment, the rate of assessment and the imposition of assessments), such action shall be the final adjudication of the issues presented.

Copies of the Master Assessment Ordinance, the Initial Assessment Resolution and the preliminary assessment roll are available for inspection at the Village Clerk's office located at Village Hall, 655 – 96th Street, Bal Harbour, Florida 33154.

The non-ad valorem assessments amounts shown on this notice and the ad valorem taxes for the above parcel will be collected on the ad valorem tax bill mailed in November 2018. Failure to pay the assessments will cause a tax certificate to be issued against the property which may result in a loss of title.

If there is a mistake on this notice, please advise us so that it will be corrected. If you have any questions regarding your assessment, please contact the Village at (305) 866-4633, Monday through Friday between 9:00 a.m. and 5:00 p.m.

*****THIS IS NOT A BILL*****

EXHIBIT "A"
GEOGRAPHIC BOUNDARIES OF ASSESSED AREA

A portion of territorial boundaries of the municipality of Bal Harbour Village, in the County of Miami-Dade and State of Florida, described as follows:

- a. Lots 1 through 3, Block 12A, Resubdivision of Residential Section of Bal Harbour, Plat Book 53, page 15.
- b. All of Blocks 1, 2, 3, 4, 5 and 6, Residential Section of Bal Harbour, Plat Book 44, page 98.
- c. All of Blocks 9, 10, 11 and 12, Residential Section of Bal Harbour, Plat Book 44, page 98.
- d. Tract E, Residential Section of Bal Harbour, Plat Book 44, page 98.

(Excluding Lots 1 and 2 of Block 1 and Lot 3 of Block 12 A of District 3 as such District 3 is described in Village Code Sec. 18-111(a)(3)).

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Jorge M. Gonzalez, Village Manager

FROM: Patricia Cohen, Councilwoman
Jeffrey Freimark, Councilman

DATE: June 12, 2018

SUBJECT: **Discussion regarding Surfside's Firearm Preemption Lawsuit**

Please place an item on the June 12, 2018 Village Council Meeting Agenda for a discussion regarding Surfside's Firearm Preemption Lawsuit.

Thank you.

20 Cities Pile Into Gun Preemption Legal Challenge

by Samantha Joseph

A lawsuit against Florida officials aimed at removing roadblocks that stop local governments from implementing their own gun restrictions is gaining momentum.

Twenty municipalities and 61 elected officials have now joined the litigation as plaintiffs against the state government, Gov. Rick Scott, Attorney General Pamela Jo Bondi, Florida Department of Agriculture and Consumer Services Commissioner Adam Putnam, state Department of Law Enforcement Commissioner Rick Swearingen, Auditor General Sherrill Norman and Florida's Chief Financial Officer Jimmy Patronis.

Their suit comes in the wake of two Florida mass shootings that drew global attention and sparked debates about gun-control and ownership rights under the Second Amendment of the U.S. Constitution. It follows the Feb. 14 shooting at Marjory Stoneman Douglas High School in Parkland that left 17 dead, and the June 2016 massacre at Orlando's Pulse nightclub, where a gunman killed 49 people.

"Municipalities and elected officials from across the state—in urban, suburban and rural communities—have all joined the fight to protect the home rule authority of local governments, and to reflect the passion of their residents," said lead attorney Jamie Cole, managing director of Weiss Serota Helfman Cole & Bierman.

"The state system is one-size-fits-all. The same rules apply in an urban area like downtown Miami, a suburban area like Weston and an agricultural area like Central Florida," he added. "We think that that residents in

they believe the conditions in their city justify such rules."

The state Attorney General's office, which is defending the lawsuit, declined comment, citing a policy that prevents commenting on ongoing litigation.

Plaintiffs filed an amended complaint to an April suit by 10 South Florida cities: Weston, Miramar, Pompano Beach, Pinecrest, South Miami, Miami Gardens, Miami Beach, Coral Gables, Cutler Bay and Lauderhill. They initially included



MELANIE BELL

"Municipalities and elected officials from across the state—in urban, suburban and rural communities—have all joined the fight to protect the home rule authority of local governments, and to reflect the passion of their residents," said lead attorney Jamie Cole.

May 21, 2018

31 elected officials. Their plaintiff list has since doubled, with Boca Raton, Surfside, Tallahassee, North Miami, Orlando, Fort Lauderdale, Gainesville, St. Petersburg, Maitland and Key Biscayne signing on to the complaint filed in Leon Circuit Court. Another 30 politicians also joined the fray.

The plaintiffs hope to persuade the court to invalidate a slew of penalties provided under state law to punish local government officials who pass local gun regulations.

Florida's legislature enacted provisions in 2011 that remove elected officials from office without a hearing, fine them up to \$5,000, and allows unlimited lawsuits against municipalities by plaintiffs who claim local gun regulations impinge on their constitutional rights.

"The law, with all these penalties, has effectively chilled elected officials from taking any action on firearms," Cole said. "This is a unique and unprecedented act to remove from office and penalize local officials, just because they vote a certain way."

Samantha Joseph is a litigation editor in ALM's global newsroom. Grad school: Newhouse Syracuse. Contact: sjoseph@alm.com. On Twitter: @SjosephWriter

Broward and Boca Raton ready to sue state over gun law



Larry Barszewski Contact Reporter

Broward County commissioners decided Tuesday to sue Florida over a [2011 law](#) that prohibits local governments from enacting their own gun laws — and imposes severe penalties on elected officials who try.

Commissioners say they need the change so the county can [pass laws that protect “the health,](#) safety and welfare of its residents and visitors.”

The planned county suit is separate from [one filed a week ago](#) by 10 South Florida cities, who are also seeking the power to regulate firearms locally without paying fines or having their elected officials removed from office. The cities are Weston, Coral Gables, Cutler Bay, Lauderdale, Miami Beach, Miami Gardens, Miramar, the village of Pinecrest, Pompano Beach and South Miami.

Their suit was being served this week to Gov. Rick Scott, Florida Attorney General Pam Bondi and other state officials, said Jamie Cole, an attorney for Weston and other cities.

Meanwhile, three other Broward cities have since stepped forward to challenge the state law. Coral Springs, Coconut Creek and Pembroke Pines filed suit Tuesday, according to The Associated Press.

The city of Boca Raton also plans to join in. With a 4-1 vote on Tuesday night, the Boca City Council approved a resolution to join the lawsuit presented by the 10 cities last week.

Penalties in the state law include a \$5,000 fine, possible removal from office and opening up officials to potential lawsuits seeking additional monetary damages in excess of \$100,000.

Broward County Attorney Drew Meyers said the county's lawsuit challenging the state law is a top priority for his office, but he does not know yet when the complaint will be finished and ready to file in court.

Broward commissioners said the threat of penalties has even kept them from fully enforcing the county's five-day waiting period on the purchase of hand guns — a waiting period that's allowed by the state constitution — because they don't know if any action they take would be seen as violating the 2011 law.



Commissioner Steve Geller said it's not possible that weekend gun shows held in the county are meeting the county requirement, but he said the county can't enforce the waiting period if it can't require sellers to keep better records of their transactions.

“We have a constitutional right. There must be a way of enforcing it,” Geller said.

That’s part of the reason for the suit, Meyers said, to have a court rule on just how far the state can go in blocking local initiatives.

“We have a constitutional power that can’t be pre-empted by the state,” Meyers said.

Commissioners also said they would like to consider passing laws that would require the completion of a criminal background check before someone can purchase guns. Other measures could include restricting the size of large-capacity magazines, enacting zoning regulations that apply to guns and ammunition and precluding guns in areas such as polling places and school administration buildings.

After the [Marjory Stoneman Douglas High School](#) massacre in February, the state approved new rules that raise the age when assault rifles can be purchased from 18 to 21, prohibit mentally disabled individuals from owning guns, ban bump stock attachments that allow guns to fire more rapidly, and allow police to temporarily prevent high-risk individuals from possessing firearms. The [National Rifle Association](#) has already challenged the new law in federal court.

Commissioner Chip LaMarca was the lone vote against having the county sue the state. He said the state this year passed “monumental changes” after the Parkland shooting and thought that’s where future efforts should be.

“I think some of these things can continue to be changed. It’s not our universe to have the conversation,” LaMarca said.

But Commissioner Nan Rich, a former state legislator, said court action is needed.

“Everybody knows that the Legislature is not the place where this is going to happen,” Rich said. “I think it has to be a judicial resolution.”

Staff writer Marci Shatzman contributed to this report.

lbarszewski@SunSentinel.com, 954-356-4556 or

Twitter [@lbarszewski](https://twitter.com/lbarszewski)



Town of Surfside

DISCUSSION ITEM MEMORANDUM

Agenda # 9F

Date: April 10, 2018

From: Daniel Dietch, Mayor
Lillian M. Arango, Town Attorney

Subject: Firearm Preemption Lawsuit

Background: Over the past several years, there have been an unprecedented number of mass shootings in American communities including, most recently, at Marjory Stoneman Douglas High School in Parkland, Florida. In Section 790.33, Florida Statutes, the State of Florida (a) declared that it is occupying the whole field of regulation of firearms and ammunition, to the exclusion of all existing and future county or city ordinances, regulations, or rules, (b) purports to prohibit the enactment of any future ordinances or regulations "relating to firearms," and (c) also purports to create potential liability for damages for actions other than ordinances and regulations, including any "measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced." The purported preemption, by using the terms "relating to firearms" and "any measure, directive, rule, enactment, order or policy promulgated," is broad and vague, and could apply to a panoply of measures that the Town would like to consider enacting, including the restricting of guns in Town-facilities and parks, the placing of signs relating to guns in Town-facilities and parks, the regulation of gun accessories (such as holsters or bump stocks) or the creating of "gun free zones" or "gun safe zones." The potential violation of the broad and vague preemption of firearm regulation in Section 790.33, Florida Statutes, carries the risk of onerous and punitive consequences, including but not limited to, damages up to \$100,000 and fines up to \$5,000 (for which the official may be personally liable), removal from office by the Governor without due process of law, and a prohibition of the use of public funds to pay or reimburse the official for fines, damages or defense costs (collectively, the "Onerous Preemption Penalties").

As a result of the Onerous Preemption Penalties, the Town Commission and its members are effectively prohibited from taking any steps that could even remotely be viewed as a violation of the preemption, creating a chilling effect upon Town action and preventing the Town Commission from responding to the petitions and requests of the Town's residents to do something to protect against the dangers of firearms. The Town Commission may desire to consider various reasonable measures related to firearms, including the restriction of guns in Town-facilities and parks, the placing of signs related to guns in Town-facilities and parks, the regulation of gun accessories (such as holsters or bump stocks), the creation of "gun free zones" or "gun safe zones," or other measures related to guns, but refrain from doing so because any action could possibly be viewed as falling under the preemption and subject to the Onerous Preemption Penalties.

On February 26, 2018, the City of Weston passed Resolution 2018-30, authorizing and directing the City Attorney to file a lawsuit seeking a declaration that the provisions punishing elected officials set forth Section 790.33, Florida Statutes, for violating the preemption related to the regulation of firearms and ammunition are invalid ("Lawsuit"), and invited other local governments to join the Lawsuit. Since the initial resolution adopted by the City of Weston, over ten local municipalities have passed similar resolutions and have elected to join in the Lawsuit. A copy of the sample Resolution to be adopted by the Town Commission should it elect to join the Lawsuit is attached as Exhibit "A" to this Memorandum, and the filed Complaint for Declaratory Relief is attached as Exhibit "B" to this Resolution.

Analysis: The Mayor and Town Attorney are seeking direction on whether the Commission desires to join the Lawsuit and authorize the Town Attorney to file a lawsuit naming the Town, and those, if any, individual members of the Commission (in their official capacity) who choose to participate, as plaintiffs, seeking declaratory and other appropriate relief to challenge the Onerous Preemption Penalties contained in Section 790.33, Florida Statutes, based upon appropriate legal theories. The Town Attorney will charge the Town a flat fee of \$10,000 to represent the Town and the individual members of the Commission (in their official capacity) who choose to participate as plaintiffs, for the litigation and all appeals. If more than 15 cities choose to have the Town Attorney's law firm represent them, the flat fee will be reduced by 1% for each city over 15 up to a maximum reduction of 25% (which would lower the fee to \$7,500 if 40 or more cities have the Town Attorney's law firm represent them), and refund any amounts paid in excess of the reduced flat fee. The Town also acknowledges that the Town Attorney's law firm will be representing other local governments and officials in this Lawsuit and waives any conflicts related to such representation.

Budget Impact: A flat fee of \$10,000 to represent the Town and the individual members of the Commission (in their official capacity) who choose to participate as plaintiffs, in the litigation and all appeals. The flat fee may be reduced depending on the number of cities that join the Lawsuit.

Staff Impact: Minimal staff time is anticipated for the oversight and monitoring of the Lawsuit.

Recommendation: The Mayor and Town Attorney are seeking direction on whether the Town, and individual commissioners electing to be named as plaintiffs in their official capacity, elect to join the Lawsuit and challenge the Onerous Preemption Penalties.



Daniel Dietch, Mayor



Lillian M. Arango,
Weiss Serota Helfman Cole & Bierman, P.L.,
Town Attorney

RESOLUTION NO. 18-2504

A RESOLUTION OF THE MAYOR AND TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, RATIFYING THE AUTHORIZATION AND DIRECTION TO FILE A LAWSUIT SEEKING A DECLARATION THAT THE PROVISIONS PUNISHING ELECTED OFFICIALS SET FORTH IN SECTION 790.33, FLORIDA STATUTES, FOR VIOLATING THE PREEMPTION RELATED TO THE REGULATION OF FIREARMS AND AMMUNITION ARE INVALID, AND INVITING OTHER LOCAL GOVERNMENTS TO JOIN THE LAWSUIT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, over the past several years there have been an unprecedented number of mass shootings in American communities including, most recently, at Marjory Stoneman Douglas High School in Parkland, Florida; and

WHEREAS, National and State leaders continue to fail to act to implement sensible gun law reforms that are supported by a majority of the nation; and

WHEREAS, in Section 790.33, Florida Statutes, the State of Florida (a) declared that it is occupying the whole field of regulation of firearms and ammunition, to the exclusion of all existing and future county or city ordinances, regulations, or rules, (b) purports to prohibit the enactment of any future ordinances or regulations “relating to firearms,” and (c) also purports to create potential liability for damages for actions other than ordinances and regulations, including any “measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced”; and

WHEREAS, the purported preemption, by using the terms “relating to firearms” and “any measure, directive, rule, enactment, order or policy promulgated,” is extremely broad and vague, and could apply to a panoply of measures that the Town would like to consider enacting, including the restricting of guns in Town facilities and parks, the placing of signs relating to guns in Town facilities and parks, the regulation of gun accessories (such as holsters, high capacity magazines, or bump stocks) or the creating of “gun free zones” or “gun safe zones”; and

WHEREAS, the potential violation of the broad and vague preemption of firearm regulation in Section 790.33, Florida Statutes, carries the risk of onerous and punitive consequences, including but not limited to damages up to \$100,000 and fines up to \$5,000 (for which the official may be personally liable), removal from office by the Governor without due process of law, and a prohibition of the use of public funds to pay or reimburse the official for fines, damages or defense costs (collectively, the “Onerous Preemption Penalties”); and

WHEREAS, as a result of the Onerous Preemption Penalties, the Town Commission and its members fear taking any steps that could even remotely be viewed as a violation of the

preemption, creating a chilling effect upon Town action and preventing the Town Commission from responding to the petitions and requests of the Town's residents to do something to protect against the dangers of firearms; and

WHEREAS, the Town Commission and its members desire to consider various reasonable measures related to firearms, including the restriction of guns in Town facilities and parks, the placing of signs related to guns in Town facilities and parks, the regulation of gun accessories (such as holsters, high capacity magazines, or bump stocks), the creation of "gun free zones" or "gun safe zones," or other measures related to guns, but have refrained from doing so because they could possibly be viewed as falling under the preemption and be subjected to the Onerous Preemption Penalties; and

WHEREAS, the Onerous Preemption Penalties strike at the core of the American system of democratic representation: they suppress, in an insidious, Orwellian fashion, the voice of the local electorate through intimidation of local elected officials; and

WHEREAS, the Onerous Preemption Penalties infringe on the free speech rights of the Town Commission and its members, and interfere with their ability to perform their official duties; and

WHEREAS, the Onerous Preemption Penalties infringe upon the legislative immunity the members of the Town Commission enjoy under law when casting votes in their official capacities; and

WHEREAS, the portion of the Onerous Preemption Penalties related to the removal from office by the Governor conflicts with Article 4, Section 7 of the Florida Constitution, by allowing the Governor to remove a municipal official who has not been indicted for any crime, and violates due process; and

WHEREAS, on February 26, 2018, the City of Weston passed Resolution 2018-30, authorizing and directing its City Attorney (Weiss Serota Helfman Cole & Bierman, the "Firm") to file a lawsuit seeking a declaration that the provisions punishing elected officials set forth in Section 790.33, Florida Statutes, for violating the preemption related to the regulation of firearms and ammunition are invalid ("Lawsuit"), and invited other local governments to join the Lawsuit; and

WHEREAS, the Town desires to join the Lawsuit and invite other local governments to join also; and

WHEREAS, the Town Commission believes it is in the best interest of the citizens and residents of the Town to file a lawsuit seeking a declaration that the Onerous Preemption Penalties are invalid and urging other local governments to join the lawsuit as plaintiffs with the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:

Section 1: **Recitals.** The above Recitals are true and correct and incorporated herein by this reference.

Section 2: **Authorization.** The Town Commission hereby ratifies the authorization and direction to file a lawsuit naming the Town and those individual Members of the Commission in their official capacity who choose to participate, as plaintiffs (Mayor Daniel Dietch, Vice Mayor Daniel Gielchinsky, Commissioner Michael Karukin and Commissioner Tina Paul), seeking declaratory and other appropriate relief to challenge the Onerous Preemption Penalties contained in Section 790.33, Florida Statutes, based upon any appropriate legal theories, including those set forth above.

Section 3: **Attorneys' Fee.** The Firm is hereby retained to represent the Town in this litigation. The Firm will charge the Town a flat fee of \$10,000 to represent the Town and the individual Members of the Commission in their official capacity who choose to participate as plaintiffs (Mayor Daniel Dietch, Vice Mayor Daniel Gielchinsky, Commissioner Michael Karukin and Commissioner Tina Paul), for the litigation, including all appeals. If more than 15 cities choose to have the Firm represent them, the flat fee will be reduced by 1% for each city over 15 up to a maximum reduction of 25% (which would lower the fee to \$7,500 if 40 or more cities have the Firm represent them), and refund any amounts paid in excess of the flat fee. The Town also acknowledges that the Firm will be representing other local governments and officials in this lawsuit and waives any conflicts related to such representation. The Firm's retention may be subject to execution of a retainer agreement between the Town and the Firm consistent with the terms set forth herein and which addresses any conflict of interest waivers.

Section 4: **Urging Other Local Governments.** The Town Commission invites and urges other local governments and elected officials to join the Town as plaintiffs in the lawsuit and to coordinate their efforts with the Town.

Section 5: **Town Clerk Responsibilities.** The Town Clerk is directed to distribute this Resolution to all local governments in Miami-Dade County.

Section 6: **Authority.** That the appropriate Town Officials are hereby authorized to do all things necessary and expedient to carry out the aims of this Resolution.

Section 7: **Effective Date.** That this Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 8th day of May, 2018.

Motion by Commissioner Paul
Second by Vice Mayor Gielchinsky.

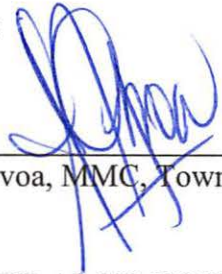
Commissioner Barry Cohen
Commissioner Michael Karukin
Commissioner Tina Paul
Vice Mayor Daniel Gielchinsky
Mayor Daniel Dietch

yes
yes
yes
yes
yes



Daniel Dietch, Mayor

ATTEST:



Sandra Novoa, MMC, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE TOWN OF SURFSIDE ONLY:**



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT IN AND FOR LEON
COUNTY, FLORIDA

CASE NO.

CITY OF WESTON, FLORIDA;
MAYOR DANIEL J. STERMER,
COMMISSIONER MARGARET BROWN,
and COMMISSIONER BYRON L. JAFFE,
each as elected officials of the City of Weston,
Florida;

CITY OF MIRAMAR, FLORIDA;
MAYOR WAYNE M. MESSAM,
COMMISSIONER YVETTE COLBOURNE,
COMMISSIONER WINSTON F. BARNES,
and COMMISSIONER DARLINE B. RIGGS,
each as elected officials of the City of Miramar,
Florida;

CITY OF POMPANO BEACH, FLORIDA;
and MAYOR LAMAR FISHER,
as an elected official of the City of Pompano
Beach, Florida;

VILLAGE OF PINECREST, FLORIDA;
MAYOR JOSEPH M. CORRADINO,
VICE-MAYOR CHERI BALL,
COUNCILMEMBER ANNA
HOCHKAMMER, COUNCILMEMBER
DOUG KRAFT, and COUNCILMEMBER
JAMES E. MCDONALD, each as elected
officials of the Village of Pinecrest, Florida;

CITY OF SOUTH MIAMI, FLORIDA;

CITY OF MIAMI GARDENS, FLORIDA;
MAYOR OLIVER G. GILBERT, III, VICE-
MAYOR ERHABOR IGHODARO, PH. D.,
COUNCILMEMBER LISA C. DAVIS,
COUNCILMEMBER RODNEY HARRIS,
COUNCILMEMBER LILLIE Q. ODOM,
COUNCILMEMBER FELICIA ROBINSON,
and COUNCILMEMBER DAVID
WILLIAMS, JR., each as elected officials of the

City of Miami Gardens, Florida;
CITY OF MIAMI BEACH, FLORIDA;
MAYOR DANIEL GELBER,
COMMISSIONER MICKY STEINBERG,
COMMISSIONER MARK SAMUELIAN,
COMMISSIONER MICHAEL GÓNGORA,
COMMISSIONER KRISTEN GONZALEZ,
COMMISSIONER RICKY ARRIOLA, and
COMMISSIONER JOHN ALEMÁN
each as elected officials of the City of Miami
Beach, Florida;

CITY OF CORAL GABLES, FLORIDA; and
MAYOR RAUL VALDES-FAULI,
as an elected official of the City of Coral
Gables, Florida;

TOWN OF CUTLER BAY, FLORIDA;
MAYOR PEGGY R. BELL, and
COUNCILMEMBER ROGER CORIAT,
each as elected officials of the Town of Cutler
Bay, Florida; and

CITY OF LAUDERHILL, FLORIDA; and
MAYOR RICHARD J. KAPLAN, as an elected
official of the City of Lauderhill, Florida,

Plaintiffs,

vs.

THE HONORABLE RICHARD “RICK”
SCOTT, in his official capacity as Governor of
the State of Florida, and in his official capacity
as head of the Department of Revenue;

THE HONORABLE PAMELA JO BONDI, in
her official capacity as Attorney General of the
State of Florida;

THE HONORABLE ADAM H. PUTNAM,
in his official capacity as Commissioner,
Florida Department of Agriculture and
Consumer Services;

THE HONORABLE RICK SWEARINGEN,

in his official capacity as Commissioner,
Florida Department of Law Enforcement;

THE HONORABLE SHERRILL F. NORMAN,
in her official capacity as Auditor General of
the State of Florida; and

THE HONORABLE JIMMY PATRONIS, in
his official capacity as Chief Financial Officer
of the State of Florida,

Defendants.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs bring this action against Defendants for declaratory relief, and state as follows:

Overview

1. This is an action by numerous Florida municipalities and elected officials challenging the onerous, unconstitutional, and unprecedented penalties contained in section 790.33, Florida Statutes. The penalties are imposed whenever a municipality or its officials are found to have violated or impinged upon the State Legislature's purportedly exclusive occupation of the field of regulation of firearms and ammunition.

2. Normally, the enactment of a law in violation of express preemption will, at most, result in a declaration that the law is null and void. The penalty provisions of section 790.33 go much further, threatening an official who violates section 790.33(1) with removal from office with no hearing and a civil fine of up to \$5,000 that must be paid personally by the official. Additionally, public funds may not be used to defend the official. Further, the violation of section 790.33(1) can lead to unlimited lawsuits by any persons or organizations that claim to be "adversely affected" by the law, exposing the municipality to substantial damages and attorneys'

fees. Finally, section 790.33(3)(b) specifically precludes the municipality from claiming good faith or reliance upon advice of counsel as a defense.

3. These onerous penalties are vindictive and expressly intended to be punitive in nature. *See* § 790.33(2), Fla. Stat. As a result, the penalties deter and chill officials from taking *any* actions in the area of firearms and ammunition, even in those areas where such actions are (or may be) allowed. *See, e.g.*, § 790.33(4), Fla. Stat.

4. The penalties are improper and must be declared null and void because they: (1) violate constitutional limitations on gubernatorial authority with respect to municipal officers; (2) conflict with the constitutional right of elected officials to legislative immunity in connection with their performance of legislative activities; (3) conflict with the constitutional right of municipalities to be immune from suit for discretionary functions; (4) are overbroad, in violation of local officials' free speech rights; (5) are unconstitutionally vague; (6) are irrational, arbitrary, and capricious; and (7) violate the right to petition and instruct local elected officials.

Jurisdiction and Venue

5. This is an action for declaratory relief, pursuant to Chapter 86, Florida Statutes, seeking to declare that the penalty provisions contained in section 790.33(3), Florida Statutes, are unconstitutional and invalid. The Court has jurisdiction to grant declaratory relief. *See* §§ 86.011, 86.021, 86.101, Fla. Stat.; *Martinez v. Scanlan*, 582 So. 2d 1167, 1170 (Fla. 1991).

6. Venue is proper in Leon County because the Defendants are all located in, or have their principal headquarters in, Leon County, Florida.

7. All conditions precedent to the institution of this lawsuit have been, or will be, satisfied or waived.

The Parties

8. The Plaintiffs are all incorporated municipalities existing under the laws of the State of Florida (the “Municipal Plaintiffs”) and elected officials in those municipalities (the “Elected Official Plaintiffs”) (together, the “Plaintiffs”). The Plaintiffs consist of:

- a. The Weston Plaintiffs. The CITY OF WESTON (“Weston”) is a municipality existing under the laws of the State of Florida, and is located in Broward County, Florida. DANIEL J. STERMER is the duly elected Mayor of Weston. COMMISSIONERS MARGARET BROWN and BYRON L. JAFFE are duly elected Commissioners of Weston.
- b. The Miramar Plaintiffs. The CITY OF MIRAMAR (“Miramar”) is a municipality existing under the laws of the State of Florida, and is located in Broward County, Florida. WAYNE M. MESSAM is the duly elected Mayor of Miramar. COMMISSIONERS YVETTE COLBOURNE, WINSTON F. BARNES and DARLINE B. RIGGS are duly elected Commissioners of Miramar.
- c. The Pompano Beach Plaintiffs. The CITY OF POMPANO BEACH (“Pompano Beach”) is a municipality existing under the laws of the State of Florida, and is located in Broward County, Florida. LAMAR FISHER is the duly elected Mayor of Pompano Beach.
- d. The Pinecrest Plaintiffs. The VILLAGE OF PINECREST (“Pinecrest”) is a municipality existing under the laws of the State of Florida, and is located in Miami-Dade County, Florida. JOSEPH M. CORRADINO is the duly elected Mayor of Pinecrest. CHERI BALL is the duly elected Vice-Mayor of Pinecrest.

COUNCILMEMBERS ANNA HOCHKAMMER, DOUG KRAFT, and JAMES E. MCDONALD are duly elected Councilmembers of Pinecrest.

- e. The South Miami Plaintiff. The CITY OF SOUTH MIAMI (“South Miami”) is a municipality existing under the laws of the State of Florida, and is located in Miami-Dade County, Florida.
- f. The Miami Gardens Plaintiffs. The CITY OF MIAMI GARDENS (“Miami Gardens”) is a municipality existing under the laws of the State of Florida, and is located in Miami-Dade County, Florida. OLIVER G. GILBERT, III, is the duly elected Mayor of Miami Gardens. ERHABOR IGHODARO, PH. is the duly elected Vice-Mayor of Miami Gardens. COUNCILMEMBERS LISA C. DAVIS, RODNEY HARRIS, LILLIE Q. ODOM, FELICIA ROBINSON and DAVID WILLIAMS, JR are duly elected Councilmembers of Miami Gardens.
- g. The Miami Beach Plaintiffs. The CITY OF MIAMI BEACH (“Miami Beach”) is a municipality existing under the laws of the State of Florida, and is located in Miami-Dade County, Florida. DANIEL GELBER is the duly elected Mayor of Miami Beach. COMMISSIONERS MICKY STEINBERG, MARK SAMUELIAN, MICHAEL GÓNGORA, KRISTEN GONZALEZ, RICKY ARRIOLA, and JOHN ALEMÁN are duly elected Commissioners of Miami Beach.
- h. The Coral Gables Plaintiffs. The CITY OF CORAL GABLES (“Coral Gables”) is a municipality existing under the laws of the State of Florida and is located in Miami-Dade County, Florida. RAUL VALDES-FAULI is the duly elected Mayor of Coral Gables.

- i. The Cutler Bay Plaintiffs. The TOWN OF CUTLER BAY (“Cutler Bay”) is a municipality existing under the laws of the State of Florida and is located in Miami-Dade County, Florida. PEGGY R. BELL is the duly elected Mayor of Cutler Bay. COUNCILMEMBER ROGER CORIAT is a duly elected Councilmember of Cutler Bay.
 - j. The Lauderhill Plaintiffs. The CITY OF LAUDERHILL (“Lauderhill”) is a municipality existing under the laws of the State of Florida and is located in Broward County, Florida. MAYOR RICHARD J. KAPLAN is the duly elected Mayor of Lauderhill.
9. Each of the Elected Official Plaintiffs performs legislative functions as part of his or her responsibilities as an elected representative, including, but not limited to, participating in public deliberations and voting on the adoption of ordinances and resolutions relating to the health, safety, and general welfare of the citizens of his or her respective municipality. Nearly all of the Elected Official Plaintiffs receive a salary from his or her respective municipality in compensation for his or her performance and services. Each Elected Official Plaintiff has taken an oath to uphold the Florida Constitution.
10. Each of the Municipal Plaintiffs is a municipality established pursuant to Article VIII, Section 2(a) of the Florida Constitution and is authorized to exercise home rule powers pursuant to Article VIII, Section 2(b) of the Florida Constitution.
11. The governing body for each of the Municipal Plaintiffs has affirmatively passed, by majority vote, resolutions indicating that the Municipal Plaintiffs would consider firearms-related measures if not for the preemption statute and its penalties, and each of the Elected Official Plaintiffs voted for those resolutions.

12. THE HONORABLE RICHARD “RICK” SCOTT (“Scott”) is the Governor of the State of Florida and is sued in his official capacity. Scott is a proper defendant in this action because the Governor is expressly designated as the official to enforce section 790.33(3)(e), Florida Statutes, regarding the removal from office of an official for violation of section 790.33(1), Florida Statutes. The Governor is also expressly designated in the Florida Constitution as the person who can initiate judicial proceedings against any county or municipal officer to enforce compliance with any duty or to restrain any unauthorized act, including any alleged violations of section 790.33(1), Florida Statutes. See Art. 4, § 1(b), Fla. Const. The Governor’s antagonistic position is further established by the fact that he signed into law the legislation that is now section 790.33, Florida Statutes, and challenged herein.

13. THE HONORABLE PAMELA JO BONDI (“Bondi”) is the Attorney General of the State Florida and is sued in her official capacity. Bondi is a proper defendant in this action because the Attorney General is the chief law enforcement officer of the State and is expressly designated to enforce a portion of Chapter 790, to which the preemption and penalties in section 790.33 apply. Specifically, the Attorney General is designated to enforce the provisions that prohibit the registries and listing of gun owners, § 790.335(5)(c), Fla. Stat., and the provisions that relate to the right to bear arms in motor vehicles, § 790.251(6), Fla. Stat. The Attorney General also has the general right and authority to defend the constitutionality of state laws and, in fact, has intervened in at least one prior legal proceeding seeking to defend the validity of the preemption penalties found in section 790.33.

14. THE HONORABLE ADAM H. PUTNAM (“Putnam”) is the Commissioner of the Florida Department of Agriculture and Consumer Services (“FDOACS”) and is sued in his official capacity. Putnam is a proper defendant in this action because FDOACS is expressly

designated to enforce and administer a portion of Chapter 790, to which the preemption and penalties in section 790.33 apply. Specifically, FDOACS is designated to enforce and administer the concealed weapons license regulations and program pursuant to section 790.06, Florida Statutes.

15. THE HONORABLE RICK SWEARINGEN (“Swearingen”) is the Commissioner of the Florida Department of Law Enforcement (“FDLE”) and is sued in his official capacity. Swearingen is a proper defendant in this action because FDLE is expressly designated to enforce and administer a portion of Chapter 790 for which the preemption and penalties in section 790.33 apply. Specifically, FDLE is designated to enforce and administer the provisions related to the sale of firearms pursuant to section 790.65(1)(a), Florida Statutes.

16. THE HONORABLE SHERRILL F. NORMAN (“Norman”) is the Auditor General of the State of Florida and is sued in her official capacity. Norman is a proper defendant in this action because, through her audit and review functions under section 11.45, Florida Statutes, the Auditor General is the official responsible for ensuring that municipalities do not use public funds for improper purposes. Thus, the Auditor General would be the responsible official to enforce the provision in section 790.33(3)(d), Florida Statutes, that prohibits the use of public funds to defend against or reimburse expenses incurred in defending an alleged violation of section 790.33(1), Florida Statutes.

17. THE HONORABLE JIMMY PATRONIS (“Patronis”) is the Chief Financial Officer (“CFO”) of the State of Florida and is sued in his official capacity. Patronis is a proper defendant in this action because the CFO is the official responsible for depositing and accounting for the fines issued and collected pursuant to section 790.33(3)(c), Florida Statutes.

18. Defendants Scott, Bondi, Putnam, and Patronis, collectively, also constitute the head of the Florida Department of Revenue and are being sued in that official capacity as well. The Florida Department of Revenue is the official State agency responsible for receiving the fines issued and collected pursuant to section 790.33(3)(c), Florida Statutes.

19. Defendants Scott, Bondi, Putnam, Swearingen, Norman, and Patronis each have an actual, cognizable interest in this action for, among other things, the reasons stated above.

BACKGROUND

Home Rule Powers And Preemption Generally

20. Prior to 1968, Florida operated under “Dillon’s Rule,” which provided that municipalities only had those powers that were expressly given to them by the State.

21. This changed with the approval by the voters of the 1968 Florida Constitution, which gave broad home rule powers to municipalities in Article VIII, Section 2(b):

Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

22. Consistent with the new home rule powers given to municipalities by Florida’s electors, the Florida Legislature adopted the Home Rule Powers Act, which provided that “[t]he legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except . . . any subject expressly preempted to state or county government by the constitution or by general law.” § 166.021(3), Fla. Stat.

23. The Plaintiffs do not dispute in this action the power of the State, generally, to preempt certain subject matters from regulation by municipalities. In fact, the State has preempted several subject areas, including, *inter alia*, signs for gas stations and franchises, the

activities and operations of pest control services, the operation of the state lottery, the use of electronic communication devices in motor vehicles, inter-district transfers of groundwater, mobile home lot rents, minimum wage, short-term rentals, plastic bags, and managed honeybee colonies. However, other than in connection with the firearm preemption that is the subject of this action, the State has never created legislation that would impose penalties on local officials and local governments for the violation of a preemption statute. In every other circumstance, the only consequence of a determination that local action violates express preemption would be a finding that such local action is null and void.

The Firearm Preemption

24. In 1987, the Legislature enacted the Joe Carlucci Uniform Firearms Act, which is codified in section 790.33, Florida Statutes. The statute was amended to its current version in 2011.

25. The general preemption of regulations of firearms and ammunition is set forth in section 790.33(1), Florida Statutes, and will be referred to hereafter as the “Firearm Preemption”:

PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.

26. Notwithstanding the broad language of the Firearm Preemption, the Municipal Plaintiffs retain some authority to regulate and operate in the area of firearms and ammunition, as well as in areas unrelated to firearm regulation that may affect the use and possession of

firearms. Not only does this Firearm Preemption language not apply to regulations that are related to, but not necessarily encapsulated within, the field of firearms and ammunition itself, section 790.33 expressly incorporates exceptions to the Firearm Preemption. For example, section 790.33(1) does not prohibit: zoning ordinances that encompass firearms businesses; law enforcement agencies from enacting or enforcing regulations pertaining to firearms, ammunition, or firearm accessories issued to or used by peace officers in the course of their official duties; or any entity from regulating or prohibiting the carrying of firearms and ammunition by an employee of the entity during and in the course of the employee's official duties. § 790.33(4)(a)–(c), Fla. Stat. Additionally, there is a provision requiring local jurisdictions to enforce state firearm laws. § 790.33(2)(a), Fla. Stat.

27. Although the Municipal Plaintiffs and the Elected Official Plaintiffs are allowed (and in one case required) to act in the area of firearms and ammunition, the permissible actions are vague and ambiguous. For example, while the Firearm Preemption applies only to “ordinances and regulations,” section 790.33(3)(a) also refers to “administrative rule[s],” and section 790.33(3)(f) suggests it may apply to any “measure, directive, rule, enactment, order or policy promulgated.” Additionally, although the Firearm Preemption applies only to “firearms and ammunition,” another section also mentions, but does not define, firearm “components.” § 790.33(2)(a), Fla. Stat. Indeed, many of the terms in section 790.33 are not defined, leading to further uncertainty.

28. As a result of the conflicting and undefined terms, as well as the lack of clarity in section 790.33, municipal attorneys are unable to give assurances to municipalities and elected officials that any particular desired act relating to or impacting firearms is free of risk of being

found to be preempted, even acts that the attorney’s legal analysis would suggest are likely not preempted.

The Onerous Consequences For Impinging Upon Or Violating the Firearm Preemption

29. Normally, ambiguity in a preemption statute would not prevent a municipality or its elected officials from acting in accordance with the wishes of their constituents. They would, instead, in good faith and upon reliance of advice of counsel, engage in reasonable regulation despite the lack of certainty, knowing that the consequence of a legal determination of preemption would be limited to a finding that the regulation is null and void.

30. However, in 2011, penalties were specifically added to section 790.33 that apply to both individual elected officials and local governments. The Legislature’s stated intent in imposing these penalties was to chill and deter local governments from taking *any* action at all that might affect firearms, even when such action might not be preempted. Section 790.33(2)(b) states:

It is further the intent of this section to deter and prevent the violation of this section and the violation of rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof, by the abuse of official authority that occurs when enactments are passed in violation of state law or under color of local or state authority.

31. In order to ensure that there would be no “abuse of official authority,” onerous (and unprecedented) consequences were enacted for the violation or impingement of the Firearm Preemption (collectively, the “Onerous Preemption Penalties”), which also requires members of the judicial branch of government to inquire into the hearts and minds of members of the legislative branch to determine whether the alleged violation was “knowing and willful”:

- a. Potential removal from office. Section 790.33(3)(e) provides that “[a] knowing and willful violation of any provision of this section by a person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance or administrative rule or regulation prohibited under paragraph (a) or otherwise under color of law shall be cause for termination of employment or contract or *removal from office by the Governor.*”
- b. Potential civil fine. Section 790.33(3)(c) provides that “[i]f the court determines that a violation was knowing and willful, the court shall assess a *civil fine of up to \$5,000* against the elected or appointed local government official or officials or administrative agency head under whose jurisdiction the violation occurred.”
- c. Prohibition on use of public funds for legal defense. Section 790.33(3)(d) provides that “[e]xcept as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated this section.”
- d. Potential civil liability for damages up to \$100,000 and attorneys’ fees. Section 790.33(3)(f) provides that “[a] person or an organization whose membership is *adversely affected* by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of this section may file suit against any county, agency, municipality, district, or other entity in any court of this state having jurisdiction over any defendant to the suit for declaratory and injunctive relief and for *actual damages*, as limited herein, caused by the violation.” It further provides that “[a] court shall award the prevailing plaintiff in any such suit: 1. Reasonable attorney’s fees and costs in

accordance with the laws of this state, including a contingency fee multiplier, as authorized by law; and 2. The actual damages incurred, but not more than \$100,000.” In addition, pursuant to section 790.33(3)(b), “[i]t is no defense that in enacting the ordinance, regulation, or rule the local government was acting in good faith or upon advice of counsel.” Thus, even a good faith, unintentional violation of the preemption statute, done upon advice of counsel, could still result in an unlimited number of lawsuits against a Plaintiff Municipality for damages and attorneys’ fees.

The Desire, But Inability, Of Plaintiffs To Act In The Area Of Firearms

32. Over the past several years, there have been an unprecedented number of mass shootings in American communities, including at Marjory Stoneman Douglas High School in Parkland, Florida, on February 14, 2018. As a result, many students throughout the country, as well as many adults, have petitioned and instructed their elected officials, including the Elected Official Plaintiffs, to take some action regarding firearms and ammunition to increase public safety.

33. Consistent with their constitutional authority, the Elected Official Plaintiffs and Municipal Plaintiffs desire to take reasonable, constitutional actions relating to firearms and have considered a panoply of possible measures, including, but not limited to, the restricting of guns in municipal-owned facilities and parks, the placing of signs relating to guns in municipal-owned facilities and parks, the regulation of gun accessories (such as holsters or high capacity magazines), or the creation of “gun free zones” or “gun safe zones.” These and other possible measures have been discussed by the Plaintiffs, but the attorneys for the Plaintiffs have warned them about the risk of the Onerous Preemption Penalties, even as to measures that are likely not

preempted by the Firearm Preemption, but could nonetheless result in costly litigation, the cost of which would be largely borne by the elected officials personally.

34. The Plaintiffs have also been threatened with the Onerous Preemption Penalties to the extent they seek to enact, promulgate, or enforce any regulation relating to firearms or ammunition. Most recently, a gun rights organization, which has sued a number of local governments under section 790.33 in the past, threatened litigation when the Coral Gables Plaintiffs considered enacting certain firearm-related measures and took a preliminary vote in February 2018 in favor of passing one such a measure. Through an email from its general counsel to the Coral Gables City Attorney, the entity reminded the City Attorney about a recent lawsuit in which it had sued a different South Florida city (and several of the city's employees) over a zoning measure that related to firearms. Additionally, a member of the public told the Coral Gables Plaintiffs that he and that same gun rights organization "will in fact sue" if the city so much as passed the proposed gun-related measures on first reading, and he also told the Coral Gables Mayor that he will "urge Governor Scott to remove you from office and fine you individually as permitted under Florida statutes."

35. Because of the actual and imminent threat of the imposition of the Onerous Preemption Penalties, the Elected Official Plaintiffs and Municipal Plaintiffs are uncertain as to their rights and responsibilities and fear taking any action that could even remotely be viewed as a violation of the Firearm Preemption.

36. Accordingly, the Plaintiffs have suspended or refrained from consideration of reasonable firearms measures that express the political views of the Municipal Plaintiffs and their citizens, and which may be appropriate for the specific circumstances of that municipality (as opposed to the "one size fits all" approach of the State), thus making the constitutionality of

the penalties an issue that is capable of repetition, yet evading review. In short, the Onerous Preemption Penalties have created the intended chilling effect upon taking any action and preventing the Plaintiffs from responding to the petitions and requests of their constituents relating to firearms.

Expedited Consideration

37. Section 86.111, Florida Statutes, provides for expedited consideration of actions for declaratory relief, and the Municipal Plaintiffs and the Elected Official Plaintiffs hereby request such consideration.

COUNT I

**VIOLATION OF CONSTITUTIONAL LIMITATIONS ON GUBERNATORIAL
AUTHORITY WITH RESPECT TO MUNICIPAL OFFICERS
(Elected Official Plaintiffs Against Defendant Scott)**

38. The Elected Official Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

39. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that the removal penalty provided for in section 790.33(3)(e), Florida Statutes, violates the constitutional limitations on the Governor's authority to remove municipal elected officials from office.

40. The authority of the Governor vis-à-vis duly elected municipal officials is circumscribed by the Florida Constitution, and the Legislature lacks the authority to expand the Governor's authority through section 790.33(3)(e), which purports to allow the Governor to remove from office "any person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance or administrative rule or regulation prohibited under paragraph (a)," if that official violated the Firearm Preemption in a "knowing and willful" manner.

41. Article IV, Section 7(c) of the Florida Constitution provides that “[b]y order of the governor, any elected municipal officer *indicted for crime* may be *suspended* from office until acquitted and the office filled by appointment for the period of suspension, not to extend beyond the term, unless these powers are vested elsewhere by law or the municipal charter.” (emphasis added).

42. There is, however, no constitutional authority for the Governor to remove from office any municipal elected official simply because that individual knowingly and willfully violated the Firearm Preemption. Even a knowing and willful violation of the Firearm Preemption is not tantamount to an indictment for committing a crime. Moreover, the constitutional authority conferred by Article IV, Section 7(c) merely provides for the *suspension* of the indicted municipal official, not his or her automatic and permanent removal.

43. In fact, the Governor’s authority to remove a county official pursuant to section 790.33(3)(e), Florida Statutes, has already been stricken as unconstitutional because the purported statutory authority exceeded the Governor’s constitutional authority to suspend county officials pursuant to Article IV, Section 7 of the Florida Constitution. *Marcus v. Scott*, 2014 WL 3797314 (Fla. 2d Jud. Cir. June 2, 2014).

44. The court’s reasoning in *Marcus* is instructive here:

This Court further finds that [section 790.33] may not constitutionally authorize the Governor to remove Plaintiffs from office in the event that they are found to have committed a knowing and willful violation of the State’s preemption of firearms regulation. Article IV, section 7, Florida Constitution, authorizes the Governor only to suspend county commissioners and recommend their removal by the Florida Senate; *the Legislature has no power to expand* the Governor’s suspension power into a removal power. *See In re Advisory Opinion of Governor Civil Rights*, 306 So. 2d 520, 523 (Fla. 1975) (holding that a constitutional prescription of the manner in which an action should be taken is a prohibition against a different manner of taking the action); *Bruner v. State Commission on Ethics*, 384 So. 2d 1339, 1340-41 (Fla. 1st DCA 1980) (holding that the Florida

Legislature may not vary from the constitutional allocation of power in the gubernatorial suspension of public officials). *In re Advisory Opinion of Governor Civil Rights*, at p. 523 stated: “The principle is well established that, where the Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different manner. Even though the Constitution does not in terms prohibit the doing of a thing in another manner, the fact that it has prescribed the manner in which the thing shall be done is itself a prohibition against a different manner of doing it.” (citations omitted) “Therefore, *when the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive, and it is beyond the power of the Legislature to enact a statute that would defeat the purpose of the constitutional provision.*” (Emphasis Supplied).

45. As such, the Court should declare that section 790.33(3)(e), as applied to the Elected Official Plaintiffs, is invalid and unconstitutional.

46. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that section 790.33(3)(e), Florida Statutes, is invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that section 790.33(3)(e), Florida Statutes, is unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT II

VIOLATION OF LEGISLATIVE IMMUNITY AND SEPARATION OF POWERS **(Elected Official Plaintiffs Against All Defendants)**

47. The Elected Official Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

48. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that the Onerous Preemption Penalties applicable to the Elected Official Plaintiffs, as provided for in sections 790.33(3)(a), (c), (d), and (e), Florida Statutes, violate the Elected Official Plaintiffs' well-settled right to legislative immunity in the enactment of legislation.

49. Among the Onerous Preemption Penalties are two punitive provisions that specifically target individual elected officials for actions taken in their purely legislative capacities: (1) the possibility of a \$5,000 fine; and (2) removal from office by the Governor upon a finding that the elected official violated the Firearm Preemption in a "knowing and willful" manner.

50. Additionally, section 790.33(d) precludes the expenditure of any public funds to defend the elected official or reimburse the elected official if that official's conduct is found to

be “knowing and willful,” thereby requiring the elected official to use personal funds to pay attorneys for his or her defense.

51. The “knowing and willful” components of section 790.33(3) necessarily require an inquiry into the motives and intent of the elected official in voting as he or she did, in order to potentially punish that local legislator for such a vote.

52. Such an inquiry is an invasion of the legislative immunity afforded to elected officials when acting within the sphere of legitimate legislative activity.

53. The concept of legislative immunity is a fundamental component of American democracy. As the United States Supreme Court has observed:

The principle that legislators are absolutely immune from liability for their legislative activities has long been recognized in Anglo–American law. This privilege has taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries and was taken as a matter of course by those who severed the Colonies from the Crown and founded our Nation.

* * *

Because the common law accorded local legislators the same absolute immunity it accorded legislators at other levels of government, and because the rationales for such immunity are fully applicable to local legislators, we now hold that local legislators are likewise absolutely immune from suit ... for their legislative activities.

Bogan v. Scott-Harris, 523 U.S. 44 (1998) (internal quotation marks and citations omitted). As the *Bogan* Court further explained, “Absolute immunity for local legislators ... finds support not only in history, but also in reason.... ‘[A]ny restriction on a legislator’s freedom undermines the “public good” by interfering with the rights of the people to representation in the democratic process.’” *Id.* at 52 (quoting *Spallone v. United States*, 493 U.S. 265, 279 (1990)).

54. “Furthermore, the time and energy required to defend against a lawsuit are of particular concern at the local level, where the part-time citizen-legislator remains commonplace.

. . . And the threat of liability may significantly deter service in local government, where prestige and pecuniary rewards may pale in comparison to the threat of civil liability.” *Id.* (citing *Tenney v. Brandhove*, 341 U.S. 367, 377 (1951), and *Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982)).

55. “Absolute legislative immunity attaches to all actions taken ‘in the sphere of legitimate legislative activity.’” *Id.* at 54 (citing *Tenney, supra*, at 376). Any inquiry into the motivations or intent of local legislators, therefore, is prohibited. *Id.* at 55 (“Furthermore, it simply is ‘not consonant with our scheme of government for a court to inquire into the motives of legislators.’” (quoting *Tenney*, 341 U.S. at 377)). The threat of proceedings against the Elected Official Plaintiffs, whether for monetary or injunctive relief, “creates a distraction and forces [legislators] to divert their time, energy, and attention from their legislative tasks to defend the litigation.” *Supreme Court of Va. V. Consumers Union of U.S., Inc.*, 445 U.S. 719, 733 (1980) (quoting *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 503 (1975)).

56. The Florida Supreme Court has echoed the importance of legislative immunity in its own jurisprudence. In *McNayr v. Kelly*, 184 So. 2d 428 (Fla. 1966), the Florida Supreme Court, citing federal precedents, first expressly acknowledged the absolute privilege from liability that elected officials enjoy for conduct in their official capacities, and stressed its critical role:

The justification for [the immunity] is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties.

* * *

In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation.

Id. at 431 n. 12. Since *McNayr*, other Florida courts, citing *McNayr* and U.S. Supreme Court precedents like *Tenney*, have reaffirmed the application of legislative immunity to local legislators and concluded that the scope of the immunity must be broadly construed. See, e.g., *Prins v. Farley*, 208 So. 3d 1215 (Fla. 1st DCA 2017); *City of Pompano Beach v. Swerdlow Lightspeed Mgmt. Co., LLC*, 942 So. 2d 455 (Fla. 4th DCA 2006); *P.C.B. P'ship v. City of Largo*, 549 So. 2d 738 (Fla. 2d DCA 1989).

57. Florida courts have also concluded that legislative immunity has independent roots in the Florida Constitution's separation of powers doctrine. See *Florida House of Representatives v. Expedia, Inc.*, 85 So. 3d 517, 524 (Fla. 1st DCA 2012) (recognizing that legislative privilege, which derives from legislative immunity, "exists by virtue of the separation of powers provision of the Florida Constitution"); see also *Wallace v. Dean*, 3 So. 3d 1035, 1045 (Fla. 2009) ("[W]e take this occasion to reaffirm that, in Florida, governmental immunity derives entirely from the doctrine of separation of powers, not from . . . any statutory basis." (citations and quotations marks omitted)). Florida's separation of powers doctrine is set forth in Article II, section 3 of the Florida Constitution: "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." The doctrine in Florida has been applied to maintain a *strict* separation of powers. *Bush v. Schiavo*, 885 So. 2d 321, 329 (Fla. 2004).

58. The First District explained:

The importance of this provision cannot be overstated. Our supreme court described the separation of powers as "the cornerstone of American democracy." ... The power vested in the legislature under the Florida Constitution would be severely compromised if legislators were required to appear in court to explain why they voted a particular way or to describe their process of gathering

information on a bill. Our state government could not maintain the proper “separation” required by Article II, section 3 if the judicial branch could compel an inquiry into these aspects of the legislative process.

Expedia, 85 So. 3d at 525.

59. The Onerous Preemption Penalties, as applied to the Elected Official Plaintiffs, breach the strict separation of powers doctrine by specifically authorizing the judiciary to inquire into the motivations and intent of local legislators to determine whether they knowingly and willfully violated the Firearm Preemption. This is precluded by binding precedent and threatens “the cornerstone of American democracy.”

60. The Legislature was well aware that its enactment of the Onerous Preemption Penalties targeting local elected officials would potentially eviscerate legislative immunity and undermine the principles of democratic representation. *See* Staff Final Bill Analysis, Bill #: CS/CS/CS/HB 45 (“Bill Analysis”). The Bill Analysis expressly states:

The general rule under the common law is that legislators enjoy absolute immunity from liability for performance of legislative acts. Absolute immunity for legislators has historically been recognized as a “venerable tradition” which has withstood the development of the law since pre-colonial days. Courts have upheld absolute immunity for legislators at all levels of law-making, including federal, state, and local government levels. The courts’ reasoning behind such holdings is that when legislators hold legislative powers, they use them for the public good, and are exempt from liability for mistaken use of their legislative powers. Furthermore, courts fear that allowing personal liability could distort legislative discretion, undermine the public good by interfering with the rights of the people to representation, tax the time and energy of frequently part-time citizen-legislators, and deter service in local government.

Id. at 4 (footnotes omitted). The Bill Analysis further recognized that notwithstanding legislative immunity, citizens retain the legal remedy of challenging preempted ordinances and obtaining declaratory and injunctive relief to prevent enforcement of preempted local laws. *Id.*

61. And yet, despite the Bill Analysis’ recognition of the critical significance of legislative immunity, the Legislature imposed the Onerous Preemption Penalties on individual

elected officials, based entirely on an inquiry into the elected officials' motivation in enacting local legislation.

62. The Bill Analysis' only basis for attempting to penalize the Elected Official Plaintiffs despite an immunity that the Bill Analysis recognizes as "a 'venerable tradition,' which has withstood the development of the law since pre-colonial days," is that "[a]rguably, an express and clear preemption would remove discretion from local government officials seeking to engage in lawmaking in the preempted field." Bill Analysis at 4. The reasoning underlying this approach is that the Legislature's preemption would make the enactment of local legislation and the voting of elected officials into "ministerial" acts. *Id.*

63. The adoption of ordinances and resolutions are not, however, ministerial acts. Lawmaking, such as the adoption of ordinances and resolutions, requires the exercise of discretion in balancing the costs of the proposed legislation against the legislation's relative benefits. "Voting for an ordinance" is "quintessentially legislative" conduct. *Bogan, supra*, at 55.

64. Furthermore, the question of whether a particular legislative act runs afoul of the Firearm Preemption can be determined only after review by a court, considering the express language of the preemption itself and any other general laws relating to gun regulation.

65. Given the variety of statutory and constitutional provisions affecting local firearms and ammunition regulation, the sphere of legitimate local activity in this field is not clearly defined. Rather, the development of some policies in the field of regulation of firearms and ammunition is clearly within the province of local governments, who serve closest to the people who are actually affected by gun violence. If states are the laboratories of our democracy, municipalities are the scientists. Local governments are where democracy flourishes in its truest

and most accessible sense. As issues relating to gun activity develop and evolve in particular jurisdictions, the Elected Official Plaintiffs can, should, and desire to react accordingly and in the best interest of the local community.

66. The electoral process, which allows for removal of elected officials, and the ability and duty of the judiciary to declare preempted legislation null and void, are fully adequate “checks” on the Elected Official Plaintiffs. The punitive provisions of section 790.33 are unnecessary and unconstitutional.

67. As such, the Court should declare section 790.33(3), Florida Statutes, invalid and unconstitutional.

68. Based on the foregoing, all elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that the Onerous Preemption Penalties are invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Elected Official Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that sections 790.33(3)(a)–(e), Florida Statutes, are unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT III

VIOLATION OF GOVERNMENTAL FUNCTION IMMUNITY **(Municipal Plaintiffs Against All Defendants)**

69. The Municipal Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

70. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that section 790.33(3)(f), Florida Statutes, is invalid because it violates the discretionary governmental immunity of the Municipal Plaintiffs by creating a strict liability cause of action for damages (up to \$100,000), not inclusive of attorneys' fees and costs, against municipalities for performing the discretionary governmental act of enacting or enforcing ordinances or regulations. The Municipal Plaintiffs face liability even if their officials acted in good faith and in reliance on counsel.

71. Under Florida law, there are certain policy-making, planning, or judgmental governmental functions that are inherent in the act of governing and therefore ought not to be subjected to scrutiny by judge or jury because it would inappropriately entangle the courts in fundamental questions of planning and policy. *Commercial Carrier Corp. v. Indian River County*, 371 So. 2d 1010 (Fla. 1979).

72. Notwithstanding the Legislature's enactment in section 768.28, Florida Statutes, of a limited waiver of sovereign immunity for tort actions against local governments (up to specified monetary caps), the Florida Supreme Court has held that "even absent an express exception in section 768.28 for discretionary functions, certain policy-making, planning or judgmental governmental functions cannot be the subject of traditional tort liability." *Id.* at 1020.

73. "Accordingly, where governmental actions are deemed discretionary, as opposed to operational, the government has absolute immunity from suit." *City of Freeport v. Beach Community Bank*, 108 So. 3d 684 (Fla. 1st DCA 2013).

74. The decision of a municipality's governing body to enact an ordinance or regulation is quintessential discretionary conduct. It involves the determination of governmental policy and objective; is an essential step in the accomplishment of the policy or objective; requires the exercise of basic policy evaluation and judgment on the part of the government; and is within the lawful authority and duty of the governing body. *Trianon Park Condo. Ass'n v. City of Hialeah*, 468 So. 2d 912, 918 (Fla. 1985).

75. Even if a Court were to ultimately determine that a local government and its municipal attorney were incorrect and enacted an ordinance that violated the Firearm Preemption, the decision to enact the ordinance was still a discretionary function that is protected by absolute immunity.

76. As such, the Court should declare section 790.33(3)(f), Florida Statutes, invalid and unconstitutional.

77. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that section 790.33(3)(f), Florida Statutes, is invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Municipal Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that section 790.33(3)(f), Florida Statutes, is unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT IV

VIOLATION OF RIGHT TO FREE SPEECH DUE TO OVERBREADTH
(Municipal And Elected Official Plaintiffs Against All Defendants)

78. The Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

79. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that section 790.33(3)(f), Florida

Statutes, is unconstitutional on grounds of overbreadth. Such overbreadth results in an infringement of the Elected Official Plaintiffs' free speech rights secured by Article I, Section 4 of the Florida Constitution.

80. Section 790.33(3)(f) states, in pertinent part, "A person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy *promulgated* or caused to be enforced in violation of this section may file suit against any ... municipality[.]"

81. The term "promulgate" is defined in various ways:

1. to make (something, such as a doctrine) known by open declaration; proclaim
2. to make known or public the terms of (a proposed law)
3. to put (a law) into action or force

See <https://www.merriam-webster.com/dictionary/promulgate>; see also *Black's Law Dictionary* (10th ed. 2014). The statute does not specify which of these potential definitions governs the potential liability of a municipality under section 790.33(3)(f). However, the first two definitions immediately demonstrate the vagueness and over-breadth problems with the statute.

82. While case law suggests that elected officials do not typically enjoy constitutional free speech protection when merely *casting a vote* in their elected, representative capacities, they do, however, enjoy free speech rights when advocating on behalf of particular public policies. The Elected Official Plaintiffs frequently address their colleagues and members of the public from the dais on issues of great public significance, including potential firearm regulation. In doing so, they certainly "make (something, such as a doctrine) known by open declaration" or "proclamation." They just as frequently "make known or public the terms of a *proposed* law," even if that law is never ultimately enacted.

83. Because the Legislature’s use of the term “promulgate” is overbroad, it is virtually impossible for any elected official to know when his or her protected free speech crosses the line into “promulgation” that might give rise to significant municipal and personal liability. This uncertainty infringes upon the free speech rights of the Elected Official Plaintiffs and works to deter them from engaging even in simple, constitutionally protected advocacy of a political position. Furthermore, the overbreadth of the term “promulgate” purports to make speech that is unquestionably protected by the Florida Constitution subject to state-sanctioned strict liability.

84. The Municipal Plaintiffs similarly are deterred from encouraging public discourse at public meetings for fear that such discourse might lead their elected officials to “promulgate” views that contravene the preemption endorsed by the Legislature. In fact, the Bill Analysis expressly acknowledged that the penalty provision found in section 790.33(f) will have a negative fiscal impact on municipalities and that any damages awarded could even be satisfied “by seizure of municipal property.” Bill Analysis at 4, 7.

85. Additionally, the statute is overbroad in that it restricts the protected speech and conduct of the electorate who desire to promote positive change in their own communities. Indeed, the very existence of the Onerous Preemption Penalties causes constituents to refrain from constitutionally protected speech or expression with their elected officials out of fear that their public comments could lead to severe sanctions against the very municipality they seek to improve, not to mention the local leaders who serve them. As a result, a substantial amount of protected speech concerning the regulation of firearms and ammunition is effectively prohibited or chilled in the process.

86. As such, the Court should declare section 790.33(3)(f), Florida Statutes, invalid and unconstitutional.

87. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that section 790.33(3)(f), Florida Statutes, is invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Municipal and Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that section 790.33(3)(f), Florida Statutes, is unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT V

VIOLATION OF RIGHT TO DUE PROCESS DUE TO VAGUENESS **(Elected Official Plaintiffs Against All Defendants)**

88. The Elected Official Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

89. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that the Onerous Preemption Penalties in section 790.33, Florida Statutes, are void for vagueness.

90. In a penal statute, the Due Process Clause of the Florida Constitution, Article I, Section 9, requires the use of language that is sufficiently definite to provide fair notice to individuals who may be affected of what conduct is prohibited.

91. Section 790.33 fails to give adequate notice of what conduct is prohibited. It appears to proscribe municipalities and their elected officials from enacting or causing to be enforced any local ordinance or administrative rule or regulation “impinging” upon the Legislature’s “exclusive occupation of the field of regulation of firearms and ammunition.” However, this section is riddled with ambiguity. For example, while the Firearm Preemption applies only to “ordinances and regulations,” section 790.33(3)(a) also refers to “administrative rule[s],” and section 790.33(f) suggests it may apply to any “measure, directive, rule, enactment, order or policy promulgated.” Additionally, although the Firearm Preemption applies only to “firearms and ammunition,” another section also mentions, but does not define, firearm “components.” § 790.33(2)(a), Fla. Stat.

92. This language of section 790.33 is so vague and so broad that a person of common intelligence must speculate about its meaning and be subjected to punishment if the

guess is wrong. Further, because of its imprecision, section 790.33 necessarily invites arbitrary and discriminatory enforcement.

93. Section 790.33 is a penal statute in that it imposes effectively criminal punishment against the Elected Official Plaintiffs. It has a “knowing and willful” scienter or *mens rea* requirement. When the scienter requirement is met, the Elected Official Plaintiffs may be fined up to \$5,000 and removed from office, and the Elected Official Plaintiffs may not use public funds in their defense.

94. The Elected Official Plaintiffs have property rights in continued employment as elected officials. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538–39 (1985); *McRae v. Douglas*, 644 So. 2d 1368, 1372–73 (Fla. 5th DCA 1994). The Elected Officials also have property rights in the use of their private funds.

95. The purpose and intent of the Onerous Preemption Penalties are punishment, retribution, and deterrence.

96. As such, the Court should declare section 790.33, Florida Statutes, invalid and unconstitutional.

97. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that section 790.33, Florida Statutes, is invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.

- d. The Plaintiffs and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that section 790.33, Florida Statutes, is unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT VI

**VIOLATION OF THE PROHIBITION ON ARBITRARY AND CAPRICIOUS LAWS
AND LAWS THAT LACK A RATIONAL BASIS**
(Municipal And Elected Official Plaintiffs Against All Defendants)

98. The Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

99. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that section 790.33(3), Florida Statutes, is invalid because it treats the violation of the preemption of local government regulation of firearms differently than violations of other preempted subject areas and gives more protection to the newly created right against local regulation of firearms than to any other rights (even those set forth in the Florida Constitution), all with no rational basis. This Count also seeks a declaratory judgment that section 790.33(3), and the application of the general preemption of local firearm regulation contained in section 790.33(1) to the regulation of

firearms by a municipality on municipal-owned property, are invalid because they arbitrarily and capriciously treat municipal-owned property differently than privately owned property, with no rational or reasonable basis to distinguish between the two.

100. Under Florida law, all statutes must, at a minimum, have a rational basis and must not be arbitrary and capricious. See *Dept. of Corrections v. Fla. Nurses Ass'n.*, 508 So. 2d 317, 319 (Fla. 1987). This requirement is rooted in doctrines of equal protection and due process, as well as Article III, Section 11(b) of the Florida Constitution (“In the enactment of general laws on other subject, political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law.”); see also *Goodman v. Martin County Health Dept.*, 786 So. 2d 661, 664 (Fla. 4th DCA 2001) (“A statute that is vague, arbitrary, or capricious and bears no reasonable relationship to a legitimate legislative intent is unconstitutional.”).

101. Under Section 790.33(3), individual elected officials who vote for an ordinance in violation of the Firearm Preemption are subject to severe consequences (removal from office and civil fines), while individual elected officials who vote for an ordinance in violation of other state preemptions (or even in violation of other state constitutional rights) are not. Similarly, municipalities that enact ordinances in violation of the Firearm Preemption are subjected to lawsuits from all adversely affected persons and organizations and to damages up to \$100,000, plus attorneys’ fees, while municipalities that enact ordinances in violation of other state preemptions (or even in violation of state constitutional rights) are not.

102. There is no rational basis for such disparate treatment. The concept of preemption is of equal importance regardless of the subject matter of the preemption, and the consequences for violation should be the same. The consequence of a violation of the Firearm Preemption was, until the enactment of the Onerous Preemption Penalties in 2011, always the same as a violation

of any other preemption statute—a declaration that the preempted ordinance is invalid. The creation of different consequences for a preemption violation is arbitrary and capricious and has no rational basis.

103. In essence, the Onerous Preemption Penalties create a private right to be free from local governmental regulation of firearms, and then makes that right sacrosanct and elevates and protects it more than even the core constitutional rights declared in Article 1 of the Florida Constitution (including the right of equal protection, religious freedom, freedom of speech, freedom of the press, due process, etc.), by creating severe penalties for the violation of only that right.

104. In addition, under Florida law, private property owners are permitted to pass and enforce “rules” relating to firearms and ammunitions on their property. However, pursuant to section 790.33(1), Florida Statutes, local government property owners may not do so.

105. The Plaintiffs have the same interest as private property owners in keeping their government-owned premises, visitors, and employees safe. Elsewhere in Chapter 790, the State recognized this important interest by exempting the possession of a concealed firearm at any meeting of the governing body of a municipality by an individual who is otherwise licensed to carry a concealed firearm. § 790.06(12)(a)(7), Fla. Stat. However, prior to the meeting, as soon as the meeting is over, and every other day of the week, the employees of a municipality who are clearly deserving of protection are again subject to the potential danger posed by firearms.

106. The Plaintiffs, like many private property owners throughout the State, desire to enact and enforce rules related to firearms and ammunition on their property that do not conflict with the fundamental right to bear arms, but that provide for more uniform protection and safety of property, visitors, and employees.

107. Section 790.33(1), taken together with other Florida Statutes, creates a classification scheme treating local government property owners differently than private property owners with no reasonable relationship to the purpose of the law. There is no rational basis for treating local governments who seek to impose limitations on the use of firearms and ammunition on their property differently from private entities who seek to do so on their privately owned property.

108. As such, the Court should declare section 790.33(3), Florida Statutes, and the application of the general preemption of local firearm regulation contained in section 790.33(1) to the regulation of firearms by a municipality on municipally owned property, invalid and unconstitutional.

109. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that the Onerous Preemption Penalties contained in section 790.33(3), Florida Statutes, are invalid, and unconstitutional, and that the application of the general preemption of local firearm regulation contained in section 790.33(1) to the regulation by the Plaintiffs of firearms on municipally owned property, and the imposition of the Onerous Preemption Penalties for the enactment of such regulation, are also invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.

- d. The Plaintiffs and the Defendants have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Municipal and Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- a. Declaring that section 790.33(3), Florida Statutes, is unconstitutional;
- b. Declaring that section 790.33(3), and the application of the general preemption of local firearm regulation contained in section 790.33(1) to the regulation of firearms by a municipality on municipally owned property, are unconstitutional; and
- c. Granting such other relief as this Court deems just and proper.

COUNT VII

VIOLATION OF RIGHT TO PETITION AND INSTRUCT
(Municipal And Elected Official Plaintiffs Against All Defendants)

110. The Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

111. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that the Onerous Preemption Penalties applicable to the Elected Official Plaintiffs, as provided for in sections 790.33(3)(a), (c), (d), and (e), Florida Statutes, violate Article I, Section 5 of the Florida Constitution by

rendering illusory the rights of residents living in the Municipal Plaintiffs to petition and instruct their elected representatives.

112. Article I, Section 5 of the Florida Constitution reads as follows: “**Right to assemble.** – The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.” The Florida Supreme Court has characterized the right to petition as “inherent and absolute.” *Krivanek v. Take Back Tampa Political Committee*, 625 So. 2d 840, 843 (Fla. 1993). Underlying the constitutional right to petition is the concept of government accountability, as noted in *Reynolds v. State*, 576 So. 2d 1300 (Fla. 1991).

113. The U.S. Supreme Court described the right just as eloquently:

The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances. The First Amendment of the Federal Constitution expressly guarantees that right against abridgment by Congress. ... For the right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions – principles which the Fourteenth Amendment embodies in the general terms of its due process clause.

De Jonge v. State of Oregon, 299 U.S. 353, 364 (1937).

114. Florida is one of only sixteen states with a constitutional provision that authorizes the people to “instruct their representatives.”¹ These rights were typically included in state constitutions because “the drafters of the earliest state constitutions labored under the recent memory of British attempts *to suppress town meetings and assert control over representative governments[.]*” and “those actions figured prominently in colonists’ decisions to safeguard the

¹ See Cal. Const. art. I, § 3; Idaho Const. art. I, § 10; Ind. Const. art. I, § 31; Kan. Const. Bill of Rights, § 3; Me. Const. art. I, § 15; Mass. Const. Declaration of Rights, art. 19; Mich. Const. art. I, § 3; Nev. Const. art. I, § 10; N.H. Const. art. I, § 32; N.C. Const. art. I, § 12; Ohio Const. art. I, § 3; Or. Const. art. I, § 26; Tenn. Const. art. I, § 23; Vt. Const. Declaration of Rights, art. XX; W. Va. Const. art. III, § 16.

right to assemble, and to fuse it to guarantees of the right of instruction and the right to petition the legislature for assistance in redressing wrongs.” *Lahmann v. Grand Aerie of Fraternal Order of Eagles*, 121 P. 3d 671, 681 (Or. 2005) (emphasis added).

115. The Elected Official Plaintiffs all take an oath of office to uphold the Florida Constitution in their roles as representatives of their constituents. The Onerous Preemption Penalties preclude the Elected Official Plaintiffs from fulfilling their oath of office.

116. The Onerous Preemption Penalties do irreparable damage to the rights of petition and instruction enshrined in the Florida Constitution. These rights have no value if the constituents invoking them are faced with the certainty that, as to particular topics solely of the Legislature’s choosing, their concerns *must* be ignored by their elected officials at the risk of facing significant fines and removal from office.

117. The Onerous Preemption Penalties strike at the core of the American system of democratic representation: they suppress, in an insidious, Orwellian fashion, the voice of the local electorate through intimidation of local elected officials. The right to petition and instruct elected officials, which is guaranteed to Florida citizens by the Florida Constitution, is effectively suppressed by the Onerous Preemption Penalties, as the collective will of the local citizenry on the subject of firearm regulation, most clearly manifested through the legislative or quasi-legislative actions of their democratically elected local representatives, is silenced.

118. The Elected Official Plaintiffs are, through the threat of sanction, precluded from giving voice to the political interests of their constituents, whether by enactment of resolutions and ordinances or arguably even by public expressions of disapproval, on the subject of reasonable gun regulation within their community. Even if limited to symbolic, non-enforceable gestures, the will of the Municipal Plaintiffs’ residents is suppressed by the Onerous Preemption

Penalties, which threaten to punish the Elected Official Plaintiffs and subject the Municipal Plaintiffs to potentially exorbitant liabilities, if they enact, attempt to enforce, or even “promulgate” any “ordinance, regulation, measure, directive, rule, enactment, order, or policy” relating to gun regulation.² See § 790.33(3)(f), Fla. Stat.

119. To be clear, Plaintiffs are not alleging that local residents are entitled to have laws enforced that are inconsistent with or preempted by state statute. However, it is the Plaintiffs’ contention that local constituencies have a constitutional right to petition their democratically elected local officials and invoke their assistance in enacting local legislation, even if that legislation is ultimately determined to be unenforceable and merely symbolic. It is the role of the judiciary, not the Legislature, to determine whether particular local legislation is enforceable in light of controlling (and even preemptive) state law. Ironically, the Legislature was well aware of this legal remedy available to adversely affected individuals, but intended to threaten into submission (and eventually punish) local governments that do not “bend the knee.”

120. The idea that the Governor may summarily remove from office any elected local representative merely for *voting* in accordance with the petitions and instructions of his or her constituents, but who is later found to have knowingly and willfully voted in a manner inconsistent with the will of the Legislature, erodes the foundation of American democracy.

121. Accordingly, the Court should declare that the Onerous Preemption Penalties violate the constitutional rights to petition and instruct under Article I, Section 5 of the Florida Constitution.

² The inclusion of the term “promulgate,” with its inherent ambiguities and potentially broad interpretation, enhances the chilling effect of the Onerous Preemption Penalties on the democratic process.

122. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that the Onerous Preemption Penalties are unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Municipal and Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that the penalty provisions set forth in sections 790.33(3)(a), (c), (d) and (e), Florida Statutes, are unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

Dated this 2nd day of April, 2018.

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Editorial: Every city should join fight against harmful state gun law

OPINION

By The Palm Beach Post Editorial Board

2



Thousands gather at Mizner Park Amphitheater March 24 in Boca Raton for the March for Our Lives to demand gun control after the Parkland shooting on Valentine's Day. (Carla Trivino/The Palm Beach Post)

Updated: 3:14 p.m. Sunday, April 22, 2018 | Posted: 12:00 p.m. Sunday, April 22, 2018

The Boca Raton City Council wants to consider some reasonable regulations on firearms, like restricting guns in city facilities or parks, a recent [resolution](#) states.

But the council hasn't done so — and for a troubling reason. The members are afraid of running afoul of an extreme state law that has worked like a National Rifle Association hammerlock on local governments across Florida.

>>RELATED: This state legislator is credited with the law that prevents cities from enacting gun laws

That law, passed in 2011, places severe, and unprecedented, penalties on elected officials who enact or enforce rules or regulations regarding firearms and ammunition — which only the Florida Legislature or Constitution are entitled to regulate.

Each local official can be fined up to \$5,000 personally, and no public money can be used to reimburse the fined official. The governor can summarily remove that official. And citizens unhappy with a local gun regulation can sue their local government for damages of up to \$100,000, plus attorney's fees.

You might call this unreasonable, a chilling of speech, a usurpation of local authority, an overreach of a governor's power. You'd be right.

And you'd be agreeing with Boca's city council. On Tuesday, [it voted 4-1](#) to join at least 10 other cities in a lawsuit that seeks to have the outrageous [penalty provisions of Section 790.33](#), Florida Statutes, declared invalid and unconstitutional.

RELATED: [Editorial: NRA suit against Florida: A weak case for a bad cause](#)

The Broward County city of [Weston filed the suit on April 2](#), on the heels of the mass shooting that left 17 students dead and 17 injured at Marjory Stoneman Douglas High School. Nine more cities — including Miami Beach, Miramar, Pompano Beach and Miami Gardens — have signed on to the filing. In recent days, Fort Lauderdale, Orlando, St. Petersburg, Tallahassee, Orlando, Gainesville and Surfside have voted to join in, too, plaintiff attorney Jamie A. Cole said Friday.

So far, Boca Raton is the only Palm Beach County town to support the suit. But there isn't a jurisdiction in this county that shouldn't be eager to fight this pernicious law.

[The lawsuit](#), which names Gov. Rick Scott and other top state officials as defendants, doesn't dispute the state's right to preempt certain subject areas from regulation by local jurisdictions. Tallahassee often claims the exclusive authority for things, from the state lottery to pest-control services.

But only in the case of guns has the state ever threatened local officials and governments with penalties, the lawsuit notes. In every other area, a local law that steps on the state's toes is simply declared null and void. That there's an exception for firearms shows how profoundly Florida state government has contorted itself in submission to the pro-gun lobby.

The idea of fining local officials individually for decisions they make in their official capacity violates legal tradition that goes back to pre-Colonial days. You can't expect many people to serve on the town council if their decisions can lead to personal fines.

Since the Stoneman Douglas High massacre, a majority of Americans want stiffer regulations on guns. But today in Florida, local officials must turn a deaf ear to their citizens who want such action, or risk of fines or removal from office.

These penalties "suppress, in an insidious, Orwellian fashion, the voice of the local electorate through intimidation of local elected officials," the lawsuit aptly states. They "strike at the core of the American system of democratic representation."

Making matters worse, the state's preemption of "the whole field of regulation of firearms and ammunition" is shot through with inconsistencies, the lawsuit asserts. Municipalities can write zoning ordinances pertaining to firearms businesses, for example. Because of the statute's "conflicting and undefined terms," municipal attorneys are unable to assure elected officials that any particular act they might want to take on firearms is free of risk.

These muzzles on local government emit the same unconstitutional stink as the Legislature's notorious "Docs vs. Glocks" ban on physicians asking about firearms in the home. Like that example of zealotry, these shackles on local gun regulations deserve a court's quick heave-ho.

And the lawsuit against them deserves every Palm Beach County municipality's support.

But only in the case of guns has the state ever threatened local officials and governments with penalties, the lawsuit notes.

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Jorge M. Gonzalez, Village Manager

FROM: Patricia Cohen, Councilwoman

DATE: June 12, 2018

SUBJECT: **Discussion regarding Plastics on the Beach**

Please place an item on the June 12, 2018 Village Council Meeting Agenda for a discussion regarding Plastics on the Beach.

Thank you.

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: June 6, 2018

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE III, ENTITLED "LITTER," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 46-92 THEREOF, ENTITLED "LITTER; DEFINITIONS; PROHIBITIONS ON LITTER; PENALTIES FOR LITTER AND COMMERCIAL HANDBILL VIOLATIONS; COMMERCIAL HANDBILL REGULATIONS, FINES, AND REBUTTABLE PRESUMPTIONS; SEIZURE AND REMOVAL OF LITTER BY THE CITY; ENFORCEMENT; APPEALS; LIENS" TO PROHIBIT ANY PERSON FROM CARRYING ANY SINGLE-USE PLASTIC BEVERAGE STRAW OR SINGLE-USE PLASTIC STIRRER ONTO ANY BEACH OR PARK WITHIN THE CITY, OR ONTO ANY CITY MARINA, PIER, DOCK, OR BOAT RAMP; AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY CREATING SECTION 82-8 THEREOF, TO BE ENTITLED "PROHIBITIONS REGARDING SALE OR USE OF SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS BY CITY CONTRACTORS AND SPECIAL EVENT PERMITTEES," TO PROHIBIT THE SALE, USE, PROVISION, AND OFFERING OF SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS BY CITY CONTRACTORS AND SPECIAL EVENT PERMITTEES IN CITY FACILITIES AND ON CITY PROPERTY; AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, ENTITLED "SIDEWALK CAFES," BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-385 THEREOF, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFES," TO PROVIDE PROHIBITIONS REGARDING SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS ON THE RIGHT-OF-WAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

BACKGROUND

On April 11, 2012, the Mayor and City Commission adopted Ordinance No. 2012-3759 which, in pertinent part, prohibits any business from providing plastic straws with the service or delivery of any beverage to patrons on the beach, in order to reduce plastic straw litter on the sand. Since the adoption of this Ordinance, Miami Beach continues to see plastic straws littered on beaches, parks, streets, and in other areas of the City.

ANALYSIS

The small size and disposable nature of single-use plastic beverage straws and single-use plastic stirrers causes these items to become an environmental blight for coastal communities

worldwide. The City of Miami Beach (the “City”) is a major and internationally recognized tourist destination that continues to encounter a proliferation of discarded plastic straws on the City’s beaches, waterways, and streets, as a result of businesses providing plastic straws with beverages, and improper disposal of those beverages and straws by consumers.

The average plastic straw is used only for a few minutes before being discarded. Plastic straws are one of the most commonly found littered items during beach cleanups and pose a challenge to daily cleaning efforts carried out by Miami-Dade County Parks and Recreation Beach Operations and Miami Beach Sanitation Department staff. It is estimated that 500 million single-use plastic beverage straws are used by Americans on a daily basis. Many of these straws end up in the ocean, where it takes approximately 200 years to begin degrading. According to a United Nations (UN) article, over eight million metric tons of plastic are found in our oceans every year, impacting our marine wildlife, fisheries, and tourism, and costing at least \$8 billion in damage to marine ecosystems. Plastic straws are among the top 10 marine debris items.

The remains and broken-down particles of these types of plastic are ingested by wildlife such as shore birds, sea turtles, and fish. The UN takes the position that it is critical to the public’s health, safety, and welfare to reduce litter and pollutants. Accordingly, the UN has launched a full campaign to encourage countries around the world to reduce their dependency on single-use plastics.

As a result of increasing awareness of this issue, several U.S. cities have been addressing this concern, developing campaigns and policies to ban the use of plastic straws and stirrers. The Town of Fort Myers Beach, FL, recently adopted an ordinance, which was implemented this year, prohibiting the distribution, vending, sale, giving, and deployment or delivering of plastic straws for any purpose. In addition, the City of Malibu, CA, adopted a similar policy that takes effect on June 1, 2018, in which the city will enforce its prohibition on the use, distribution, and sale of single-use plastic straws, as well as stirrers and cutlery items, in all retail stores and restaurants in Malibu. The City of Oakland, CA, also adopted an ordinance, which will take effect on July 1, 2018, prohibiting restaurants from provide single-use beverage straws to dine-in customers, unless specifically requested by the customer. The California Legislature has proposed a bill that would prohibit food facilities from providing single-use plastic straws to consumers, unless specifically requested by the consumer.

In 2017, the City of Seattle, WA, supported a voluntary campaign (“Strawless in Seattle”), driven by the Lonely Whale Foundation, for local businesses and restaurants, which campaign resulted in a reduction of 2.3 million plastic straws in a period of about three months. Upon the launch of the “Strawless in Seattle” campaign, the Mayor of Seattle announced that, in July 2018, Seattle would become the largest metropolitan city to ban single-use plastic straws. Seattle recently approved a bill to eliminate plastic straws and other single-use plastic items. This legislation will take effect in July 2018, and will require more than 4,500 food service providers to provide compostable or recyclable options to their patrons. A number of these businesses have opted to only provide straws if requested by their customers. Moreover, several other major U.S. cities are currently discussing the adoption of similar policies, including New York City.

The cities adopting these policies have worked with local non-profit organizations and businesses to identify materials that can serve as substitutes for plastic straws and stirrers, such as paper, reusable glass, stainless steel, copper, bamboo, and several other kinds of reusable materials.

The attached Ordinance is proposed in order to reduce the amount of plastic pollution in the City's environment, outside of the waste stream, and in Miami Beach's stormwater management system and waterways, through litter and the circulation of windblown debris, as well as to improve the City's water quality.

The proposed Ordinance amends Chapter 46 of the City Code, to create definitions for single-use plastic beverage straws and single-use plastic stirrers, and to prohibit single-use plastic beverage straws and single-use plastic stirrers on the City's beaches, parks, marinas, piers, docks, and boat ramps. The Ordinance also amends Chapter 82 of the City Code, to prohibit City contractors and special event permittees from selling, using, providing beverages with, or offering the use of single-use plastic beverage straws or single-use plastic stirrers in City facilities or on City property. Furthermore, the Ordinance amends the Sidewalk Cafe Ordinance (set forth in Chapter 82, Article IV, Division 5 of the City Code), to prohibit single-use plastic beverage straws and single-use plastic stirrers on the right-of-way, and to provide that single-use plastic beverage straws and single-use plastic stirrers shall not be provided to sidewalk cafe patrons.

The proposed Ordinance would not take full effect until February 1, 2019, in order to allow the City Administration to conduct a public education campaign for a period of three months (i.e. from August 1, 2018, through October 31, 2018). The goal of the campaign is to inform sidewalk cafe permittees, city contractors, and special event permittees of the provisions of the Ordinance, and to provide assistance with identifying alternatives to single-use plastic beverage straws and single-use plastic stirrers. Following the City's public education efforts, the City shall provide for a three-month-long written warning period (i.e. from November 1, 2018, through January 31, 2019), during which time written warnings shall be issued by the Code Compliance Department for violations of the Ordinance. Beginning on February 1, 2019, the Code Compliance Department shall enforce the Ordinance.

The Ordinance would not apply to any City contract, lease, or concession agreement entered into prior to February 1, 2019, or any special event permit issued prior to February 1, 2019, unless the City contractor or special event permittee voluntarily agrees thereto.

CONCLUSION

The Administration recommends that the City Commission adopt the proposed Ordinance.

Attachments:

A- Draft Ordinance

SMT/ESW/FCT/YP

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE III, ENTITLED "LITTER," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 46-92 THEREOF, ENTITLED "LITTER; DEFINITIONS; PROHIBITIONS ON LITTER; PENALTIES FOR LITTER AND COMMERCIAL HANDBILL VIOLATIONS; COMMERCIAL HANDBILL REGULATIONS, FINES, AND REBUTTABLE PRESUMPTIONS; SEIZURE AND REMOVAL OF LITTER BY THE CITY; ENFORCEMENT; APPEALS; LIENS" TO PROHIBIT ANY PERSON FROM CARRYING ANY SINGLE-USE PLASTIC BEVERAGE STRAW OR SINGLE-USE PLASTIC STIRRER ONTO ANY BEACH OR PARK WITHIN THE CITY, OR ONTO ANY CITY MARINA, PIER, DOCK, OR BOAT RAMP; AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY CREATING SECTION 82-8 THEREOF, TO BE ENTITLED "PROHIBITIONS REGARDING SALE OR USE OF SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS BY CITY CONTRACTORS AND SPECIAL EVENT PERMITTEES," TO PROHIBIT THE SALE, USE, PROVISION, AND OFFERING OF SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS BY CITY CONTRACTORS AND SPECIAL EVENT PERMITTEES IN CITY FACILITIES AND ON CITY PROPERTY; AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, ENTITLED "SIDEWALK CAFES," BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-385 THEREOF, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFES," TO PROVIDE PROHIBITIONS REGARDING SINGLE-USE PLASTIC BEVERAGE STRAWS AND SINGLE-USE PLASTIC STIRRERS ON THE RIGHT-OF-WAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach ("City") declares that it is in the interest of the public health, safety, and welfare of its residents and visitors to reduce litter and pollutants on the land and in the waters of the City; and

WHEREAS, disposable food service articles, including single-use plastic beverage straws and single-use plastic stirrers, constitute a portion of the litter in the City of Miami Beach's streets, parks, public places, and waterways; and

WHEREAS, the City's goal is to reduce litter by reducing the use of and replacing single-use plastic beverage straws and single-use plastic stirrers with reusable materials; and

WHEREAS, as an environmental leader among local governments in the State of Florida, the City of Miami Beach, by virtue of this Ordinance, will prohibit the use of single-use plastic beverage straws and single-use plastic stirrers by its contractors and special event permittees in City facilities and on City property; will prohibit the use of single-use plastic beverage straws and single-use plastic stirrers by sidewalk cafes on the public right-of-way; and, will strengthen its litter laws by prohibiting single-use plastic beverage straws and single-use plastic stirrers in City parks, beaches, marinas, piers, docks, and boat ramps; and

WHEREAS, this Ordinance will preserve and enhance the environment of the City of Miami Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. Division 1 of Article III of Chapter 46 of the Code of the City Miami Beach is hereby amended as follows:

**CHAPTER 46
ENVIRONMENT**

* * *

ARTICLE III. Litter

* * *

DIVISION 1. Generally

Sec. 46-92. Litter; definitions; prohibitions on litter; penalties for litter and commercial handbill violations; commercial handbill regulations, fines, and rebuttable presumptions; seizure and removal of litter by the city; enforcement; appeals; liens.

- (a) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

- (2) *Business* means any commercial or industrial activity, entity, or event in or for which any goods or services are made, sold or offered for sale or other consideration, pecuniary or otherwise.

* * *

- (5) *Litter* means any paper, handbill, commercial handbill, garbage, bottle caps, chewing gum, tobacco products, including, but not limited to, used and unused cigarettes, cigars, pipe or chewing tobacco, polystyrene or plastic products, or other waste, including, but not limited to, tree, plant, and grass cuttings, leaves, or other yard maintenance debris, that has been placed or deposited on a public sidewalk, street, road, avenue, beach, swale, median, building, fence, wall, boardwalk, beachwalk, baywalk, cutwalk, park, or in a gutter, drain, or sewer, or on any other public property, right-of-way or place, or on any object located on public property, or on the kneewall, window ledge or sill of any public or private building, or on a motor vehicle, or on any other type of private real or personal property. Handbills and commercial handbills

attached to a trash receptacle, but not within the trash receptacle in the usual manner, shall also be considered litter.

* * *

- (7) *Person, benefactor, or owner* include, within their respective meanings, either an individual or an entity.
- (8) *Right-of-way* means and includes, but is not limited to, any state, county, or city-owned public street, sidewalk, street corner, curb, bicycle path, or pedestrian walkway.
- (9) *Polystyrene* means a thermoplastic polymer comprised of at least 80 percent styrene or para-methylstyrene by weight.
- (10) *Expanded polystyrene* means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).
- (11) *Single-use plastic beverage straw* means a tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, for transferring a beverage from its container to the mouth of the drinker. *Single-use plastic beverage straw* includes compostable and biodegradable petroleum or biologically based polymer straws, but does not include straws that are made from non-plastic materials, such as paper, sugar cane, bamboo, or other similar materials.
- (12) *Single-use plastic stirrer* means a device that is used to mix beverages, intended for only one-time use, and made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources. *Single-use plastic stirrer* includes compostable and biodegradable petroleum or biologically based polymer stirrers, but does not include stirrers that are made from non-plastic materials, such as paper, sugar cane, bamboo, or other similar materials.
- (b) *Litter prohibited.* It shall be unlawful for any person or benefactor to throw, discard, place or deposit, or cause to be thrown, discarded, placed, or deposited, litter in any manner or amount whatsoever in or on any public highway, sidewalk, road, street, alley, thoroughfare, beach, park, baywalk, beachwalk, cutwalk, sidewalk cafe areas, or any other public place, except in containers or areas lawfully provided therefor. It shall be unlawful for any person to throw, discard, place or deposit any garbage, cans, bottles or containers in or on any freshwater lakes, rivers, streams, canals, or tidal or coastal waters within the city. In addition, it shall be unlawful for any person to throw, discard, place or deposit litter in any manner or amount whatsoever on any private real or personal property, including, but not limited to, sidewalk cafe furniture and fixtures, unless prior consent of the owner has been given and unless such litter will not cause a public nuisance or be in violation of any other state or local laws, rules or regulations.
- (c) *Prohibitions on beaches, marinas, piers, docks, boat ramps, and in parks.* It shall be unlawful for any person to carry onto any beach within the city a glass or metal bottle or other glass or metal container. In addition, it shall be unlawful for any person to carry any expanded polystyrene product, single-use plastic beverage straw, or single-use plastic stirrer onto any beach or park within the city, or onto any city marina, pier, dock, or boat

ramp, or for any business to provide plastic straws with the service or delivery of any beverage to patrons on any beach within the city.

(1) Notwithstanding the above, beginning on August 1, 2018, the city shall engage in public education efforts to inform the public of those provisions in this subsection (c) that pertain to single-use plastic beverage straws and single-use plastic stirrers, and to provide assistance with identifying alternatives to single-use plastic beverage straws and single-use plastic stirrers. Beginning on November 1, 2018, and continuing through January 31, 2018, the city shall provide for a warning period, during which the code compliance department shall issue written warnings for violations of those provisions of subsection (c) that pertain to single-use plastic beverage straws and single-use plastic stirrers. Beginning on February 1, 2019, the code compliance department shall enforce the provisions in subsection (c) that pertain to single-use plastic beverage straws and single-use plastic stirrers.

(d) *Prohibitions on causing litter in sewers and on public and private property.* It shall be unlawful for any person to use leaf blowers, or any other means, to sweep, cast or throw, or cause to be cast or thrown, or discarded into any of the gutters, drains, sewers, or public rights-of-way within the city, or upon any adjacent public or private real or personal property, any garbage, litter, paper, handbill, trash, tree, plant, or grass cuttings, leaves, yard maintenance debris, or other objects or substances.

* * *

(f) *Penalties for violations.* The following civil fines shall be imposed for violations of this section, except as provided in subsection (h) below:

(1) For violations of subsection (c):

- a. First offense within a 12-month period: \$100.00 civil fine.
- b. Second offense within a 12-month period: \$200.00 civil fine.
- c. Third or subsequent offense within a 12-month period: \$500.00 civil fine.

(2) For violations of subsection (b) that take place anywhere other than a beach or park within the city, or a city marina, pier, dock, or boat ramp, or for violations of subsections (d) or (e):

- a. First offense within a 12-month period: \$1,000.00 civil fine.
- b. Second offense within a 12-month period: \$2,000.00 civil fine.
- c. Third or subsequent offense within a 12-month period: \$3,000.00 civil fine.

(3) For violations of subsection (b) that take place on a beach or park within the city, or on a city marina, pier, dock, or boat ramp:

- a. First offense within a 12-month period: \$1,500.00 civil fine;
- b. Second offense within a 12-month period: \$2,500.00 civil fine; and

- c. Third or subsequent offense within a 12-month period: \$3,500.00 civil fine.
- (4) In lieu of a civil fine, the special master may accept voluntary community service removing litter in the city equivalent to one hour of community service for each \$50.00 of an imposed civil fine. If the community service is not completed within six months of an adjudication of guilt, the fine shall be reinstated.
- * * *
- (l) *Enforcement by code compliance officers; notice of violation.* If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this article, such code compliance officer shall issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator may be liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within ten days after service of the notice of violation, and that failure to do so shall constitute an admission of the violations and waiver of the right to a hearing.
- (m) *Rights of violators; payment of fine; right to appeal; failure to pay civil fine or to appeal.*
- (1) A violator who has been served with a civil notice of violation shall elect either to:
- a. Pay the civil fine in the manner indicated on the notice; or
 - b. Request an administrative hearing before a special master to appeal the notice of violation, which hearing must be requested within ten days of service of the notice of violation.
- (2) The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of the City Code.
- (3) The failure to pay the civil fine, or to timely request an administrative hearing before a special master, shall constitute a waiver of the violator's right to administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties may be assessed accordingly.
- (4) Any party aggrieved by a decision of the special master may appeal that decision to a court of competent jurisdiction.
- (5) The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten days of the service of the notice of violation.
- (6) Other than the option to accept voluntary community service in lieu of a civil fine pursuant to subsection (f)(4), the special master shall not have discretion to alter the penalties prescribed in subsections (f)(1), (f)(2) or (f)(3).
- (n) *Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.*
- (1) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.

- (2) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. Three months after the recording of any such lien which remains unpaid, the city may foreclose or otherwise execute upon the lien, for the amount of the lien, plus accrued interest.
- (o) *Planning board authority.* Nothing in this article shall limit or restrict any condition or limitation imposed by the planning board.
- (p) *Injunctive relief.* As an additional means of enforcement, the city may seek injunctive relief and/or follow procedures to revoke a business tax receipt and/or certificate of use as set forth in chapters 14, 18 and 102 of the City Code when there are more than three offenses by the same violator within a calendar year.

SECTION 2. Article I of Chapter 82 of the Code of the City Miami Beach is hereby amended as follows:

**CHAPTER 82
PUBLIC PROPERTY**

* * *

ARTICLE I. In General

* * *

Sec. 82-8. Prohibitions regarding sale or use of single-use plastic beverage straws and single-use plastic stirrers by city contractors and special event permittees.

- (a) *Legislative intent.* Plastic straws are neither readily recyclable nor biodegradable, and take hundreds of years to degrade. The City's goal is to reduce litter by reducing the use of and replacing single-use plastic beverage straws and single-use plastic stirrers with reusable materials.
- (b) *Definitions.* For purposes of this section only, the following definitions shall apply:
- (1) *City contractor* means a contractor, vendor, commercial lessee, concessionaire of the city, or operator of a city facility or property.
 - (2) *City facility* includes, but is not limited to, any building, structure, park, beach, golf course, marina, pier, dock or boat ramp leased to the city, or owned, operated, leased, or managed by the city.
 - (3) *City property* includes, but is not limited to, any land, water, or air rights leased to the city, or owned, operated, leased, or managed by the city.
 - (4) *Single-use plastic beverage straw* means a tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant

sources, for transferring a beverage from its container to the mouth of the drinker. *Single-use plastic beverage straw* includes compostable and biodegradable petroleum or biologically based polymer straws, but does not include straws that are made from non-plastic materials, such as paper, sugar cane, bamboo, or other similar materials.

(5) *Single-use plastic stirrer* means a device that is used to mix beverages, intended for only one-time use, and made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources. *Single-use plastic stirrer* includes compostable and biodegradable petroleum or biologically based polymer stirrers, but does not include stirrers that are made from non-plastic materials, such as paper, sugar cane, bamboo, or other similar materials.

(6) *Special event permittee* means any person or entity issued a special event permit by the city for a special event on city property or in a city facility.

(c) *Prohibitions.* City contractors and special event permittees shall not sell, use, provide beverages with, or offer the use of single-use plastic beverage straws or single-use plastic stirrers in city facilities or on city property. A violation of this section shall be deemed a default under the terms of the city contract, lease, or concession agreement and is grounds for revocation of a special event permit.

(d) *Exceptions.* Any city contract, lease, or concession agreement entered into prior to February 1, 2019, or any special event permit issued prior to February 1, 2019, shall not be subject to the requirements of this section, unless the city contractor or special event permittee voluntarily agrees thereto.

Secs. 82-89—82-35. – Reserved.

SECTION 3. Subdivision II of Division 5 of Article IV of Chapter 82 of the Code of the City Miami Beach is hereby amended as follows:

CHAPTER 82 PUBLIC PROPERTY

* * *

ARTICLE IV. Uses in Public Rights-of-Way

* * *

DIVISION 5. Sidewalk Cafes

* * *

Subdivision II. Permit

* * *

Sec. 82-385. Minimum standards, criteria, and conditions for operation of sidewalk cafes.

* * *

(p) No food preparation, food storage, expanded polystyrene food service articles, single-use plastic beverage straws, single-use plastic stirrers, refrigeration apparatus or equipment, or fire apparatus or equipment, shall be allowed on the right-of-way. In addition, expanded

polystyrene food service articles, single-use plastic beverage straws, and single-use plastic stirrers shall not be provided to sidewalk cafe patrons.

- (1) Notwithstanding the above, beginning on August 1, 2018, the city shall engage in public education efforts to inform the public of those provisions in this subsection (p) that pertain to single-use plastic beverage straws and single-use plastic stirrers, and to provide assistance with identifying alternatives to single-use plastic beverage straws and single-use plastic stirrers. Beginning on November 1, 2018, and continuing through January 31, 2018, the city shall provide for a warning period, during which the code compliance department shall issue written warnings for violations of those provisions of subsection (p) that pertain to single-use plastic beverage straws and single-use plastic stirrers. Beginning on February 1, 2019, the code compliance department shall enforce the provisions in subsection (p) that pertain to single-use plastic beverage straws and single-use plastic stirrers.

* * *

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 5. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 6. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2018.

PASSED AND ADOPTED this _____ day of _____, 2018.

ATTEST:

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

(Sponsored by Mayor Dan Gelber and Co-Sponsored by Commissioner Michael Góngora)

Underline denotes additions

~~Strike-through~~ denotes deletions

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

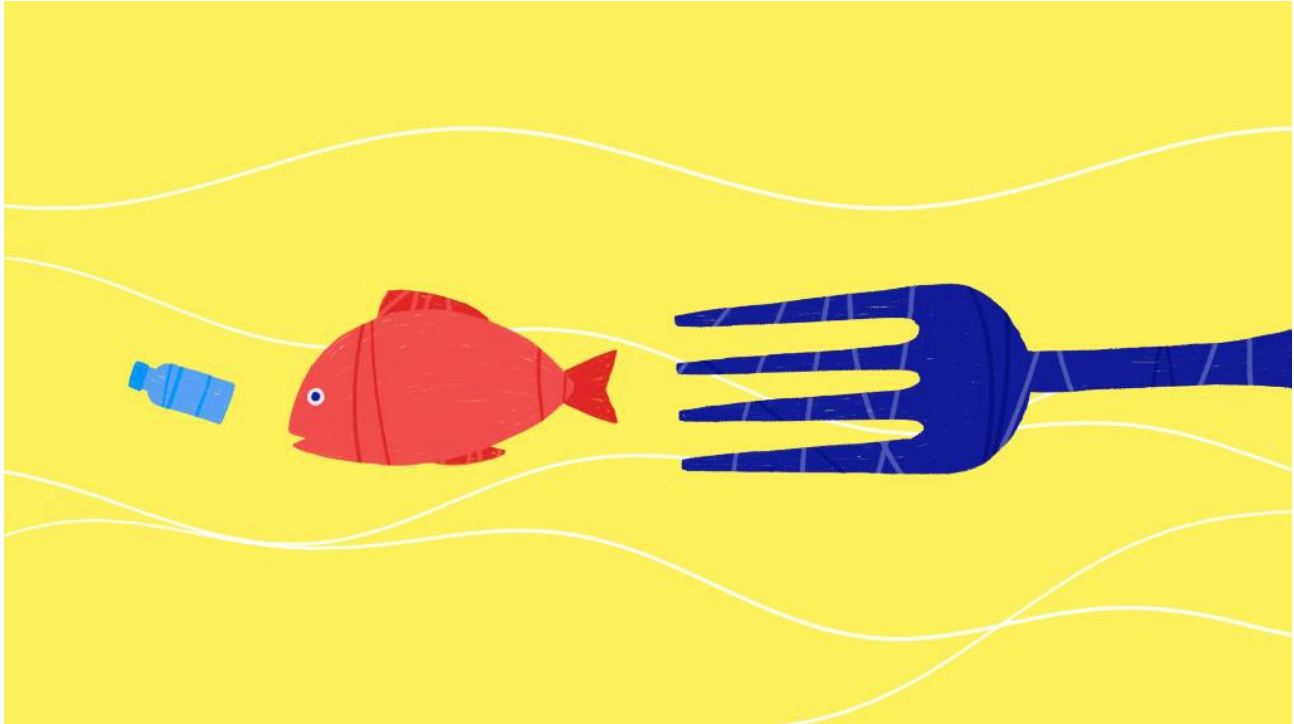
22 April 5/30/18

City Attorney NK Date

Europe plans to phase out plastic cutlery, straws and more

 money.cnn.com/2018/05/28/news/europe-plastic-ban-proposal/index.html

by Alanna Petroff



Europe is proposing a ban on single-use plastic items such as cutlery, straws and cotton buds in a bid to clean up the oceans.

The European Commission wants to ban 10 items that make up 70% of all litter in EU waters and on beaches. The list also includes plastic plates and drink stirrers.

The draft rules were unveiled Monday but need the approval of all EU member states and the European Parliament. It could take three or four years for the rules to come into force.

The legislation is not just about banning plastic products. It also wants to make plastic producers bear the cost of waste management and cleanup efforts, and it proposes that EU states must collect 90% of single-use plastic bottles by 2025 through new recycling programs.

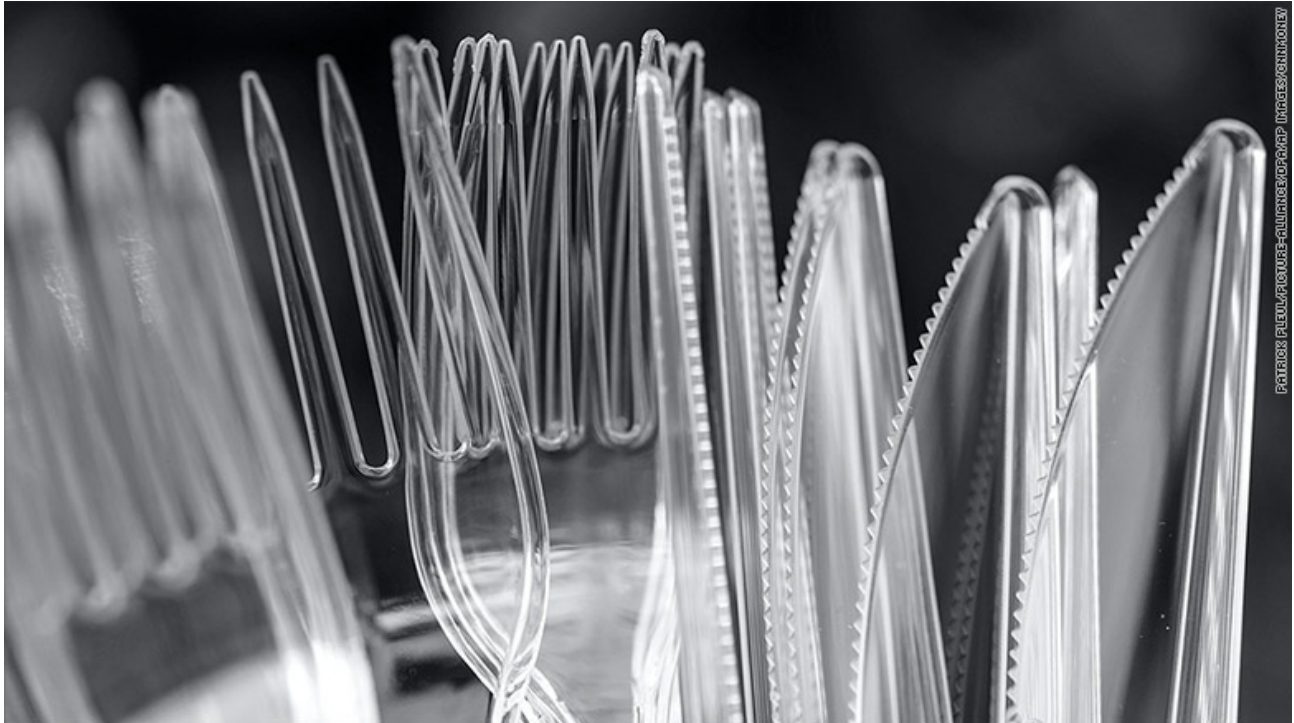
The European Commission estimates that these rules, once fully implemented in 2030, could cost businesses over €3 billion (\$3.5 billion) per year. But they could also save consumers about €6.5 billion (\$7.6 billion) per year, create 30,000 jobs, and avoid €22 billion (\$25.6 billion) in environmental damage and cleanup costs.

Related: China trash ban is a global recycling wake up call

The Rethink Plastic Alliance -- an association of environmental organizations -- called the proposals "a leap forward in tackling plastic pollution" but criticized some perceived shortcomings.

The proposals do not set targets for EU countries to reduce the use of plastic cups and food containers, it said.

"This could result in countries claiming they are taking the necessary steps as long as any reduction is achieved, regardless of how small," the alliance said in a statement.



Europe could ban plastic cutlery in the coming years.

The proposal also faced criticism from the plastics industry.

Plastics Europe, which represents manufacturers, said it supported the "overarching objective" of the proposal but said there must be more resources dedicated to "waste management" to ensure better collection of used plastic.

"Plastic product bans are not the solution," it said in a statement, and noted that "alternative products may not be more sustainable."

[Related: Starbucks offers \\$10 million for ideas on a better cup](#)

On a global basis, only 14% of plastic is collected for recycling. The reuse rate is terrible compared to other materials -- 58% of paper and up to 90% of iron and steel gets recycled.

Research shows there will be more plastic than fish by weight in the world's oceans by 2050, which has spurred policy makers, individuals and companies into action.

Last month a group of more than 40 companies including Coca-Cola (KO), Nestle (NSRGE), Unilever (UL) and Procter & Gamble (PG) pledged to slash the amount of plastic they use and throw away in the United Kingdom.

Starbucks (SBUX) also announced in March it was launching a \$10 million grant challenge to solicit designs for a cup that's easier to recycle

CNNMoney (London) First published May 28, 2018: 11:00 AM ET

The Death of the Plastic Straw

 nationalgeographic.com/travel/features/plastic-straw-single-use-plastics-in-hotels-cruises/

View Images

Plastic straws jut from cocktails at a resort on the island of Nosy Mitsio, Madagascar. Hotels and resorts are increasingly banning single-use plastics like these straws.

Photograph by Tommaso Bonaventura, [contrasto/Redux](#)

This story is part of *[Planet or Plastic?](#)*—our multiyear effort to raise awareness about the global plastic waste crisis. Learn what you can do to [reduce your own single-use plastics](#), and [take your pledge](#).

In 2015, a disturbing [video](#) of an olive ridley sea turtle suffering from a plastic straw stuck in its nose went viral, changing many viewers' attitudes toward the plastic tool that is largely a convenience for most people.

But how can the plastic straw—a diminutive item used briefly before being thrown away—cause so much damage? For starters, it easily finds its way into oceans due to its lightweight nature. Once there, it does not biodegrade. Instead, it slowly fragments into smaller and smaller pieces known as microplastics, which are frequently mistaken for food by marine animals.

Secondly, it can't be recycled. "Unfortunately, most plastic straws are too lightweight to make it through mechanical recycling sorters, so they end up in landfills and waterways and, eventually, our oceans," explains Dune Ives, executive director of [Lonely Whale](#). The nonprofit facilitated the successful Strawless in Seattle marketing campaign supporting the [Strawless Ocean](#) initiative.

In the United States, we dispose of millions of plastic straws each day. In the U.K., at least 4.4 billion straws are estimated to be thrown away annually. Hotels are some of the worst offenders: [Hilton Waikoloa Village](#), which became the first resort on the island of [Hawaii](#) to eliminate plastic straws earlier this year, used more than 800,000 straws in 2017.

Of course, straws are just part of the monumental waste that goes into our oceans. "Over the last 10 years, we have produced more plastic than in the whole of the last century, and 50 percent of the plastic we use is single-use and is immediately thrown away," says Tessa Hempson, operations manager for [Oceans Without Borders](#), a newly launched foundation from luxury safari company [&Beyond](#). "One million seabirds and 100,000 marine mammals are killed annually from plastic in our oceans. Forty-four percent of all seabird species, 22 percent of whales and dolphins, all sea turtle species, and a growing list of fish species have been

documented with plastic in or around their bodies.”

But now, the plastic straw has finally started to become an endangered species itself, with some cities in the United States (Seattle, Washington; Miami Beach and Fort Myers Beach, Florida; and Malibu, Davis, and San Luis Obispo, California) banning them, and some countries limiting single-use plastic items, which include straws. Belize, Taiwan, and England are among the latest countries to propose bans.

Still, a company doesn't have to wait for the government to institute a ban before implementing one on its own. Soneva banned straws in 2008, and Cayuga has been using bamboo straws since 2010. Hotels like these have paved the way for a movement and the travel and hospitality industries are finally starting to catch on.

Hotel brands initiating plastic straw bans include Four Seasons, AccorHotels North and Central America, Marriott International in the U.K., EDITION hotels, the Doyle Collection, Six Senses, Taj Hotels Palaces Resorts Safaris, Experimental Group, and Anantara. Cruise lines and tour companies including Carnival, Hurtigruten, Peregrine Adventures, and Coral Expeditions have reduced or eliminated their use of plastic straws on their ships. And luxury safari companies like &Beyond and Wilderness Safaris are both working toward removing plastic straws from their lodges.

While individual actions can have a significant impact on the environment and influence in the industry, a ban from a single hotel chain can remove millions of straws in a single year. Anantara and AVANI estimate their hotels across Asia used 2.49 million straws in 2017 and AccorHotels estimates using 4.2 million straws in the U.S. and Canada last year as well.

“Plastic straws are one of the worst offenders in terms of plastic pollution. By putting in alternatives and eliminating their use across &Beyond's lodges, we are doing our part to keep plastic out of the oceans,” says Hempson.

While not using a straw is best, some people prefer them or need them, like those with disabilities or sensitive teeth or gums. If you want to use a straw, reusable metal or glass straws are ideal. Final Straw, which claims to be the first collapsible reusable straw, is currently raising funds through Kickstarter.

Hospitality brands eliminating plastic straws have looked to various disposable alternatives. Paper is popular, with many U.S. establishments using Aardvark to supply American-made, FDA-approved straws that take 30 to 60 days to decompose. Another choice is compostable straws made from PLA (polylactic acid), a plant-based bioplastic made from materials like cornstarch instead of petroleum. These straws are compostable under the proper conditions but do not break down in water.

A more creative option is uncooked pasta, which is currently being used at Paradise Cove Beach Café in Malibu and tested by Terranea Resort in Rancho Palos Verdes, California. At the Taj Exotica Resort & Spa, Andamans, bamboo straws and stirrers are used.

And some establishments are using actual *straw* as straws, just like when straws first came into use. The Mandrake Hotel in London offers straws made from rye stems, which they get from German company Bio-Strohhalme.

“Most people just don’t think about the effects the simple act of reaching [for] or accepting a plastic straw has on their lives and the lives of generations to come,” says David Laris, chief creative officer and chef at Cachet Hospitality Group, which does not use plastic straws. “The hospitality industry has an obligation to begin reducing the amount of plastic waste it generates.”

Devorah Lev-Tov is a food and travel writer based in Brooklyn; find her on Instagram @devoltv.

PUBLISHED May 16, 2018

ORDINANCE NO. 2018-1676

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING CHAPTER 34 "ENVIRONMENT" OF THE TOWN'S CODE OF ORDINANCES TO CREATE SECTION 34-11, "PROHIBITION ON DISTRIBUTION, SALE OR USE OF PLASTIC STRAWS;" PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside ("Town") is committed to environmental conscientiousness and leadership, and towards that end has previously adopted ordinances prohibiting the sale or use of polystyrene food service articles by Town contractors, special event permittees, food services providers, and stores; and

WHEREAS, the Town finds that it is in the public interest, safety, and welfare to reduce litter and pollutants on the lands and in the waters of the Town; and

WHEREAS, Chapter 34 of the Town's Code of Ordinances ("Code") pertains to the environment; and

WHEREAS, discarded plastic straws threaten wildlife and marine life and degrade and litter the beaches and waters off of Florida's coast, which include areas within the Town; and

WHEREAS, plastic straws constitute a portion of the litter in the Town's streets, parks, public places, and waterfront areas; and

WHEREAS, the use, sale, and distribution of plastic straws has a detrimental effect on the Town's environment; and

WHEREAS, the Town Commission finds that there are reasonable, environmentally-friendly alternatives to plastic straws; and

WHEREAS, the Town Commission wishes to amend Chapter 34 of the Town's Code to create Section 34-11 to prohibit the sale, distribution, and use of plastic straws; and

WHEREAS, the Town Commission finds that this Ordinance is necessary for the preservation and improvement of the environment, public health, safety and welfare of the Town's residents and visitors.

32 NOW, THEREFORE, THE COMMISSION OF THE TOWN OF SURFSIDE
33 HEREBY ORDAINS:¹

34 Section 1. Recitals. The above-stated recitals are true and correct and are
35 incorporated herein by this reference.

36 Section 2. Town Code Amended. The Code of the Town of Surfside, Florida is
37 hereby amended by adding a section, to be numbered Section 34-11, which section reads as
38 follows:

39 Chapter 34 – Environment

40 Article I. -- In General

41 ***

42 Division 4. Food Service Articles

43 Section 34-11. Prohibition on Distribution, Sale or Use of Plastic Straws.

44 (a) Definitions. For purposes of this section, the following definitions apply:

45 ~~(1) Customer means any person receiving or purchasing goods, food, or liquids~~
46 ~~from a commercial establishment or at a Town Facility or Property.~~

47 (2) (1) Plastic Straw means a straw provided, sold, or distributed for the purpose
48 of imbibing liquids or transferring a beverage from its container to the mouth
49 of the drinker by suction, which is made predominantly of plastic derived
50 from petroleum, a biologically-based source (such as corn or other plants), or
51 polystyrene, polypropylene, or polyethylene, and which is intended for a
52 single-use.

53 ~~(3) (2) Special Event Permittee means any person or entity, and their~~
54 ~~subcontractor(s), issued a special event permit by the Town for a special event~~
55 ~~on Town property, or in a Town facility, or in the Town's right-of-way.~~

56 (4) (3) Town Facility includes, but is not limited to, any building, structure, park,
57 beach, road, street, right-of-way, or other facility owned, operated or managed
58 by the Town.

59 ~~(5) (4) Town Property includes, but is not limited to, any land, water, or air rights~~
60 ~~owned, operated or managed by the Town.~~

61 (b) Plastic Straws Prohibited; Exceptions

¹ Coding: Strikethrough words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicted with highlighted double-strikethrough and double underline.

(1) A Plastic Straw shall not be used, sold, or distributed in any commercial establishment or at any Town Facility or Town Property or by any Special Event Permittee.

(2) Exceptions.

a. This prohibition shall not apply to pre-packaged drinks sold at commercial establishments.

b. This prohibition shall not apply to medical or dental facilities.

c. This prohibition shall not apply to the school district or county, state, or federal governmental entities.

(c) Enforcement; Penalties

(1) Following adoption of this Section, the Town shall engage in public education efforts to inform commercial establishments of the provisions of this Section and to provide assistance with identifying alternatives to Plastic Straws.

(2) Beginning May 1, 2018, the Town's Code Compliance Department shall enforce all provisions of this Section.

(3) Penalties for violations of the provisions of this Section shall be enforced through Chapter 15 of the Town Code. Fines shall be in the amounts prescribed in the schedule of civil penalties adopted by resolution.

Secs. 34-1012 – 34-25. Reserved.

Section 3. Codification. It is the intent of the Town Commission that the provisions of this ordinance shall become and be made a part of the Town's Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered, and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Conflicts. All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 6. Effective Date. This Ordinance shall become effective immediately upon final adoption on second reading.

PASSED on first reading on the 13th day of February, 2018.

97 **PASSED AND ADOPTED** on second reading on the 13th day of March, 2018.

98 On Final Reading Moved By: Commissioner Paul

99 On Final Reading Second By: Vice Mayor Cohen

100 **FINAL VOTE ON ADOPTION**

101 Commissioner Daniel Gielchinsky yes

102 Commissioner Michael Karukin yes

103 Commissioner Tina Paul yes

104 Vice Mayor Barry Cohen yes

105 Mayor Daniel Dietch yes

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Daniel Dietch

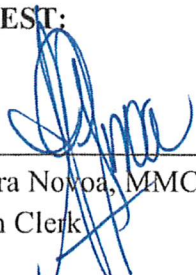
Mayor

111 **ATTEST:**

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113

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115 Sandra Novoa, MMC

116 Town Clerk

117

118 **APPROVED AS TO FORM AND LEGALITY FOR THE USE**

119 **AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**

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121

122



123 Weiss Serota Helfman Cole & Bierman, P.L.

124 Town Attorney

BAL HARBOUR

- V I L L A G E -

MEMORANDUM

TO: Honorable Mayor and Council

FROM: Dwight S. Danie, Village Clerk

DATE: June 5, 2018

RE: Lobbyist Registration Report

Name of Lobbyist	Principal Represented	Date Registered
Maria A. Gralia - Stearns, Weaver, Miller	Hudson Bay Company/Saks Fifth Ave	01/16/18
Darrell Payne - Stearns, Weaver, Miller	Hudson Bay Company/Saks Fifth Ave	01/16/18
Carolyn M. Travis	Whitman Family Development	01/25/18
Randall A. Whitman	Bal Harbour Shops, LLLP	01/25/18
Matthew W. Lazenby	Bal Harbour Shops, LLLP	01/25/18
John K. Shubin, Shubin & Bass	Bal Harbour Shops, LLLP	01/25/18
Amy E. Huber, Shubin & Bass	Bal Harbour Shops, LLLP	01/25/18
Bernard Zyscovich Zyscovich Architects	Bal Harbour Shops, LLLP	01/25/18
Ivor N. Massey aka Nik Massey	Bal Harbour Shops, LLLP	01/25/18
Michael D. Katz Katz Barron Squitero Faust	Bal Harbour Shops, LLLP	01/25/18
Howard L. Friedberg Katz Barron Squitero Faust	Bal Harbour Shops, LLLP	01/25/18
Benjamin Elias, Whitman Family Development	Bal Harbour Shops, LLLP	01/25/18
Raymond Jungles, Raymond Jungles Architects	Bal Harbour Shops, LLLP	01/25/18
Roberto Bezold, Zyscovich Architects	Bal Harbour Shops, LLLP	01/25/18
Jeffrey Bercow	Bal Harbour Civic Association	01/26/18
Thomas Robertson	Bal Harbour Civic Association	01/26/18
Tony Imbesi	Flamingo Way Enterprises	01/30/18
Joseph Imbesi	Flamingo Way Enterprises	01/30/18
Morgan McDonough	Saks Fifth Avenue	02/20/18
Mark B. Fisher	Bal Harbour Civic Association	05/23/18

BAL HARBOUR

- V I L L A G E -

Name of Lobbyist	Principal Represented	Date Registered
Yankie Andrusier	Bal Harbour Civic Association	05/23/18
Dina Cellini	Bal Harbour Civic Association	05/23/18