



CITY OF MIAMI SPRINGS, FLORIDA

Mayor Xavier M. Garcia

**Vice Mayor Jennifer Ator
Councilwoman Grace Bain**

**Councilman Bob Best
Councilman George V. Lob**

Decorum: "Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the City Council, shall be barred from further audience before the City Council by the Mayor, unless permission to continue or again address the City Council is granted by the majority vote of the City Council members present. In accordance with the foregoing, the City Council has determined that racial or ethnic slurs, personal attacks and comments unrelated to City matters or issues constitute prohibited comments from the podium".

AGENDA

REGULAR MEETING

Monday, February 11, 2013 – 7:00 p.m.

Council Chambers – City Hall

201 Westward Drive – Miami Springs

- 1. Call to Order/Roll Call**
- 2. Invocation: Mayor Garcia**

Salute to the Flag: Students from Miami Springs Middle School will lead the audience in the Pledge of Allegiance and Salute to the Flag
- 3. Awards & Presentations:**
 - A) Presentation of the Yard of the Month Award for February 2013 to Anna Margarita Bello of 900 Quail Avenue**
 - B) Government Finance Officers Association – Presentation of Distinguished Budget Award to Assistant City Manager/Finance Director William Alonso**
- 4. Open Forum: Persons wishing to speak on items of general city business, please sign the register located on the speaker's stand before the meeting begins**
- 5. Approval of Council Minutes:**
 - A) 01-28-2013 – Regular Meeting**

6. Reports from Boards & Commissions:

- A) 02-04-2013 – Zoning and Planning Board – Minutes
- B) 02-05-2013 – Code Enforcement Board – Cancellation Notice
- C) 02-06-2013 – Architectural Review Board – Cancellation Notice
- D) 02-12-2013 – Recreation Commission – Cancellation Notice

7. Public Hearings: None

8. Consent Agenda:

- A) Approval of City Attorney’s Invoice for January 2013 in the Amount of \$12,980.25
- B) Recommendation that Council Waive the Competitive Bid Process and Approve an Expenditure of \$84,236.88 to Diamond Contract Services for Janitorial Services, Pursuant to Section 31.11 (E) (6) (g) of the City Code, and Pursuant to the Contract Renewal Option Provided by the City’s Existing Contract/Contract Vendor for an Additional One Year Period
- C) Recommendation that Council Award a Bid to Hector Turf Utilizing Florida State Contract Bid # 760-000-10-1, in the Amount of \$16,525.89, for Toro Sand Pro 3040 with Attachments Listed, Pursuant to Section 31.11 (E) (5) of the City Code

9. Old Business:

- A) Appointments to Advisory Boards by the Mayor and Council Members

Adjourn to Local Planning Agency Meeting

- Local Planning Agency Discussion Regarding Approval and Authorization of Proposed Adult-Use Related Ordinances as Follows:
 - 1. Zoning Ordinance [Section 150-165(D)]
 - 2. Business Regulation Ordinance (New Chapter Section 119; Repealing Sections 132-10 through 132-99).

Reconvene City Council Meeting

10. **New Business:**

- A) First Reading – Ordinance No. 1050-2013 – An Ordinance of the City Council of the City of Miami Springs Amending Chapter 150, “Zoning Code” of the Code of Ordinances, by Amending Section 150-165 “Abraham Tract District” to Provide for Zoning Regulations of Adult-Related Businesses; Establishing Intent and Purpose Related Thereto; Repealing all Ordinances or Parts of Ordinances in Conflict; Providing for Severability, Codification, and an Effective Date
- B) First Reading – Ordinance No. 1051-2013 – An Ordinance of the City Council of the City of Miami Springs Amending the Code of Ordinances by Providing for Creation of Chapter 119 “Adult-Related Businesses Code”, to Provide for Licensing Requirements and Business Regulations for Adult-Related Businesses; Providing for Repeal of Article II of “Sex Related Business Activities” of Chapter 132 “Sex Offenses”; Establishing Intent and Purpose Related Thereto; Providing for Severability; Repealing all Ordinances or Parts of Ordinances in Conflict; Providing for Codification; Effective Date
- C) Approval of Audit Firm Selection Committee
- D) Resolution No. 2013-3570 - A Resolution of the City Council of the City of Miami Springs, Florida; Relating to Earth Hour Participation on March 23, 2013; Urging Other Municipalities to Register and Participate in Earth Hour; Effective Date
- E) Recommendation that Council Approve a Site Plan for the Hyatt Place Hotel at 3549 Le Jeune Road
- F) Approval of Interlocal Agreement with Miami-Dade County for Shuttle Bus Service
- G) Recommendation that Council Waive the Competitive Bid Process and Approve an Expenditure in an Amount not to Exceed \$8,000.00 to NGF Consulting, Inc., for Professional Consulting Services Related to the Continued Operation of the Golf and Country Club, Pursuant to Section 31.11 (E) (6) (g) of the City Code
- H) Resolution No. 2013-3571 – A Resolution of the City Council of the City of Miami Springs; Requesting the Withdrawal of the City’s Indefinite Deferral of the County’s Consideration of the City’s Pending Annexation Application; Authorizing the County’s Immediate Review and Consideration of the City’s Pending Annexation Application; Effective Date

11. **Other Business:** None

12. **Reports & Recommendations:**

- A) City Attorney
- B) City Manager
- C) City Council

13. Adjourn

If any person decides to appeal any decision of this Board with respect to any matter considered, s/he 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 made (F. S. 286.0105), all of which the City does not provide.

In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the City Clerk, 201 Westward Drive, Miami Springs, Florida 33166. Telephone: (305) 805-5006, no later than (7) days prior to the proceeding.

Pursuant to Sec. 2-11.1 (S) of the Miami-Dade County Code and Miami Springs Code of Ordinances Chapter 33 - §33-20, all persons, firms or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of (1) ordinance, resolution, action or decision of the City Council; (2) any action, decision, recommendation of any City Board or Committee; or (3) any action, decision or recommendation of City personnel during the time period of the entire decision-making process on such action, decision or recommendation which will be heard or reviewed by the City Council, or a City Board or Committee shall register with the City before engaging in any lobbying activities on forms prepared for this purpose and shall state under oath his or her name, business address, the name and business address of each person or entity which has employed said registrant to lobby, and the specific issue on which he or she has been employed to lobby. A copy of the lobbyist registration form is available from the Office of the City Clerk.



CERTIFICATE OF RECOGNITION

Presented to

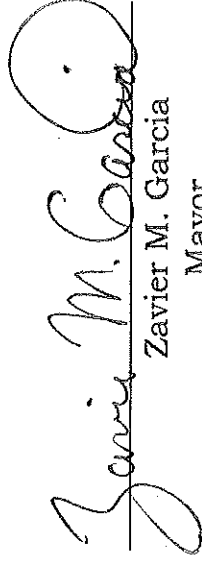
The Bello-Gonzalez Family
of
900 Quail Avenue

for their home being designated as

**“YARD OF THE MONTH”
FEBRUARY 2013**

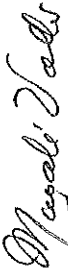
Presented this 11th day of February 2013.

CITY OF MIAMI SPRINGS, FLORIDA



Zavier M. Garcia
Mayor

ATTEST:



Magali Valls, CMC
City Clerk



Government Finance Officers Association
203 North LaSalle Street, Suite 2700
Chicago, Illinois 60601-1210
312.977.9700 fax: 312.977.4806

Agenda Item No.

City Council Meeting of:

02-11-2013 *Low*

January 10, 2013

The Honorable Xavier Garcia
Mayor
City of Miami Springs
201 Westward Ft.
Miami Springs, FL 33166

Dear Mayor Garcia:

I am pleased to notify you that City of Miami Springs, Florida has received the Distinguished Budget Presentation Award for the current budget from the Government Finance Officers Association (GFOA). This award is the highest form of recognition in governmental budgeting and represents a significant achievement by your organization.

When a Distinguished Budget Presentation Award is granted to an entity, a Certificate of Recognition for Budget Presentation is also presented to the individual or department designated as being primarily responsible for its having achieved the award. This has been presented to:

William Alonso, Finance Director

We hope you will arrange for a formal public presentation of the award, and that appropriate publicity will be given to this notable achievement. A press release is enclosed for your use.

We appreciate your participation in GFOA's Budget Awards Program. Through your example, we hope that other entities will be encouraged to achieve excellence in budgeting.

Sincerely,

Stephen J. Gauthier, Director
Technical Services Center

Enclosure



Government Finance Officers Association
203 North LaSalle Street, Suite 2700
Chicago, Illinois 60601-1210
312.977.9700 fax: 312.977.4806

January 10, 2013

PRESS RELEASE

For Further Information Contact
Stephen J. Gauthier (312) 977-9700

Chicago--The Government Finance Officers Association of the United States and Canada (GFOA) is pleased to announce that **City of Miami Springs, Florida** has received the GFOA's Distinguished Budget Presentation Award for its budget.

The award represents a significant achievement by the entity. It reflects the commitment of the governing body and staff to meeting the highest principles of governmental budgeting. In order to receive the budget award, the entity had to satisfy nationally recognized guidelines for effective budget presentation. These guidelines are designed to assess how well an entity's budget serves as:

- a policy document
- a financial plan
- an operations guide
- a communications device

Budget documents must be rated "proficient" in all four categories, and the fourteen mandatory criteria within those categories, to receive the award.

When a Distinguished Budget Presentation Award is granted to an entity, a Certificate of Recognition for Budget Presentation is also presented to the individual or department designated as being primarily responsible for its having achieved the award. This has been presented to **William Alonso, Finance Director**.

For budgets including fiscal period 2011, 1,328 entities received the Award. Award recipients have pioneered efforts to improve the quality of budgeting and provide an excellent example for other governments throughout North America.

The Government Finance Officers Association is a nonprofit professional association serving over 17,500 government finance professionals throughout North America. The GFOA's Distinguished Budget Presentation Awards Program is the only national awards program in governmental budgeting.



The Government Finance Officers Association
of the United States and Canada

presents this

CERTIFICATE OF RECOGNITION FOR BUDGET PREPARATION

to

William Alonso, Finance Director
City of Miami Springs, Florida

The Certificate of Recognition for Budget Preparation is presented by the Government Finance Officers Association to those individuals who have been instrumental in their government unit achieving a Distinguished Budget Presentation Award. The Distinguished Budget Presentation Award, which is the highest award in governmental budgeting, is presented to those government units whose budgets are judged to adhere to program standards.

Executive Director

Date

January 10, 2013





DRAFT

City of Miami Springs, Florida

The Miami Springs City Council held a **REGULAR MEETING** in the Council Chambers at City Hall on Monday, January 28, 2013, at 7:00 p.m.

1. Call to Order/Roll Call

The meeting was called to order at 7:07 p.m.

The following were present:

- Mayor Zavier M. Garcia
- Vice Mayor Jennifer Ator
- Councilwoman Grace Bain
- Councilman Bob Best
- Councilman George Lob

Also Present:

- City Manager Ronald K. Gorland
- Assistant City Manager/Finance Director William Alonso
- City Attorney Jan K. Seiden
- Chief of Police Peter G. Baan
- Comptroller Alicia E. González
- Planning and Zoning Director James H. Holland
- Building & Code Compliance Director H. "Tex" Ziadie
- Public Works Director Thomas Nash
- Administrative Assistant Aly Paz
- Deputy City Clerk Suzanne S. Hitaffer
- Clerical Assistant Elora R. Sakal

2. Invocation: Councilwoman Bain offered the invocation.

Salute to the Flag: Students from the Academy for International Education Charter School led the audience in the pledge of allegiance to the flag and Mayor Garcia presented Certificates of Recognition to the students who participated.

3. Awards & Presentations:

3A) Proclamation – Mary Ann Goodlett-Taylor Day

Mayor Garcia presented a proclamation to Mary Ann Goodlett-Taylor for her thirty years of service to the Historic Preservation Board.

Senator René Garcia presented a proclamation from the Florida Senate and he said that it is great when a community has a historian with knowledge. It is always important, especially for the younger children, to know their history because it gives them a sense of direction on where they are going. He thanked Ms. Goodlett-Taylor for what she has done for the community of Miami Springs and for protecting the Curtiss Mansion.

County Commission Chairwoman Rebeca Sosa presented a Certificate of Appreciation to Ms. Goodlett-Taylor. She said that history is written because of important people like Mary Ann who have dedicated many hours to the City. She commended the City of Miami Springs and its residents and thanked everyone on behalf of Miami-Dade County Mayor Carlos Giménez and the Board of County Commissioners. She congratulated Ms. Goodlett-Taylor and stated that she will never be forgotten.

Vice Mayor Ator presented a bouquet of flowers to Ms. Goodlett-Taylor for her service on the Historic Preservation Board. She commented that her grandfather, who passed away a year ago, attended one of the tours of the historical homes and he commented that the City has such a great treasure and that Mary Ann knows so much about the City. She thanked her for providing those memories to her grandfather and the services to the City and its citizens.

Mayor Garcia presented a plaque to Ms. Goodlett-Taylor with a key to the City for her service as the City Historian and Chairwoman to the Historic Preservation Board. He said that since he has been on Council, he has never witnessed anyone receiving a key to the City and she deserves it.

Ms. Goodlett-Taylor said that Miami Springs is a special town that is an oasis in the middle of the County. She decided to put together the history because the City did not really have any record of it and she encourages everyone to visit the Historical Museum. She thanked everyone for the recognition.

(Agenda Item 3C was discussed at this time, followed by Agenda Item 3D).

3B) Presentation of the Comprehensive Annual Financial Report (CAFR)

Néstor Caballero of Alberní, Caballero and Company presented the audit of the September 30, 2012 financial statements. The City was issued a clean, unqualified opinion on the financial statements; they performed the auditor and government auditing standards and there are no findings to report.

Chris Chiocca of Alberní, Caballero and Company stated that the Management's Discussion and Analysis is shown on pages three through nineteen, which he encourages everyone to read thoroughly. On page eighteen there is a General Fund unrestricted surplus chart which shows the history of the City from 1998 to 2012.

Mr. Caballero commented that the chart shows that in 2002 there was a General Fund Unrestricted deficit, which has gone up and now they are seeing an incline. Reserves are up and the use of those reserves has been budgeted. At some point in time, the City passed a minimum requirement for the reserve fund balance which is 25% of next year's expenditures. The City is currently at 25%, which is very conservative.

Mr. Caballero said that the Government Finance Officers Association recommends 10% for the minimum fund balance, but that is nationwide and they do not face the hurricanes that Florida faces. Having a healthy fund balance reserve is important and the City has taken positive steps by passing an ordinance to keep a minimum level.

Mr. Chiocca mentioned that the Statement of Net Assets is on page twenty, which is on the full accrual basis of accounting, while the General Fund is on a modified accrual basis. The total assets of the City are \$35.2MM and there was a decrease of \$2.2MM from the prior year. The total liabilities were \$7.5MM and there was a small decrease of \$800,000 from the prior year. The total net assets of the City were \$27.6MM with a decrease of \$1.5MM from the prior year.

Mr. Chiocca stated that the City's unrestricted net assets decreased only \$450,000 out of the \$1.5MM. The reason for that was because there were also some increases. The Road and Transportation Fund restricted amount in the prior year was approximately \$900,000 because the money for Local Option Gas taxes was moved into the General Fund.

Mr. Caballero commented that the new line item called Investments in M.S. Properties Inc. relates to the tax credit entities that were created.

Mr. Chiocca explained that page 21 is the statement of activities on a full accrual basis. The total revenue for the City was \$17.2MM. The total expenses were \$18.7MM for a \$1.5MM decrease and the reasoning for that was because there was a decrease in the capital grants and contributions column of approximately \$1MM related to the General Obligation Bond (G.O.B.) money received in previous years for the Curtiss Mansion restoration project that was not received in 2012.

Mr. Chiocca said that on pages 22 through 24 are the financial statements which will show the General Fund and other funds that are restricted for their use such as the Law Enforcement Trust Funds (LETF) and the capital projects fund. There is \$5MM of assets in the General Fund and \$600,000 in liabilities with a total fund balance of \$4.3MM. There was a slight decrease in the unassigned fund balance of \$200,000 and a decrease in committed funds of \$280,000.

Mr. Chiocca stated that the \$3.4MM is the unassigned fund balance which is 25% of next year's operating expenditures and transfers.

Mr. Caballero commented that the federal government has audited the LETF funds and the City received a clean report with no findings, which is rare.

Councilman Best asked about the State investment pool funds and what the status was on receiving some of the funds that were due to the City.

Mr. Caballero responded that the City had not received the funds because if they were taken out of the account now, the City would have to take a large loss. He recommends that the City keep the money in the fund until it starts to recover.

Mr. Alonso said that he would cover the topic when he presents the interim budget report. The current unrealized loss is \$1,500 and there is still \$89,000 on deposit with the State.

Mr. Chiocca referred to the Statement of Revenues, Expenditures and Changes in Fund Balance on page 24. Total revenues for the General Fund were \$13.6MM which was an increase of approximately \$700 from the prior year. Total expenditures were \$14MM and there was approximately a \$200,000 increase from the prior year. The net change in fund balance was \$509,000. A significant increase from last year was the public safety line. There was approximately a \$470,000 increase mainly due to an increase in pension costs, workers compensation claims and some other fees related to claims.

Mr. Chiocca explained that the total assets for sanitation and storm water funds were \$4.3MM which is a \$300,000 decrease from the previous year. There was \$556,000 in liabilities which is approximately a \$90,000 decrease from the previous year. The overall total net assets are \$3.7MM which is a \$200,000 decrease from the previous year. The revenues and expenses related to those funds are on page 27. The operating revenues were approximately \$2.4MM which is \$150,000 less than last year. The operating expenses were \$2.6MM which is approximately a \$200,000 increase from the previous year.

Mr. Chiocca explained that overall the funds decreased \$230,000 that was also around the budgeted loss for those funds. It was anticipated to have a small loss in the storm water and sanitation funds this year. The notes to the basic financial statements are on pages 29 through 54 which go into detail and give an explanation of the numbers. There is a significant new footnote on page 53 regarding the Curtiss Mansion restoration and redevelopment project.

Mr. Chiocca commented that on page 56 is the budget versus the actual for the general fund. It gives in detail the original and final budgets as well as the actual numbers. There were some over expenditures in certain departments, but overall the total expenditures were \$140,000 less than budget. On page 56 is the budget versus the actual for the net change in fund balance. It was an anticipated decrease of \$590,000 and the City came out at \$509,000 which is approximately \$80,000 less than what was budgeted for.

Mr. Chiocca said that pages 68 through 86 include statistical information which gives more details in the numbers and historical, demographic and operational information that is required as part of the CAFR certificate program. Pages 87 through 92 are the auditor reports and findings which in the City's case were none as Mr. Caballero previously stated. Pages 89 and 90 include the Management Letter under the Rules of the Auditor General that discusses recommendations and testing that the auditors did regarding investments of public funds. He thanked Mr. Alonso and Controller Alicia González for their hard work.

Councilman Best thanked Mr. Caballero and Mr. Chiocca for their services.

3C) Certificate of Recognition to Alfreda M. Felton

Mayor Garcia presented a Certificate of Recognition to Alfreda M. Felton upon the occasion of her retirement after 35 years with the U.S. Postal Service and 27 years at the Miami Springs Post office. He stated that Ms. Felton has done a great job serving the residents of Miami Springs.

Ms. Felton thanked the City of Miami Springs for sharing, caring and showing love for her. She thanked her customers and her family members who were present. She said that out of her 35 year career, the 27 years she worked in the Miami Springs Post Office were enjoyable and she will miss everyone.

3D) Presentation of Co-Officers of the Month Award – January 2013 – Harry Mayer and Justin Robbins

Chief of Police Peter G. Baan asked Harry Mayer and Justin Robbins to come forward to receive their award for Co-Officers of the Month for January 2013.

Sergeant Gurney read the nomination letter summarizing the excellent work of Detective Mayer and Officer Robbins. She explained that Detective Mayer cleared three residential burglaries by arrest on the same day, and he cleared a burglary that occurred in October 2012 in which numerous firearms were taken.

Sergeant Gurney added that Officer Robbins is diligent in his police duties, while maintaining a positive attitude and he is always willing to go the extra mile to ensure that the job is done correctly.

Chief of Police Baan stated that both officers are veteran police officers and have done a great job. Officer Robbins is the top producer in the patrol division almost every year and Detective Mayer is a top detective that knows how to get confessions. Both have a “rookie enthusiasm” and have never lost that enthusiasm for their job.

Officer Robbins said that their success was a perfect example of teamwork. It is unfortunate that three homes were burglarized, but it is also great to catch the subjects right after they committed the crimes. He thanked the Mayor and Council.

Detective Mayer also thanked everyone for the recognition.

(Agenda Item 3G was discussed at this time)

3E) Power Point Presentation by Public Works Director Tom Nash Regarding Trees in Urban Settings

City Manager Gorland reported that there had been many complimentary calls to City Hall since Raydel was selected for tree trimming and landscaping services. People who have not seen tree trimming in many years are now seeing it take place and some have been in question regarding that matter. He explained that the tree trimming can look odd to some people because the nature of what has to be done and the most common cut is the V-cut under the power lines.

City Manager Gorland said that the V-cut weakens the trees but there is nothing that can be done about it. He has spent time with Public Works Director Tom Nash and viewing Raydel’s work to see what the benefits were and he thought it would be an excellent time to inform Council of what should be done, how it is being done and why.

Mr. Nash put together a PowerPoint presentation since there have been some concerns as to how some of the trees are trimmed. The tree canopies are too low and there is a considerable amount of damage being done to vehicles and the trees. Miami-Dade County recommends twelve feet over the sidewalks and eighteen feet over the roadway which the picture of the tree shown does not have.

Mr. Nash explained that the City's Public Works Department is obligated to provide safety and quality of life to the residents. A picture was shown of a resident who has to endure a City tree to enter and exit his vehicle when leaving their property. He said that Public Works receives complaints from the Miami-Dade Fire Department due to damages to their ladder trucks and hose equipment while responding to calls and Miami-Dade County Transit has sustained damages to their buses. He noted that countless delivery trucks have sustained significant damage to the roofs of their trucks while making deliveries and there are also residents with RV's and boats that travel the City.

Mr. Nash mentioned that there are clearly obstructions and the canopies need to be raised to accommodate the large trucks and vehicles. He presented a picture of an eight-foot Oak tree limb that has grown over a resident's driveway. The tree may be acceptable for the current resident, however there is a significant sized limb that would have to be removed should the request ever be made. The separation point from the trunk to limb is approximately 15 inches in diameter which makes up approximately 30% of the tree and to remove the limb, he would have to consider removing the entire tree because of the impact that it would cause to the tree.

Mr. Nash stated that water sprouts, dead wood, crossing limbs and low hanging branches are a number one issue since Hurricanes Wilma and Katrina. Since October, there have been approximately 688 trees trimmed in the City. The sprouting is one of the major concerns with the roadway obstructions, the sidewalks and the low visibility. Water sprouts most often are in clusters and when removed they open up large areas within the canopy and gives the overall effect that the tree has been "over lifted". This is one of the concerns raised.

Mr. Nash commented that trees produce water sprouts for a number of reasons, including stress of root loss or damage, loss of branches due to storms and topping or hat racking. Once sprouts are removed from the base of a tree, the aesthetics will gain approximately twelve-feet overall height on the trunk of the tree. He noted that just because the tree is green, it does not mean that it is healthy. He presented pictures of some trees that have interior limbs that have decayed or rotted and need to be removed.

Mr. Nash presented a picture of a tree on Hammond Drive that was low over the roadway and was struck by a truck and had already been corrected. He showed a picture of another tree on Hammond Drive that encroaches on the roadway and the swale and was intruding into the backyard and over the roof of a home. He presented a picture of the tree after it was trimmed, explaining that the trimming involved opening up the roadway and clearing the swale area that was also impeding the alley way access, the sidewalk area and the roof.

The power company provides an essential service and it is not their responsibility to trim trees; it is Public Works' responsibility, according to Mr. Nash. The power company comes and makes the trees safe and Public Works comes afterwards to perform the restoration and corrective cuts.

To answer Councilman Best's question, Mr. Nash replied that he prefers to monitor Raydel's work in order to prevent issues and he has approximately four site visits a day with the company. He wants to ensure that the City is getting what they pay for and that the company is working properly. Raydel has approached him with regards to certain situations that they have come across.

Mr. Nash stated that another concern is the obstruction of road signs and pedestrians due to the vegetation from the bottom of the trees. He noted that Miami Springs is not the only community that has to maintain the tree canopies to accommodate large vehicles. Mr. Nash read the following from the University of Florida Institute of Food and Agricultural Sciences (IFAS):

“Choose trees that suit the area. Large trees need a large rooting zone. Tree roots extend 3-5 times the diameter of the canopy. If the planting area is small or the yard is small, choose a tree that naturally stays small. Avoid planting trees near septic systems, pools, sidewalks, driveways, utility lines and buildings. Tree trunks and roots expand in girth as they age. Know the mature height and width of the tree, and take this into account when choosing the planting site.

Trees with thick canopy should be thinned. Avoid removing more than 25-30% of the foliage per year. Most trees do not need to be pruned each year. Thin canopy when it becomes thick (hard to see through). Some interior branches should be removed to allow wind to go through the canopy.

Buy good quality trees and trees that are adapted to South Florida. Florida Fancy or Grade #1 are the optimum for quality. These trees have one trunk and need little additional training to form a good quality tree.”

City Manager Gorland asked if Raydel could trim 1,000 trees per year and Mr. Nash responded that they are averaging approximately 250 trees a month which is approximately fourteen trees a day.

City Manager Gorland asked Mr. Nash who some of the authorities were that he works closely with.

Mr. Nash responded that regarding the inquiries he had received, he contacted Joy Kline with the Department of Regulatory and Economic Resources which used to be known as DERM. He sent her pictures of the areas that Raydel has trimmed including Curtiss Parkway, the Circle, Esplanade Drive and North and South Melrose Drive. She replied to him explaining that the tree trimming that was done by Raydel looked fine in her opinion.

Mr. Nash stated that Public Works and Raydel are working to do what needs to be done to repair the damage to the trees and make the community safe for the residents and for the larger vehicles that drive throughout the community.

City Manager Gorland commented that the trees are in great hands and he invited Council to go out with Mr. Nash to see the work.

City Attorney Seiden clarified for Councilman Best that the City specifically requires Mr. Nash be the head person for this work because Raydel wanted to have their own arborist on staff and they were denied that request. From a liability standpoint, it is really important that the trees are maintained in a proper manner.

Mayor Garcia has heard many good things about Raydel and he asked if they have had any minor incidents occur that he has been able to rectify immediately and Mr. Nash replied that they have not had any issues that he has witnessed other than one issue that was taken care of immediately. The biggest issue Raydel has is the flow of traffic and people not respecting their work space.

3F) Near-Term Redevelopment Activities of N. W. 36th Street, Airport, Golf and Downtown Areas by Planning and Zoning Director James H. Holland

City Manager Ronald K. Gorland stated that he challenged Planning and Zoning Director Holland to determine what could be done to redevelop the Abraham Tract, 36th Street and the Golf District without a budget.

Planning and Zoning Director James H. Holland identified several activities that could be done with a limited budget and resources. He said that the first aspect of the near term development activities focuses on the regulatory environment, specifically the commercial zoning districts, including N. W. 36th Street, the Abraham District, the Airport Golf District and the Central Business District (CBD).

Mr. Holland noted that the Abraham District regulations were adopted by Council in August 2012, and the development is coming to fruition with a six-story, 135 room Hyatt Place Hotel that will be coming to the Zoning and Planning Board on Monday, February 4th. In addition, the Bennigan's site has been sold to a hotel developer and he expects activity in the very near future.

Additional work was needed for the N. W. 36th Street District in order to make it more workable and some additional work is needed in regard to the off-street loading provisions and design regulations, according to Mr. Holland. He recommends looking at the entire sign code revision. He referred to the sign code in Doylestown, PA and the Village of Pinecrest Code that have fair regulations and they are not overly restrictive. He said that Council would be making the decisions in the future.

The Airport Golf requires a land use amendment and Comprehensive Plan review by the State. There was a snag with the Florida Department of Transportation (FDOT) that can be worked out and by reducing the cap for the Floor Area Ratio (FAR) to 2.0 versus 3.0. For example, the Hyatt Place Hotel has a FAR of 1.3 on a very compact site of approximately 1.2 acres. There is one residential project coming in that creates some urgency to effect the Airport Golf regulations.

Mr. Holland explained that the CBD permitted land uses, bulk regulations and parking needs to be looked at in order to determine what encourages development. There is no specific urgency at this time and if a project happens to come forward, the Administration can respond.

City Attorney Jan K. Seiden stated that he and Mr. Holland would be meeting with the attorney that was hired to write the adult related uses. He reviewed her work in detail and it is well thought out, well supported and it will close the loop on the Abraham District. He said that two ordinances were developed; one is a zoning ordinance for the Abraham District and the other will replace Chapter 135 in the Code regarding adult related businesses. Section 119 of the Code was developed that deals with the regulation of businesses and he is very happy with the results. It should be finalized with one meeting since it is already in the proper format and it should be approved by this Council before the April election.

City Attorney Seiden commented that Council will participate in the process to make the zoning ordinance viable in terms of a potential challenge. Council will have to state for the record that they have reviewed the studies and have determined that they agree with the nature and findings of them.

The next near term activity would be the cataloging of properties by ownership and land area, according to Mr. Holland. The information is available in several different places and the object is to have it in one place with mapping capabilities that can be integrated. The ownership patterns are essential when considering land assemblage, which should be the case in the Downtown.

Mr. Holland explained that the next related activity is site suitability assessment which is looking at specific land uses in specific land areas. All parcels are not conducive to hotel or retail development and the larger sites should be reserved for larger scale developments and the smaller sites for more traditional development such as “Mom & Pop” operations. He added that commercial real estate is not always advertised and there have been many inquiries about properties that he did not realize were on the market.

Mr. Holland stated that he will further pursue a dialogue with the Greater Miami Board of Realtors and they can help with identifying available properties. In some instances properties may not be on the market, but the owners will sell if they are offered the right price; there is one large site on 36th Street where this is the case.

Mr. Holland suggested that properties with the most development potential should be identified and these include structures that are in substandard condition or functionally obsolete. This approach would involve updating the 1995 Finding and Necessity for Redevelopment study and to proceed from there.

Another activity would be assisting the sellers in the preparation of their marketing materials, according to Mr. Holland. He cited one property on 36th Street that could use better marketing information and technical expertise. The City could cooperate or participate in the development by vacating certain streets or alleys when appropriate in order to further consolidate the properties. Another activity would be to identify and explore non-monetary incentives to developers such as expedited permit processing and waiver of certain permit fees.

Councilman Best thanked Mr. Holland for identifying seven points that are development rich in terms of not spending a lot of funds. He knows the City is not in the land business.

Mr. Holland explained that the City should assume the position of expediting development instead of deterring development in Miami Springs. Many developers had no interest in coming to Miami Springs because of the anti-growth environment and hopefully that will change.

Mayor Garcia commented that the position on development had already changed and this change was facilitated by the Administration who deals with people on a day-to-day basis. He said that once the hotels are finished he would suggest acquiring a testimonial letter from the developers that could be added to the City’s marketing material.

City Manager Gorland felt that the time for 36th Street has finally arrived with the expansion of the airport and the City should do a better job of letting people know what property is available in Miami Springs. There are three tracts on 36th Street with more than three acres and one 4.5 acre tract in the Airport Golf District.

Councilman Lob asked how long it would take before Council addresses the Airport Golf District and Mr. Holland replied that it could be next month or at the first meeting in April because there is an interested developer.

3G) Presentation from the Miami Springs Senior High Stroke Awareness Team by Cesar Castillo, Member of the Miami-Dade County Youth Commission

César Castillo of 831 S. E. 7th Place, Hialeah, Member of the Miami-Dade County Youth Commission, presented information on stroke awareness, heart disease and their Stroke Awareness Team at Miami Springs Senior High School. They visit schools, churches and different events to spread the awareness of stroke and heart disease.

Luis Blanco of the Stroke Awareness Team explained that strokes predominantly affects Hispanics and African American people. They have received recognition from The Masonic Medical Research Laboratory (MMRL). He continued stating that there is a lack of awareness in Miami-Dade regarding strokes and heart disease and the team is doing everything they can to spread the awareness.

Andrea Olivera said that this is her first year with the Team. The Team wants to make the community aware of certain risk factors that increase a person's chances of having a stroke such as smoking, alcohol, eating unhealthy and not exercising regularly.

César Castillo commented that they have been working with different organizations throughout the County. They have created an idea to host a walk to bring the community together and spread the awareness about strokes and heart disease. He would like to host this walk in collaboration with Commissioner Sosa and the City Council.

(Agenda Item 3B was discussed at this time)

4. Open Forum:

No speakers.

5. Approval of Council Minutes:

5A) 01-14-2013 – Regular Meeting

Minutes of the January 14, 2013 Regular Meeting were approved as written.

Councilman Best moved the item. Councilman Lob seconded the motion which was carried 5-0 on roll call vote.

6. Reports from Boards & Commissions:

6A) 10-17-2012 – General Employees Retirement System – Minutes

Minutes of the October 17, 2012 General Employees Retirement System meeting were received for information without comment.

6B) 10-17-2012 – Police and Firefighters Retirement System – Minutes

Minutes of the October 17, 2012 Police and Firefighters Retirement System meeting were received for information without comment.

6C) 11-01-2012 – General Employees Retirement System – Minutes

Minutes of the November 1, 2012 General Employees Retirement System meeting were received for information without comment.

6D) 11-01-2012 – Police and Firefighters Retirement System – Minutes

Minutes of the November 1, 2012 Police and Firefighters Retirement System meeting were received for information without comment.

6E) 11-19-2012 – Board of Appeals – Minutes

Minutes of the November 19, 2012 Board of Appeals meeting were received for information without comment.

6F) 01-09-2013 – Golf and Country Club Advisory Board – Minutes

Minutes of the January 9, 2013 Golf and Country Club Advisory Board meeting were received for information without comment.

6G) 01-10-2013 – Board of Parks and Parkways – Minutes

Minutes of the January 10, 2013 Board of Parks and Parkways meeting were received for information without comment.

6H) 01-15-2013 – Education Advisory Board – Minutes

Minutes of the January 15, 2013 Education Advisory Board meeting were received for information without comment.

6I) 01-17-2013 – Historic Preservation Board – Cancellation Notice

Cancellation Notice of the January 17, 2013 Historic Preservation Board Meeting was received for information without comment.

6J) 01-22-2013 – Ecology Board – Cancellation Notice

Cancellation Notice of the January 22, 2013 Ecology Board meeting was received for information without comment.

6K) 01-24-2013 – Code Review Board – Cancellation Notice

Cancellation Notice of the January 24, 2013 Code Review Board meeting was received for information without comment.

6L) 02-04-2013 – Board of Adjustment – Cancellation Notice

Cancellation Notice of the February 4, 2013 Board of Adjustment meeting was received for information without comment.

7. Public Hearings:

None.

8. Consent Agenda:

None.

(Agenda Item 10D was considered at this time)

9. Old Business:

9A) Appointments to Advisory Boards by the Mayor and Council Members

Mayor Garcia **appointed** Caridad Hidalgo to the Education Advisory Board for an unexpired term ending on May 31, 2013.

Councilman Best **appointed** Bob Calvert to the Board of Adjustment/Zoning and Planning Board for an unexpired term ending on April 30, 2015.

Councilman Best announced that he is removing Art Rábade from the Revitalization and Redevelopment Ad-Hoc Committee as he is going to step down from the board. Art is involved in a new venture that everyone will soon learn of. He thanked him for his service.

10. New Business:

10A) Recommendation from the Board of Parks and Parkways

City Manager Gorland stated that based on the action taken at the Board of Parks and Parkways meeting on January 10, 2013, the board members are recommending that Council approve 900 Quail Avenue as the Yard of the Month for February 2013.

Councilman Lob moved the item. Councilwoman Bain seconded the motion which was carried 5-0 on roll call vote.

10B) Resolution No. 2013-3569 – A Resolution of the City Council of the City of Miami Springs Providing for the Second Amendment to FY2012-2013 Budget; by Appropriating Funds from Undesignated Reserves and From Re-appropriation of General Fund Budget Revenues to Cover Authorized and Approved General Fund Expenditures; Providing Intent; Specifying Compliance with Budgetary Processes and Procedures; Effective Date

City Attorney Jan K. Seiden read the resolution by title.

Attorney Seiden stated that the resolution was amended to state “designated and undesignated” in the title and in the third “Whereas” clause. The Assistant City Manager/Finance Director will further explain the items listed in the second “Whereas” clause.

Mr. Alonso said that he intends to make the budget amendment document clearer in the future in order to show what is coming from the designated and undesignated fund balances. In this particular case, \$60,120, \$3,000 and \$25,760 are from the designated fund balance, which Council approved two meetings ago. The only item coming from the unreserved fund balance is \$41,126 for pool operations and this is because when the budget was prepared, the budget was reduced because the pool was expected to close for 4-5 months during repair. Subsequently, it was determined that the pool would not close this year and the expenses must be placed on the books. The net amount is actually \$45,595 for expenses less \$4,469 in revenues generated from the pool, and the \$41,126 will come from the unreserved fund balance.

Vice Mayor Ator said that she requested information to show how the amounts related to the designated and undesignated fund balance. She asked if the amount shown on page 35 of the Comprehensive Annual Financial Report (CAFR) would still be the same today and Mr. Alonso answered affirmatively.

Vice Mayor Ator noted that \$3,000 for the Westward Median bike path is going to Southeast Design. She asked if the \$85,880 for Golf Course improvements is for the storage tank.

Mr. Alonso clarified that \$60,120 is for the Country Club roof replacement and \$25,760 is for the storage tanks. He added that \$45,595 would come from the unreserved fund balance and at the end of the fiscal year there is usually a savings, less 25%, that can be designated. If there is a shortage, Council may have to reduce the pool improvements or the hurricane contingency. He said that he would have to show Council the designated fund balance left over, which is for pool improvements and hurricane contingency and take the \$45,000 from one of those categories.

Vice Mayor Ator understood that the pool improvements were postponed because the amount was more than the original funds that were set aside.

City Manager Gorland clarified that the pool improvements involved a larger amount and the Administration is in the process of selecting an engineering firm who will be able to provide the correct numbers and prepare the specifications needed for the Request for Proposal (RFP).

Councilman Best moved to adopt Resolution No. 2013-3569. Councilwoman Bain seconded the motion which was carried 4-1 on roll call vote, with Vice Mayor Ator casting the dissenting vote.

10C) Recommendation that Council Approve an Expenditure to Florida Shredding, the Lowest Responsible Quote, in the Amount of \$2,700.00, for Twelve Quarterly Shredding Events over a Three-year Period, Pursuant to §31.11 (C) (2) of the City Code

City Manager Ronald K. Gorland stated that this item is a recommendation for approval of an expenditure in the amount of \$2,700.00 to Florida Shredding. It is also recommended that Council approve an expenditure to All Digital Printing in the amount of \$534.00 for two banners and 1,000 event flyers and an expenditure of \$1,500.00 to the River Cities Gazette for advertising for a three-year period, pursuant to Section 31.11 (E) (6) (c) of the City Code.

City Manager Gorland explained that the purchase of these services and materials would provide for the implementation of a quarterly Police sponsored "Community Shred Day" for a three-year period for the residents and businesses of Miami Springs. The total cost is \$4,734.00 and funds are available from Law Enforcement Trust Funds (LETF). He added that communities are sponsoring this activity as a security measure in order to protect personal information.

Chief Baan explained that the City Manager presented this idea to him and this activity is also done by Miami-Dade County Crime Watch, which is a program that is traditionally sponsored by government entities to allow residents to dispose of their secure documents. The program is for three years and the first time will be a pilot program to see how it works; if there is enough participation, it will be continued on a quarterly basis at the Community Center, with dates and times to be determined. He added that the City could also take advantage of shredding their records.

Chief Baan clarified that the 3-year program is an approved use of the City's Law Enforcement Trust Funds.

City Manager Gorland commented that this type of industrial shredding turns paper into confetti and residents can shred entire boxes. If the program works for the residents, it can be extended to the commercial sector and it is successful in many communities.

To answer Councilman Lob's question, Chief of Police Baan explained that the City is charged a flat fee of \$100.00 per hour for the three-hour unit. The City will actually receive four quarterly events for the price of three, regardless of the amount they shred. Residents can show proof of residency with a utility bill or driver's license.

Councilman Best asked where the event would be held and the Chief said that it would be held in the pool parking lot.

City Manager Gorland added that the event would start at the pool parking lot and subsequently could be moved to different locations in the City.

Councilman Best moved the item. Councilman Lob seconded the motion which was carried 5-0 on roll call vote.

10D) Code Revisions Priority Discussion

Building and Code Compliance Director Harold “Tex” Ziadie presented list of priorities for code revisions, explaining that his presentations on commercial vehicles and signs are ready.

Mayor Garcia asked how long before the presentations would be ready for all the recommendations and he suggested that Council could hold a workshop meeting, while the commercial vehicles and signs could be addressed at a regular meeting.

Mr. Ziadie said that most of the revisions are fairly simple and he would be able to have something ready as soon as Council requests it.

Mayor Garcia asked Mr. Ziadie and the City Manager to begin the preparation of the Code revisions and when they are completed, the recommendations will be placed on the next available agenda or Council can hold a workshop meeting if they agree.

City Attorney Seiden asked for clarification on whether Council wanted final recommendations or just alternatives for the various codes so that a workshop can be scheduled to discuss them all at the same time.

Council directed the Administration to bring back alternatives for the various code revisions that will be addressed at a Workshop meeting.

11. Other Business

11A) Presentation of Fiscal Year 2012-2013 First Quarter Budget Report (Unaudited)

Assistant City Manager/Finance Director William Alonso reported that he could not make an intelligent projection as to how the year would end and he directed Council’s attention to the financial dashboard on page three. He noted that expenditures are right on budget at 28%, compared to 30% last year for revenues and 34% for expenditures.

Mr. Alonso explained that the State Board of Administration (SBA) account that Councilman Best inquired about shows an unrealized loss of \$1,511.00 and most of the funds remaining in that account have been recouped, while the unrealized loss is reduced with time. The percentage of recreation expenditures collected in fees is 15.9% for the first quarter, compared to 13.4% last year. This is a sign that the Community Center revenue is increasing. The Golf Course loss for the first quarter was approximately \$96,000 compared to \$89,000 for the same period last year and this is due to maintenance costs for the winter preparation.

Councilman Lob asked if recent activity would impact the final outcome of the Golf Course operations and the City Manager responded that the necessary steps are being taken that will hopefully not impact the Golf Course operation.

Mr. Alonso added that daily revenues are being monitored at the Golf Course and there has not been a drop in revenues that are ahead of last year. He clarified that there has been no impact on revenue side.

Mr. Alonso stated that there is a surplus for the Building and Code Department of approximately \$51,000 for the first quarter, compared to \$12,000 last year due to increased building permit activity.

Mayor Garcia asked about the increase in permit activity and what percentage is for residential and commercial permit activity.

City Manager Gorland said that the Administration could provide the breakdown for commercial and residential permit activity. The activity log is checked daily and today approximately thirty people signed in, which is a mix of commercial and residential. This is an indication that permit activity has increased, especially in the residential area.

Vice Mayor Ator asked about page 17 in the CAFR that shows a reduction of \$60,120 that Council approved on November 19, 2012, and she commented that the budget resolution approves that action.

Mr. Alonso clarified that all the expenses in the budget amendment resolution have been pre-approved by Council, with the exception of the pool issue.

12. Reports & Recommendations:

12A) City Attorney

None.

12B) City Manager

“Yoga in a Chair”

City Manager Gorland reported that “Yoga in a Chair” takes place every Tuesday and Thursday at the Community Center. Anyone interested should call the Senior Center at 305.805.5160.

Art Classes

City Manager Gorland announced that art classes for kids age three to twelve are currently being offered at the Miami Springs Community Center every Tuesday afternoon beginning at 4:30 p.m.

Flu Shots

City Manager Gorland reminded everyone that the Miami Springs Circle Pharmacy is offering flu shots and the flu and it is not too late to get one.

Farmers Market

City Manager Gorland urged everyone to attend the Miami Springs Farmers Market at All Angels Episcopal Academy.

Grant Program

City Manager Gorland reported that County Commissioners Rebeca Sosa and José Pepe Diaz are making the “Mom & Pop Grant Program” available to small business owners in their respective districts. The deadline is February 4th and applications are available at www.miamidade.gov/district06/home.asp.

Adult Basketball Registration

City Manager Gorland announced that the Recreation Center Adult Basketball League registration starts Monday, January 28, 2013, at 6:00 p.m. and runs until February 27th. This is a great activity that is a lot of fun.

Dog Park Etiquette

City Manager Gorland informed dog owners that on Saturday, February 2nd from 10:00 a.m. to 2:00 p.m. there is an interesting class on dog park etiquette and there has been a problem with un-neutered male dogs that are prohibited in the park. Chris Norris is a certified dog trainer that owns the business Miami Paws LLC, who will conduct the presentation.

Relay for Life Fundraiser

City Manager Gorland reported that the Relay for Life will hold a special Groundhog Day fundraiser on Saturday, February 2nd from 8:00 a.m. until noon at Woody’s West End Tavern, 600 Payne Drive, which is a yard sale featuring new, re-gifted or gently used items for sale.

Soccer Fundraiser

City Manager Gorland mentioned that the Miami Springs/Virginia Gardens Soccer Club is hosting a movie night fundraiser at Virginia Gardens’ field. Participants will be able to purchase food, drinks, popcorn and candy, etc. The movies to be shown are “Wreck it Ralph” and “Hotel Transylvania.”

Curtiss Mansion Tour

City Manager Gorland announced that on Saturday, February 9th at 10:30 a.m., the Tour and Slide Show on the “Four Lives” of the Curtiss Mansion will be held at the Mansion. Saturday tours will be conducted on January 12th, February 9th, March 9th and April 13th. The cost of the tour and slide presentation is \$5.00 per person.

All Angels Silver Ball

City Manager Gorland reminded everyone of the All Angels Silver Ball on Saturday, February 9th that will have a Parisian theme this year and will be held at the Miami Springs Country Club.

“Taste of the Springs”

City Manager Gorland reported that the “Taste of the Springs” would be held at the Miami Springs Optimist Club on Sunday, February 10th from 1:00 p.m. to 8:00 p.m.

Daddy/Daughter Night

City Manager Gorland announced that the fabulous Annual Daddy and Daughter Date Night will be held on Saturday, February 16th, which is sold out and there is a waiting list.

12C) City Council

High School Soccer Team

Councilwoman Bain congratulated the High School Girls Soccer Team for winning their regional game. She said that they will hold the next regional game on Tuesday in Melbourne and hopefully they will continue to the State competition.

Shredding

Vice Mayor Ator emphasized what the Chief of Police said about the benefits of shredding because when she and her husband filed her taxes this year they received a note from the IRS informing them that their taxes were already filed by someone else. She encouraged everyone to shred their personal papers.

Advisory Board Meetings

Vice Mayor Ator has noticed that City Staff was not present at the advisory board meetings, including the Golf and Country Club and the Education Advisory Board meetings. She spoke with the City Manager before about having Staff at the meetings who can answer questions. She has attended meetings when the board members had questions and she would then have to contact the City officials to provide the answers.

Johnny's Match Program

Vice Mayor Ator went to Johnny's on Sunday night for the distribution of the proceeds from the Match Program. The Woman's Club and CATS received over \$2,000 and she accepted the check for the Optimist Club. The Miami Jackson Baseball Team and Mu Alpha Theta Math Club also received checks and many groups were pleased to receive a donation. She thanked Johnny's for sponsoring the program.

Pelican Playhouse

Vice Mayor Ator announced that the Pelican Playhouse is starting a new session that Councilman Best can speak about. Her son attends and enjoys it so now is the time to join the program and be in the next show.

Little League

Vice Mayor Ator said that the Little League is gearing up and will be holding their Opening Day on Saturday, March 2nd. The sign-ups and practices for boys and girls are starting and anyone interested should get in touch with the Miami Springs Little League, whose motto is "Where Every Kid Gets to Play."

Movie Night

Vice Mayor Ator reported that All Angels' Movie night was a big success last weekend with the food trucks and many people who had a great time. Movie Nights will continue and Mother Keedy could submit a request within the next few weeks to move the event back to the Circle.

All Angels Silver Ball

Vice Mayor Ator mentioned that the annual Silver Ball will be held on Saturday, February 9th.

League of Cities Dinner

Vice Mayor Ator announced that she cannot attend the Miami-Dade County League of Cities Installation Dinner that will also take place on Saturday, February 9th, as she will be attending the Silver Ball.

"Taste of the Springs"

Vice Mayor Ator noted that the "Taste of the Springs" would be held on Sunday, February 10th from 4:00 to 7:00 p.m., not 1-8 p.m. as shown on the list of events. The event will be held at the Optimist Club and the Chamber of Commerce is the co-sponsor. Tickets can be purchased at Johnny's or by contacting Chamber President Jim Borgmann.

"Taste of the Springs"

Councilman Best received notification that the tickets for "Taste of the Springs" are being sold at Johnny's and that the event will be held from 4:00 to 7:00 p.m.

Little League

Councilman Best announced that the Little League Opening Day would be held on Saturday, March 2nd.

Pelican Playhouse

Councilman Best commented that the Pelican Playhouse held the first meeting and at least twenty-five new people attended. Director Ralph Wakefield asked everyone to get up and tell their story, which was interesting. He is really proud of the Community Center and what was accomplished.

Good Meeting

Councilman Best commented that the meeting tonight was good.

Pelican Playhouse

Vice Mayor Ator asked what was Councilman Best's favorite line in the last show and Councilman Best replied that it was his monologue in the "Trials of Robin Hood". He relayed a story about his first production, which was "Girls to the Rescue" in 1999-2000 when a cast member forgot their lines, nothing was said for three minutes and how the actor recovered.

Message from Marli

Councilman Lob attended the Message from Marli Walk on Saturday, January 26th that was well attended, with good food on a beautiful day.

Poker Tournament

Councilman Lob reported that the annual Rotary Club Poker Tournament fundraiser was held and Councilwoman Bain made the final table, placing seventh in the tournament.

Movie Night

Councilman Lob commented that the food trucks at the All Angels Movie Night had excellent food.

Mary Ann Goodlett-Taylor

Mayor Garcia reiterated that it was great to recognize Mary Ann Goodlett-Taylor who has a lot of memories of the City's history and she always has a different story to tell. He will try to find a company that can sit with a person and record their information so that it can be electronically archived, which he hopes to do for Mary Ann.

Mayor Garcia thanked Commissioner Sosa and Senator Garcia for recognizing Ms. Goodlett-Taylor on the County and State levels.

Poker Tournament

Mayor Garcia reiterated that Councilwoman Bain placed seventh in the Optimist Club Poker Tournament, but the incredible story is about Sydney Garton who was released from the hospital the same day, had her hair done and finished second place in the tournament.

Senior Tax Exemption

Mayor Garcia mentioned that he, the Property Appraiser and Commissioner Sosa will be hosting a workshop seminar for seniors to inform them of the State and County requirements for the additional Homestead Exemption.

Assistant City Manager/Finance Director William Alonso added that he was working on a Fact Sheet for the seniors with questions and answers, including a copy of the application.

Mayor Garcia will have the Property Appraiser's office call Mr. Alonso so that the information about the seminar can be sent to the River Cities Gazette.

Commercial Development

Mayor Garcia commented that there are great reports on the improvements in the commercial areas with the new hotels coming in line.

13. Adjourn.

There being no further business to be discussed the meeting was adjourned at 9:40 p.m.

Zavier M. Garcia
Mayor

ATTEST:

Suzanne S. Hitaffer, CMC
Deputy City Clerk

Approved as _____ during meeting of:

Transcription assistance provided by Elora R. Sakal.

Words ~~stricken through~~ have been deleted. Underscored words represent changes. All other words remain unchanged.



City of Miami Springs, Florida

ZONING AND PLANNING BOARD

DRAFT

The regular meeting of the Miami Springs Zoning and Planning Board was held on Monday, February 4, 2013 in the Council Chambers at City Hall.

1. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 7:07 p.m.

Present were: Chairman Manuel Pérez-Vichot
Bob Calvert
Bill Tallman
Alternate Todd Stiff

Absent: Vice Chairman Francisco Fernández
Ernie Aloma

Also Present: City Attorney Jan K. Seiden
City Planner James H. Holland
Secretary to the Board Elora Sakal

2. APPROVAL OF MINUTES OF REGULAR MEETING:

Minutes of the February 6, 2012 meeting could not be approved because Board member Calvert and Alternate Stiff were not present at the last meeting.

Chair Perez-Vichot welcomed Board member Bob Calvert to the board.

3. NEW BUSINESS

- A) Case # 01-ZP-13
Hyatt Place
3549 LeJeune Road
Zoning: Abraham Tract
Lot Size: 48,787 sq. ft. (1.12 Acres)

Applicant is requesting approval of a proposed site plan for a six story, 135 room hotel.

City Attorney Seiden explained the roles of the Board of Adjustment and the Zoning and Planning Board for Board member Calvert and Alternate Stiff.

Israel Bigelman, representative for the architects stated that the proposed project is a six-story, 135 room Hyatt Place hotel that is located on the Abraham Tract on LeJeune Road. There is a motor lobby with some covered parking on the ground floor and the balance of required parking is located on site. This project was discussed with the Miami-Dade Fire Department and necessary adjustments were made to comply with their requirements.

Mr. Bigelman commented that the second floor is the main lobby level that includes the guest registration desk, the lounge, seating for breakfast, a fitness center, an outdoor pool with a sundeck and terrace, a small meeting room, some guest rooms and back of house hotel facilities. The rest of the guest rooms are located on the next four floors. This hotel will be an asset to the City of Miami Springs.

To answer Chair Perez-Vichot's question, Mr. Bigelman explained that Miami-Dade Fire Department worked with him on the site approval as well as the entire floor plan.

Planning and Zoning Director Holland explained that the City's recommendation is for approval subject to some conditions. One condition is that a covenant be proffered and recorded that would limit the use of the amenities to hotel guests and employees only. He wanted to point out that this will be the first leed silver building in Miami Springs.

Steven Marin of 657 Minola Drive presented a PowerPoint presentation that included photos of what the Hyatt Place hotel would look like including an aerial photo and floor plans of each floor level. He showed protocol photos of the main lobby, the great room, a guestroom and the breakfast and lounge area. He explained that each guestroom will have a small seating area, a desk, a flat screen TV and free Wi-Fi.

Chair Perez-Vichot asked Mr. Holland if the parking that is below the building could be considered a parking garage and Mr. Holland replied that it is something that can be looked into. He noted that 8'x6' is the standard parking space requirement for Dade County.

Chair Perez-Vichot commented on the ADA accessibility and wanted to ensure that it gets addressed because if it is enforced after the permit is issued, it can create problems of hardship.

Mr. Marin clarified that there will be a shuttle bus that transports guests to and from the hotel to the airport.

City Attorney Seiden commented that he noticed something that he wanted to correct. He believes that the City Arborist read the letter of the code when he discussed the trees in the memo. He stated that if trees in need of transplanting were to die, he would accept a replacement or restitution. He is technically correct but the City does not want money; they want trees.

City Attorney Seiden stated that one of the reasons that Mr. Holland is requiring a covenant restricting the use of the hotel amenities is because it would impact the parking. The restaurant facilities that are involved are going to be in-house.

Board member Tallman asked if the removal of the Queen Palms were held to a different standard and Mr. Holland replied that Queen Palms are not valuable trees and are easy to transplant but it would be more desirable to purchase new Queen Palms.

To answer Board member Calvert’s question, Mr. Bigelman replied that the four additional parking spaces could not be used as handicap spaces because they do not meet the width requirements. He noted that they have exceeded the required amount of handicap parking spaces with a total of four parking spaces.

City Attorney Seiden clarified for Board member Calvert that the hotel is not going to be open to the public as a public restaurant.

Chairman Perez-Vichot asked if there was going to be one-way traffic within the control gates and Mr. Marin responded that they are consistent with the traffic pattern.

Mr. Holland commented that there were no letters of support or objection.

Board member Tallman moved to approve subject to the covenant as outlined by the Planning and Zoning Director regarding the restriction of the restaurant and bar area to the exclusive use of guest and employees. Alternate Stiff seconded the motion which was carried unanimously on voice vote.

4. ADJOURN

There was no further business to discuss and meeting was duly adjourned at 7:31 p.m.

Respectfully submitted,

Elora Sakal
Board Secretary

Approved as _____ on

“The comments, discussions, recommendations and proposed actions of City Citizen Advisory Boards do not constitute the policy, position, or prospective action of the City, which may only be established and authorized by an appropriate vote or other action of the City Council”.



CITY OF MIAMI SPRINGS
FLORIDA

CANCELLATION NOTICE
CODE ENFORCEMENT BOARD

The regular meeting of the Code Enforcement Board scheduled for Tuesday, February 5, 2013
has been cancelled in advance due to no cases to be heard.

Tex Ziadie

Tex Ziadie
Director-Building and Code Compliance Department

cc: City Clerk
City Manager
Code Enforcement Board Members by E-Mail
Post



City of Miami Springs, Florida

Architectural Review Board

CANCELLATION NOTICE

The Architectural Review Board meeting on Wednesday, February 6, 2013 has been canceled in advance.

Elora R. Sakal
Board Secretary

cc: City Council
City Manager
Assistant City Manager/Finance Director
City Attorney
City Clerk
Planning and Zoning Director
Architectural Review Board Members
Post



City of Miami Springs, Florida

Recreation Commission

CANCELLATION NOTICE

The Recreation Commission meeting scheduled for Tuesday, February 12, 2013 has been canceled in advance.

Elora R. Sakal
Board Secretary

cc: City Council
City Manager
Assistant City Manager/Finance Director
City Clerk
City Attorney
Recreation Commission Members
Omar Luna, Recreation Director
Post

The City of Miami Springs
 Summary of Monthly Attorney Invoice
 Orshan, Lithman, Seiden, Ramos, Hatton & Huesmann, LLLP

City Council Meeting of:

02-11-2013

February 6 for January

<u>General Fund Departments</u>	<u>Cost</u>	<u>Hours</u>
Office of the City Clerk	3,358.80	24.88
Human Resources Department	1,298.70	9.62
Risk Management	481.95	3.57
Finance Department	1,661.85	12.31
Building,Zoning & Code Enforcement Department	1,312.20	9.72
Planning	1,075.95	7.97
Police Department	303.75	2.25
Public Works Department	184.95	1.37
Recreation Department	135.00	1.00
IT Department		0.00
Golf	108.00	0.80
Senior		0.00
General - Administrative Work	<u>3,059.10</u>	<u>22.66</u>
Sub-total - General Fund	\$12,980.25	96.15
<u>Special Revenue, Trust & Agency Funds</u>		
Golf Course Operations		0.00
L.E.T.F.		0.00
Due from Pension Funds		<u>0.00</u>
Sub-total - Special Funds	\$0.00	0.00
GRAND TOTAL: ALL FUNDS	\$12,980.25	96.15



CITY OF MIAMI SPRINGS
Public Services
345 N Royal Poinciana Blvd
Miami Springs, FL 33166-5259
Phone: (305) 805-5170
Fax: (305) 805-5195

Agenda Item No.

City Council Meeting of:

02-11-2013 (AW)

TO: Honorable Mayor Garcia and Members of the City Council
VIA: Ronald Gorland, City Manager
FROM: Tom Nash, Public Works Director
DATE: January 17, 2013

RECOMMENDATION: Recommendation that Council waive the competitive bid process and approve an expenditure of \$84,236.88 to Diamond Contract Services for janitorial services, pursuant to Section §31.11 (E)(6)(g) of the City Code and pursuant to the contract renewal option provided by the City's existing contract/contract vendor for an additional 1 year period.

DISCUSSION: Janitorial services for public works buildings, city hall, police dept & community policing office.

COST: \$ 84,236.88

FUNDING: Building Maintenance
Account # 001-5405-541-3400

PROFESSIONAL SERVICES APPROVAL:

Rosita Hernandez

From: Orlando Reyes [oreyes@diamondcontract.com]
Sent: Thursday, January 17, 2013 1:44 PM
To: Rosita Hernandez
Subject: Contract Extension

Hi Rosita,


Our one year anniversary is coming up in February. Please be advised we would like to continue another year under the same terms as the existing contract.

If I can be of further assistance please let me know.

Thank you

Orlando Reyes, Area Manager

Diamond Contract Services
15421 NE 21 Avenue
North Miami Beach, FL 33162
Tel: 305-469-5620
Fax: 1-888-456-8680
oreyes@diamondcontract.com

 Description: large logo

Please save a tree. Don't print this e-mail unless it's really necessary.



The City of Miami Springs is on [Twitter](#) and has a website [MiamiSprings-FL.Gov](#)



CITY OF MIAMI SPRINGS
Recreation/Golf
650 Curtiss Parkway
Miami Springs, FL 33166-5259
Phone: (305) 805-5180
Fax: (305) 805-5192

Agenda Item No.

City Council Meeting of:

02-11-2013

TO: Honorable Mayor Garcia and Members of the City Council

VIA: Ronald Gorland, City Manager

FROM: Omar Luna, Recreation Director

DATE: February 6, 2013

RECOMMENDATION:

Recommendation that Council award a bid to Hector Turf, utilizing Florida State Contact, Bid # 760-000-10-1, in the amount of \$ 16,525.89, for Toro Sand Pro 3040 w/attachments listed, pursuant to Section §31.11 (E)(5) of the City Code.

DISCUSSION: Unit to replace aging 8 year old, 300 hour existing piece of equipment utilized for sports field maintenance creating expensive repair costs both in parts, labor, and down time. This unit was budgeted for replacement in current budget year.

COST: \$ 16,525.89

FUNDING: Department/ Description: Recreation/Field Maintenance
Account Number: 001-5705-572-63-00

PROFESSIONAL SERVICES APPROVAL:



1301 NW 3rd Street
Deerfield Beach, FL 33442

Quotation

Sold To:

Miami Springs Golf Club
Attn: Ms. Sandy Pell
Golf Course Superintendent
650 Curtiss Parkway
Miami Springs, FL 33166
Via E-mail: pells@miamisprings-fl.gov

Date: 02/04/13
Quote # 1610673
Terms N30

Miami Springs Golf Club				
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Qty.	Model	Description	Unit Price	Extension
1	08703	Toro Sand Pro 3040 Bunker Rake Options Include:	13,127.43	13,127.43
1	08731	Mid-Mount ASM	1,094.80	1,094.80
1	08734	Solid Tine Toolbar	724.91	724.91
1	108-8496	Leveling Blade	278.03	278.03
1	08751	Tooth Rake	1,104.18	1,104.18
1	110-1314	Light Kit	196.53	196.53
Total for (1) SandPro 3040				16,525.89

1	08703	Toro Sand Pro 3040 Bunker Rake Options Include:	13,127.43	13,127.43
1	08751	Tooth Rake	1,104.18	1,104.18
1	08752	Spring Rake	553.66	553.66
1	110-1314	Light Kit	196.53	196.53
Total for (1) SandPro 3040				14,981.80

Pricing per National IPA Contract

Terms:

All Prices Quoted FOB Deerfield Beach Unless Otherwise Indicated. The Preceding Pricing Is Valid For 30 Days.
Pricing is based on Cash or Approved Finance Transaction Only. No use of Credit Cards for Equipment Purchases.
Prices Include Assembly Where Applicable and Accessibility to Parts and Service Manuals.
Timing of Delivery May Vary and is Subject To Manufactures Availability.
Purchaser is Responsible for Applicable Taxes and Duties.
No credit card payments on equipment purchases.
Thank you for considering Hector Turf for your equipment needs.
If I can be of any further assistance, please do not hesitate to contact me.

Quotation Provided By:

HECTOR TURF

Doug Francis
Account Representative
Commercial/Irrigation Products



CITY OF MIAMI SPRINGS
OFFICE OF THE CITY CLERK
201 Westward Drive
Miami Springs, FL 33166-5259
Phone: 305.805.5006
Fax: 305.805.5028

TO: Honorable Mayor Garcia and Members of the City Council
FROM: Magalí Valls, City Clerk
DATE: February 6, 2013
SUBJECT: PENDING BOARD APPOINTMENTS

The following appointments are pending:

<u>APPOINTMENT COUNCILMEMBER</u>	<u>CURRENT MEMBER</u>	<u>NEW TERM EXPIRES</u>	<u>ORIGINAL APPOINTMENT DATE</u>	<u>LAST APPOINTMENT DATE</u>
<u>Board of Adjustment</u>				
Mayor Xavier M. Garcia	Francisco Fernández	04-30-2015	10-14-1991	11-28-2011
<u>Architectural Review Board</u>				
Councilwoman Bain - Group II	Joe Valencia	10-31-2014	02-27-2012	02-27-2012
<u>Civil Service Board</u>				
Councilwoman Bain - Group II	Carrie Figueredo	06-30-2015	08-24-2009	08-24-2009
Councilman Best – Group I	Rob Youngs	06-30-2015	01-11-2010	01-11-2010
<u>Code Review Board</u>				
Mayor Xavier M. Garcia	Connie Kostyra*	04-30-2015	VACANT	VACANT
<u>Disability Advisory Board</u>				
Mayor Xavier M. Garcia	Charlene Anderson*	12-31-2013	VACANT	VACANT
Councilwoman Bain - Group II	Peter Newman*	12-31-2013	VACANT	VACANT
<u>Ecology Board</u>				
Councilman Best – Group I	Martin Crossland*	04-30-2015	VACANT	VACANT
Councilman Lob – Group III	Dr. Mara Zapata*	04-30-2013	VACANT	VACANT
Vice Mayor Ator – Group IV	Ann Trina Aguila*	04-30-2013	VACANT	VACANT

<u>APPOINTMENT COUNCILMEMBER</u>	<u>CURRENT MEMBER</u>	<u>NEW TERM EXPIRES</u>	<u>ORIGINAL APPOINTMENT DATE</u>	<u>LAST APPOINTMENT DATE</u>
<u>Golf and Country Club</u>				
Vice Mayor Ator – Group IV	Mark Trowbridge *	07-31-2013	VACANT	VACANT
<u>Historic Preservation Board</u>				
Mayor Xavier M. Garcia	Sydney Garton**	01-31-2016	11-08-1993	02-08-2010
Vice Mayor Ator – Group IV	M. A. Goodlett-Taylor**	01-31-2016	01-24-1983	10-08-2012
<u>Recreation Commission</u>				
Councilman Best – Group I	Jim Caudle*	04-30-2015	01-14-2013	01-14-2013
<u>Revitalization & Redevelopment Ad-Hoc Committee</u>				
Councilman Best – Group I	Arturo Rábade*	N/A	N/A	N/A
Vice Mayor Ator – Group IV	Todd Stiff*	N/A	VACANT	VACANT

* Connie Kostyra resigned on April 28, 2011.
 Charlene Anderson resigned on June 6, 2011.
 Peter Newman resigned on August 1, 2009.
 Dr. Mara Zapata resigned from the Ecology Board to become a member of the Education Advisory Board.
 Mark Trowbridge resigned on August 20, 2012.
 Martin Crossland resigned on January 9, 2013.
 Ann Trina Aguila resigned on January 9, 2013.
 Todd Stiff resigned from the Revitalization & Redevelopment Ad-Hoc Committee to become the alternate member of the Board of Adjustment/Zoning & Planning Board
 Jim Caudle resigned on January 31, 2013.
 Arturo Rábade was removed by Councilman Best on January 28, 2013.

** Historic Preservation Board – Council confirmation required per §153.11 of the City Code of Ordinances: “..... No board member who shall have served three consecutive terms of office shall be eligible to serve an additional term of office for 2 years thereafter, unless the appointment for any additional term shall be confirmed by a majority of the council.....”

cc: City Manager
 Assistant City Manager/Finance Director
 City Attorney
 Affected Board Members

LOCAL
PLANNING
AGENCY
MEETING

02-11-2013
City Council Meeting of:



Agenda Item No.

Weiss Serota Helfman Pastoriza Cole
& Boniske, P.L.

Memo

To: Ron Gorland, City Manager
Jan K. Seiden, Esq., City Attorney
James H. Holland, AICP, Planning and Zoning Director

From: Susan L. Trevarthen, Esq., AICP

Date: February 4, 2013

Subject: Proposed Regulations of Adult-Related Businesses

You have requested that I prepare updated regulations for adult-related businesses which seek to locate in the City of Miami Springs (the "City"). These regulations are intended to protect the citizens of the City from the negative impacts of adult-related uses while providing for the appropriate location of such uses consistent with all controlling laws.

Attached to this memorandum are two (2) Ordinances providing for regulations of adult-related businesses. One Ordinance provides for land development regulations of adult-related businesses, and another for business regulations. These regulations require different notices and procedures, and are subject to different legal standards, so it is best to adopt them in two separate Ordinances. I have placed the land development regulations in Section 150-165D of the Zoning Code of the Code of Ordinances, in the space left reserved by the final Abraham Tract District ordinance. I have created a Chapter 119 in the Code for the proposed business regulations of adult-related businesses.

Adult-related businesses are protected by the freedom of expression requirement of the First Amendment of the United States Constitution, because courts have concluded that "adult entertainment" includes an element of expression or speech. The United States Supreme Court has determined that adult entertainment establishments may be regulated by "content-neutral" regulations. A content-neutral regulation does not regulate the actual speech, but instead regulates the secondary effects associated with the speech.

I. Adult Secondary Effects Studies

You have been provided with binders containing the hard copies of the adult use secondary effects studies. These studies on the effects of adult-related businesses support the regulations included in the two proposed Ordinances. A memorandum that summarizes the studies is also in each binder. Pursuant to the requirements of the 11th Circuit caselaw, the summary memorandum and the studies must be reviewed by the members of the City Council prior to adoption, as described in greater detail in the memorandum.

II. Zoning Ordinance and Strategy

One of the most common and effective ways adult-related establishments are regulated is through zoning and distancing requirements that address the location of these establishments. Such regulations are considered under the First Amendment case law as lawful content-neutral limitations on the time, place, and manner of the activity which achieve the City's substantial government interest in reducing the negative secondary effects associated with adult entertainment establishments. *See City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Daytona Grand, Inc. v. City of Daytona Beach, Florida*, 490 F.3d 860, 870 (11th Cir. 2007).

I have coordinated with the City's Planning and Zoning Director in preparation of the proposed zoning Ordinance. The proposed zoning Ordinance responds to the analysis of the City's population, acreage, configuration and land use data, as provided by the City's Planning and Zoning Director. By authorizing the location of adult-related businesses within the Abraham Tract District, the proposed Ordinance allows the required minimum number of potential sites for adult-related businesses, consistent with applicable federal caselaw which analyzes the minimum number of adult-related business sites which must be provided, based on the population of the City and its available acreage for commercial use. Based on the population of the City being 13,809, the Ordinance authorizes adult-related businesses to locate on at least two (2) sites of a minimum size of two (2) acres per site.

III. Adult-Related Business Regulations Ordinance

The Ordinance providing for business regulations of adult uses comprehensively identifies and defines the different types of adult-related business establishments which are regulated by and require licenses under Chapter 119 of the Code of Ordinances. The Ordinance repeals the existing regulations located in Article II "Sex Related Business Activities" of Chapter 132 "Sex Offenses." Application requirements, review processes, and approval and enforcement procedures are also established. These business regulations address important governmental interests such as preventing the spread of diseases, avoiding opportunities for prostitution, sex crimes, drugs and other offenses, and prevents persons who have previously been convicted of crimes related to these businesses from establishing them in the City. The Ordinance also protects the ability of police and enforcement personnel to effectively inspect and monitor all areas of the business operation as needed. These regulations further address the secondary effects described in the studies.

Please note that the various fees related to regulation of adult-related businesses will need to be established by resolution of the City Council. The Ordinance proposes operating hours from 3:00 a.m. and 7:00 a.m., in accordance with the City's direction.



City Manager Department
201 Westward Drive
Miami Springs FL 33166
305-805-5010

TO: Honorable Mayor Garcia and Members of the City Council

FROM: Ron Gorland, City Manager

DATE: February 4, 2013

SUBJECT: Summary of Adult Use Studies Regarding Regulations of Adult-Related Businesses – Susan Trevarthen, AICP Attorney at Law, Weiss Serota Helfman Pastoriza Cole & Boniske, PI

Attached is subject summary for your review prior Monday night's Council meeting. Because the first reading of the two associated ordinances is scheduled for Monday night, providing this to you today will give you more opportunity to read through the summary document and then to access both this summary and the almost 300 page Secondary Effects Studies background document in the dropbox located at:

<https://www.dropbox.com/sh/gl95534foz83xui/TKA2UMceCo> (this was also emailed to you)

cc: JS, JH, WA

Memo

To: Ron Gorland, City Manager
Jan K. Seiden, Esq., City Attorney
James H. Holland, AICP, Planning and Zoning Director

From: Susan L. Trevarthen, Esq., AICP
Johanna M. Lundgren, Esq., AICP

Date: January 31, 2013

Subject: Summary of Adult Use Studies Regarding Regulations of Adult-Related Businesses

The following memorandum provides a summary of the municipal and state government studies on the secondary effects of adult-related businesses, which support the regulations included in the two proposed Ordinances. In this summary, adult-related businesses may be referred to as sexually oriented businesses, adult businesses or adult entertainment establishments, as different terminology has been used in the various studies and ordinances.

A version of this memo, and the studies it summarizes, will need to be provided to the City Council at the time of adoption. Each member of the City Council will need to state on the record that he or she has reviewed the studies and their findings, and that he or she is motivated by a desire to control the adverse secondary effects of these uses in voting to approve these Ordinances. Copies of the studies will be provided under separate cover.

- 1. The “Survey of Texas Appraisers – Secondary Effects of Sexually-Oriented Businesses on Market Values” study by Connie B. Cooper, FAICP and Eric Damian Kelly, FAICP in association with David C. Keuhl, Ph.D. and Shawn Wilson, MAI (2008)(Texas)**

This study, commissioned as part of a two part study by the Texas City Attorneys Association was conducted by planning consultants, recognized as experts within the field of sexually oriented business regulations and impacts, in order to evaluate the impacts of retail-only adult businesses on the property values of surrounding properties. This study surveyed 195 Texas appraisers who were Members of the Appraisal Institute (MAI) and Senior Residential Appraisers (SRA). The survey questionnaire included a number of uses besides different types of sexually oriented businesses that appraisers

often found concerning in relationship to market values in order to decrease the likelihood of targeted responses. The study found that both live and retail-only sexually oriented businesses had a large negative impact on market values of both single family homes and community shopping centers. Further, for single family homes, 86% of survey respondents felt those negative impacts would not diminish until at least a ¼ mile separation existed and 71% felt those negative impacts would not diminish until a ½ mile separation existed. For community shopping centers, 63% felt the negative effects did not diminish until at least ¼ mile away and 44% said the negative impacts did not diminish until ½ mile away. While the study focused on retail-only sexually oriented businesses, the survey results clearly showed the same significant impacts for sexually oriented businesses with live entertainment or video components.

2. The “Crime-Related Secondary Effects – Secondary Effects of “Off-Site” Sexually Oriented Businesses” study by Richard McCleary, Ph.D. in association with Alexi Alexander, J.D., Larry Bush, M.A., and Mark Vasquez, B.A. (2008)(Texas)

The second part of the study commissioned by the Texas City Attorneys Association is a statistical analysis which explains the criminological theory of secondary effects and applies that theory to sexually oriented businesses. The study provides analyses of other studies evaluating the crime rate impacts of sexually oriented businesses and concludes with a case study of crime data from a Texas jurisdiction. The study concludes that sexually oriented businesses pose significant public safety hazards related to prostitution, drugs, assault, robbery and vandalism. The study also analyzed a 2006 study supporting location of sexually oriented businesses. The 2008 analysis demonstrated, with the 2006 study’s own data, the increased risks of crime and showed that the risk diminished exponentially with distance from the sexually oriented business. As such, the sexually oriented businesses were neighborhood point-sources creating significant risk for crime victimization.

3. “Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report To The City Attorney” by Richard McCleary, Ph.D. (2007)(Los Angeles, California)

This study statistically evaluated the facts and materials in *Alameda Books v. City of Los Angeles*, U.S. District Court, Central District of California, Case No. CV 95-7771, and also evaluated 2006 data to consider the differences between retail only sexually oriented bookstores and sexually oriented businesses with retail and arcade/on-site viewing components. The study developed several conclusions:

- 1) There are three factors which produce large, significant crime-related secondary effects include: 1) sexually oriented businesses draw patrons from large geographical areas; 2) because patrons are disproportionately male, open to vice overtures, reluctant to report victimizations to the police, etc., these

patrons are “soft” targets; and 3) the large number of “soft” targets concentrated at the site of a sexually oriented business attracts predatory criminals, including purveyors who dabble in crime and criminals who pose as vice purveyors in order to lure or lull potential victims.

- 2) Thirty years of empirical studies employing a wide range of designs have found that sexually oriented businesses have large, significant crime-related secondary impacts.
- 3) While all sexually oriented business subclasses pose significant public safety hazards, these hazards vary based on the opportunities for different types of crime created by the subclass of business.
- 4) Considering the two subclasses of stand-alone bookstores and combined bookstore-arcades, the combined bookstore-arcade poses higher risks for crime.
- 5) The risk of victimization at the site of a combined bookstore-arcade is more than double the risk at the site of a stand alone bookstore. These risks both diminish with distance, but the two types of businesses are not equal until approximately 900 feet from the business.

4. “Survey of Findings and Recommendations of Sexually Oriented Businesses” by Eric Damian Kelly, PhD, FAICP and Connie B. Cooper, FAICP (August 2002) (Toledo, Ohio)

This study evaluated the secondary effects of sexually oriented businesses and included an analysis of ordinances, police calls and field studies of the sexually oriented businesses in Toledo, and provided findings and recommendations for zoning, licensing and other regulatory changes. The Survey was conducted working with a steering committee which included the City’s planning department, police force, building services, and legal department. Issues and concerns were additionally identified and analyzed through meetings with city council members, neighborhood groups and representatives of the sexually oriented businesses. One important issue highlighted in this report was the importance of the definitions, where the City regulated adult uses through zoning but the definitions failed to adequately identify the targets which resulted in the inability to regulate a sex toy shop with limited books and videos, as an adult entertainment establishment. The study analyzed the secondary effects of the external impacts of sexually oriented businesses on adjacent neighborhoods as well as the impacts of activities at these businesses that might not be protected by the First Amendment but that caused additional impacts in the community – often stemming from activities that started inside the business which were either unprotected activities or which often spilled out into the community.

The study found that clustering of two or more sexually oriented businesses resulted in a statistically significant increase in crime rates. There were also significant differences in criminal activity based on the type of sexually oriented business. Sexually oriented businesses with live entertainment were likely to have disproportionately higher criminal activity. For instance, in the analysis of Toledo’s existing businesses, sexually oriented cabarets accounted for only 20% of the sexually oriented businesses but

generated 44% of the total police calls. Adding an on-site entertainment component to any sexually oriented business, including a bookstore, lengthened the amount of time that patrons remained on the premises and increased the opportunity and likelihood for interaction with other patrons thereby increasing the negative impacts of the use above that of a simple retail establishment. In analyzing the data on a business by business type and ownership, the study concluded that the effects of management on the secondary impacts of a business are also significant, thus supporting the need for an effective licensing ordinance. Of the Adult Cabarets, one establishment had 102 incidents while one had 25, two had only 8 and one had no incidents reported. Of 26 calls to “encounter and touching” establishments, one establishment accounted for 69% of the calls. Of 37 calls to sexually oriented bookstores, 17 calls went to two stores which were under common ownership.

One of the major concerns identified in the study was location. A perfectly legitimate business located across from a school or in another location whereby residential neighbors, often including children, have a forced exposure to the business, will have significantly higher negative impacts on the neighborhood. The business becomes a “pig in the parlor” rather than a “pig in the barn.”

The study recommended specific revisions to Toledo’s ordinance including revisions to definitions, location criteria including distance criteria from sensitive uses and other sexually oriented businesses, inventory thresholds and access control, as well as extensive licensing requirements based on the type of sexually oriented business.

5. “A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver,” by the Zoning Administration, Office of Planning and Development, Department of Public Safety, Department of Excise and Licenses, Assessor’s Office, and in consultation with the City Attorney’s Office, Denver, Colorado (January 1998)

In 1996, an Adult Use Study Team was established to assess the secondary impacts caused by adult use businesses on nearby properties and neighborhoods, and to determine the availability of sites for adult businesses. This Team found that adult use businesses caused negative secondary impacts to nearby properties and neighborhoods, including criminal activity, litter, noise, traffic problems, and depreciation in residential property values. A survey of residents in areas where adult use businesses were located demonstrated that the litter generated by such businesses included printed material containing pornography, used condoms, sex paraphernalia, and used syringes. The criminal activity, which was significantly higher around adult use businesses compared with the city as a whole, included disturbing the peace, public indecency, prostitution, drug-related violations, loitering, robbery, larceny, theft from motor vehicle, and urinating in public.

6. "Sexually Oriented Business Ordinance Revision Committee Legislative Report, Houston, Texas (January 7, 1997)

This report was drafted by a committee tasked with updating prior research studies completed in 1983, 1986, and 1991 in order to determine and make recommendations on any needed reforms to the city's existing sexually oriented business ordinance. The committee found that criminal activities, anonymous sex, spreading of sexually transmitted diseases, and other such acts were occurring within sexually oriented businesses. In order to try to regulate these secondary effects, the committee determined that it was necessary to license all of the entertainers and managers of sexually oriented businesses, provide for certain configurations and lighting requirements within the businesses to aid the police department in their investigations, provide distancing requirements from the city's family centers, parks, and neighborhoods, and provide for the elimination of "glory holes" to reduce the risk of anonymous sex.

7. "Adult Use Study," by the Newport News Department of Planning and Development, Newport News, Virginia (March 1996)

This study examined adult use studies from other cities around the country as well as the secondary effects of the adult uses currently operating in Newport News. The studies from other cities indicated that adult uses increase crime and decrease property values in the areas surrounding the uses. In Newport News, the police calls for service indicated that the adult uses experienced crime problems that impacted nearby neighborhoods or businesses. A survey of realtors in the city indicated that adult uses lessen nearby residential property values and may lessen nearby commercial property values depending on the type of adult use and the amount of concentration. The study determined that regulation of adult uses was warranted, and after evaluating the dispersal and concentration theories, recommended spatial separation of adult uses, and separation of these uses from residential areas.

8. "Report to American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses," by Peter R. Hecht, Ph.D. of the Environmental Research Group (March 31, 1996)

This study compiled new data, examined municipal land use studies and historical data from the late eighteenth century through 1996, and drew conclusions based on statements and conclusions of previous land use studies. This study concluded that sexually oriented businesses provide a potential focus for illicit and undesirable activities by providing a place of contact for numerous potential customers for prostitution, pandering, and other activities. In addition, when alcohol is provided on site or nearby, or when there is a large concentration of sexually oriented businesses, the quantity of undesirable activities increases. This provides for a snowball effect of undesirable activities that feed upon and support each other. The research also revealed that sexually oriented businesses have more of an impact on smaller towns than they do on larger towns. This study also concluded that when these businesses are located near residential

areas or educational and religious institutions, a number of children were exposed to inappropriate models of behavior, and were victims of opportunistic personal crimes.¹

In addition, it was also concluded that sexually oriented businesses have a negative impact upon both residential and commercial property values located within three blocks of the adult use. The presence of sexually oriented businesses was considered by real estate appraisers and lenders to be evidence of community decline and decay. Also, other research indicated that areas with sexually oriented businesses experience lower rates of appreciation in property values and/or higher turnover in properties in comparison to comparable areas without sexually oriented businesses.

9. “Adult Entertainment Study” by Department of City Planning, City of New York (November 1994)

The City of New York commenced this study following a 35% increase in adult entertainment establishments over a 10 year period. At the time of the study, New York City had no adult use regulations – a triple XXX video store was subject to the same regulations as family video store. The study evaluated existing studies in other localities, studies and reports on adult entertainment establishments in New York City and an analysis and survey of the impacts adult entertainment establishments were having on the communities in New York City. In evaluating the impacts of these establishments, the City considered impacts identified by the City Planning Commission in a 1977 study, impacts identified by the Office of Midtown Enforcement and a Chelsea Business Survey, impacts identified through public hearing, a Times Square Business Improvement District Study and in newspaper reports and correspondence. The study also included an analysis of criminal complaint data and property assessed values.

The results of the Department’s study of local impacts mimicked the findings of other studies. Specifically, the location of adult uses created “dead zones” in commercial areas that shoppers avoid, greater concentrations of crime in areas surrounding adult uses especially where multiple establishments were located. These issues resulted in additional perceived issues pressuring neighboring business to hire private security guards for parking lots and closing area businesses early. A survey of 100 business owners in one New York City community found that 61% felt the location of the adult video stores in their community had a negative impact on their businesses and a telling 88% thought the potential for doing business in the area had been negatively affected by the establishments. Additional concerns identified by the City in addition to the crime, deterioration of the business and residential climates, included quality of life impacts such as littering, noise, night-time operations, offensive signage and exposure of children to inappropriate materials. The City’s survey of realtors found that 80% reported that an adult entertainment establishment decreased market values as far away as 1,000 feet. While the Planning Department’s survey of assessed values did not clearly identify

¹ It should be noted that it was also determined that the elderly and women were also susceptible to opportunistic personal crimes when sexually oriented businesses were located in close proximity to residential areas, or religious and educational institutions.

negative impacts resulting from the establishment of adult uses, the Department found that the diversity of the City and the limitation of available data would make create issues with due to the difficulty in isolating specific impacts attributable to any particular land use. However, the Department found that regardless of trackable deterioration in assessed values, the perceptions created by the establishment of the adult uses created a disincentive to invest resulting in deterioration in the neighborhood surrounding the adult establishment.

10. The “Adams County Nude Entertainment Study” by the Adam’s County Sheriff’s Department (1991)(Colorado)

This study was an update to a 1988 study conducted by the Adams County Sheriff’s Office in order to provide support for a proposed nude entertainment ordinance, which prohibited persons to appear in a “state of nudity”² for the purpose of entertaining patrons. The 1988 study consisted of two phases: first, an April 1988 study of six representative locations in Adams County was undertaken to determine the transiency of adult business customers. Second, crime statistics in two Adams County areas featuring adult businesses were gathered for the years of 1986 and 1987. The study concluded that there was a direct correlation between nude entertainment establishments and an increase in crime, alcohol related offenses, and transiency of patrons. After review of this study, the County Commissioners passed the nude entertainment ordinance which 1) restricted the hours of operation; 2) provided distance requirements; 3) provided a six-month amortization period reducing the number of adult businesses from 28 to 14; and 4) provided a public nuisance provisions for repeat or continuing violations. Subsequently, this ordinance was challenged and upheld by the Colorado Supreme Court. The court found that the ordinance did not violate constitutionally protected free speech because it did not ban nude dancing altogether and it did not unreasonably inhibit the presentation of nude dancing. The 1991 report re-evaluated the 1988 study based on 1990 statistics and found no significant changes with a few exceptions. One exception showed a block from the original study which had experienced a 900 percent increase in reported crimes including a 290% increase attributable to adult businesses offering nude entertainment and/or alcohol.

11. “Effects of Adult Entertainment Businesses on Residential Neighborhoods,” by the Department of Planning, Research and Development, City of El Paso, TX (Sept. 26, 1986)

This study, done by the Department of Planning, Research and Development, the City Attorney’s Office, the Police Department Data Processing Division, and New Mexico State University, involved one year of studying the impacts of sexually oriented businesses on the El Paso area. A separate report by New Mexico State University on

² A “state of nudity” occurs when such a person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.

perceived neighborhood problems was also included in this study. Three control areas and three study areas were used to evaluate the secondary effects of sexually oriented businesses. The study concluded that all of the following conditions existed within the study areas:

- (1) The housing base within the study area decreased substantially with a concentration of sexually oriented businesses.
- (2) Property values decreased for properties located within a 1-block radius of sexually oriented businesses.
- (3) There was an increase in listings on the real estate market for properties located near sexually oriented businesses.
- (4) The presence of sexually oriented businesses resulted in a relative deterioration of the residential area of a neighborhood.
- (5) There was a significant increase in crime near sexually oriented businesses.
- (6) The average crime rate in the study areas was 72% higher than the rate in the control areas.
- (7) Sex-related crimes occurred more frequently in neighborhoods with even one sexually oriented business.
- (8) Residents in the study areas perceived far greater neighborhood problems than residents in control areas.
- (9) Residents in study areas had a greater fear of deterioration and crime than residents in control areas.

The study of perceived neighborhood problems done by New Mexico State University revealed a strong, consistent pattern of higher neighborhood crime, resident fear and resident dissatisfaction in the neighborhoods containing sexually oriented businesses.

12. "NLC Summaries of "SOB Land Use" Studies, Crime Impact Studies by Municipal and State Governments on Harmful Secondary Effects of Sexually-oriented Businesses," National Law Center for Children and Families, 1991, 1994, 1996, 1997, 1999, 2000, 2001, 2002, 2005.

This is a collection of summaries of 43 municipal and state government studies on the secondary effects of sexually-oriented businesses conducted between 1977 and 1998. The summaries identify a historical trend of negative secondary effects from sexually oriented businesses, related to all types of criminal and economic/market behaviors.

CITY
COUNCIL
MEETING
RECONVENED

02-11-2013

ORDINANCE NO. 1050 -2013

WV

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS AMENDING CHAPTER 150, "ZONING CODE" OF THE CODE OF ORDINANCES, BY AMENDING SECTION 150-165 "ABRAHAM TRACT DISTRICT" TO PROVIDE FOR ZONING REGULATIONS OF ADULT-RELATED BUSINESSES; ESTABLISHING INTENT AND PURPOSE RELATED THERETO; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Miami Springs, Florida ("City Council") recognizes that changes to the adopted Code of Ordinances are periodically necessary in order to ensure that the City's regulations are current and consistent with the needs of the City and the requirements of law; and

WHEREAS, the City Council finds that adult-related businesses require special supervision and regulations to protect and preserve the health, safety and welfare of the employees, patrons and neighbors of adult-related businesses and the citizens of the City; and

WHEREAS, based on the evidence and testimony which has been presented to the City Council, and based upon the findings incorporated in:

1. The "Survey of Texas Appraisers – Secondary Effects of Sexually-Oriented Businesses on Market Values" study by Connie B. Cooper, FAICP and Eric Damian Kelly, FAICP in association with David C. Keuhl, Ph.D. and Shawn Wilson, MAI (2008)(Texas);
2. The "Crime-Related Secondary Effects – Secondary Effects of "Off-Site" Sexually Oriented Businesses" study by Richard McCleary, Ph.D. in association with Alexi Alexander, J.D., Larry Bush, M.A., and Mark Vasquez, B.A. (2008)(Texas);
3. "Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report To The City Attorney" by Richard McCleary, Ph.D. (2007)(Los Angeles, California);
4. "Survey of Findings and Recommendations of Sexually Oriented Businesses" by Eric Damian Kelly, PhD, FAICP and Connie B. Cooper, FAICP (August 2002) (Toledo, Ohio);
5. "A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver," by the Zoning Administration, Office of Planning and Development, Department of Public Safety, Department of Excise and Licenses, Assessor's

- Office, and in consultation with the City's Attorney's Office, Denver, Colorado (January 1998);
6. "Sexually Oriented Business Ordinance Revision Committee Legislative Report, Houston, Texas (January 7, 1997);
 7. "Adult Use Study," by the Newport News Department of Planning and Development, Newport News, Virginia (March 1996);
 8. "Report to American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses," by Peter R. Hecht, Ph.D. of the Environmental Research Group (March 31, 1996);
 9. "Adult Entertainment Study" by Department of City Planning, City of New York (November 1994);
 10. The "Adams County Nude Entertainment Study" by the Adam's County Sheriff's Department (1991)(Colorado);
 11. "Effects of Adult Entertainment Businesses on Residential Neighborhoods," by the Department of Planning, Research and Development, City of El Paso, TX (Sept. 26, 1986); and
 12. "NLC Summaries of "SOB Land Use" Studies, Crime Impact Studies by Municipal and State Governments on Harmful Secondary Effects of Sexually-oriented Businesses," National Law Center for Children and Families, 1991, 1994, 1996, 1997, 1999, 2000, 2001, 2002, 2005;

the City Council finds that there is convincing documented evidence that adult-related businesses, because of their very nature, have deleterious effects on existing and future business establishments and residential areas, causing increased crime and the deterioration of property values; and

WHEREAS, the City Council finds that adult-related businesses, because of their very nature, have serious objectionable operational characteristics; and

WHEREAS, the City Council finds that the regulation of the location of adult-related businesses is necessary to prevent undesirable adverse secondary impacts on surrounding areas; and

WHEREAS, the City Council desires to minimize and control these adverse secondary impacts and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of adjacent areas; and deter the spread of blight; and

WHEREAS, the City Council, although concerned about these adverse secondary impacts, upholds constitutionally protected speech and expression and does not desire to infringe on or censor constitutionally protected speech and expression; and

WHEREAS, the City Council desires to enact a content neutral ordinance that addresses only the adverse secondary impacts of adult-related businesses; and

WHEREAS, pursuant to §150-130 of the Code of Ordinances, the City Council, sitting in its capacity as the Local Planning Agency, has reviewed this Ordinance and recommends its approval; and

WHEREAS, the City Council finds that this Ordinance is consistent with the City's Comprehensive Plan; and

WHEREAS, the City Council has determined that it is in the best interests of the City and its citizens to provide for regulations of adult-related businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA:

Section 1. Recitals. That the preceding "Whereas" clauses are ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Amendment. That Section §150-165 "Abraham Tract District" of Chapter 150 "Zoning Code" of the Code of Ordinances is hereby amended to read as follows:

CHAPTER 150. ZONING CODE

Section 150-165. Abraham Tract District.

* * *

D. Adult-related business regulations.

Reserved

(1) Purpose, authority and findings.

(a) Purpose. In the development and enforcement of this subsection 150-165D, "Adult-related business regulations," the City recognizes that adult-related businesses, because of their very nature, have serious objectionable characteristics and have a deleterious effect upon adjacent business and residential areas. It is desirable, therefore, to protect the well-being of the youth of the City from the objectionable operational characteristics of these adult-related businesses by locating them away from residential areas and public facilities used frequently by minors, such as schools, religious facilities, parks, instructional schools serving minors, and day care centers. The City finds that, just as advertising is designed to stimulate one's appetite for desired goods and services, an overabundance or preoccupation with sexual displays or materials arouses the appetites of those so preoccupied, and encourages criminal sexual behavior.

In recognition of the protections afforded to the citizens of the United States under the First and Fourteenth Amendments to the Constitution of the United States, it is neither the intent nor the effect of this subsection to:

- (i) inhibit freedom of speech or the press; or
- (ii) limit or restrict the content of any communicative materials, including sexually oriented materials; or
- (iii) restrict or deny access by adults to sexually oriented materials protected by the First Amendment; or
- (iv) deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; or
- (v) regulate obscenity, which is regulated by general law (Chapter 847, Florida Statutes).

This subsection balances the legitimate governmental purposes of the City against the above-described constitutional rights, by imposing incidental, content-neutral place, time, and manner regulations of adult-related businesses without limiting alternative avenues of communication. The regulations deemed necessary to control the undesirable effects arising from these businesses are set forth in this subsection. Licensing and operational regulations for these uses are in Chapter 132 of this Code.

(b) Authority. This subsection is enacted pursuant to the City's home rule power to enact regulations to protect the public health, safety and general welfare of the City's residents, and Chapters 163 and 166, Florida Statutes.

(c) Findings. Based on the evidence and testimony presented before the City Council, and on the findings incorporated in:

- I. "Survey of Texas Appraisers – Secondary Effects of Sexually-Oriented Businesses on Market Values" study by Connie B. Cooper, FAICP and Eric Damian Kelly, FAICP in association with David C. Keuhl, Ph.D. and Shawn Wilson, MAI (2008)(Texas);

- II. "Crime-Related Secondary Effects – Secondary Effects of "Off-Site" Sexually Oriented Businesses" study by Richard McCleary, Ph.D. in association with Alexi Alexander, J.D., Larry Bush, M.A., and Mark Vasquez, B.A. (2008)(Texas);
- III. "Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report To The City Attorney" by Richard McCleary, Ph.D. (2007)(Los Angeles, California);
- IV. "Survey of Findings and Recommendations of Sexually Oriented Businesses" by Eric Damian Kelly, PhD, FAICP and Connie B. Cooper, FAICP (August 2002) (Toledo, Ohio);
- V. "A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver," by the Zoning Administration, Office of Planning and Development, Department of Public Safety, Department of Excise and Licenses, Assessor's Office, and in consultation with the City's Attorney's Office, Denver, Colorado (January 1998);
- VI. "Sexually Oriented Business Ordinance Revision Committee Legislative Report, Houston, Texas (January 7, 1997);
- VII. "Adult Use Study," by the Newport News Department of Planning and Development, Newport News, Virginia (March 1996);
- VIII. "Report to American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses," by Peter R. Hecht, Ph.D. of the Environmental Research Group (March 31, 1996);
- IX. "Adult Entertainment Study" by Department of City Planning, City of New York (November 1994);
- X. The "Adams County Nude Entertainment Study" by the Adam's County Sheriff's Department (1991)(Colorado);
- XI. "Effects of Adult Entertainment Businesses on Residential Neighborhoods," by the Department of Planning, Research and Development, City of El Paso, TX (Sept. 26, 1986); and
- XII. "NLC Summaries of "SOB Land Use" Studies, Crime Impact Studies by Municipal and State Governments on Harmful Secondary Effects of Sexually-oriented Businesses," National Law Center for Children and Families, 1991, 1994, 1996, 1997, 1999, 2000, 2001, 2002, 2005;

the City Council finds as follows:

- (i) Establishments exist or may exist within the City where books, magazines, motion pictures, videos, prints, photographs, periodicals, records, novelties, and devices that depict, illustrate, describe, or relate to specified sexual activities are possessed, displayed, exhibited, distributed, and sold.
- (ii) Establishments exist or may exist within the City where:
 - a. The superficial tissues of one person are manipulated, rubbed, stroked, kneaded, or tapped by a second person, accompanied by the display or exposure of specified anatomical areas;

b. Dancers, entertainers, performers, or other individuals, who, for forms of commercial gain, perform or are presented while displaying or exposing specified anatomical areas; or

c. Lap dancing occurs.

(iii) The activities described in subsections (c)(i) and (ii) occur at establishments for the purpose of making a profit and, as such, are subject to regulation by the City in the interest of the health, safety, and general welfare of City residents.

(iv) The competitive commercial exploitation of such nudity and seminudity is adverse to the public's interest, quality of life, tone of commerce, and total community environment.

(v) The commercial exploitation of nudity and seminudity consists of the use of nude and seminude entertainment in connection with or for the promotion of the sale of goods or services, and the receipt of money by the person engaging in nude or seminude entertainment in exchange for or as consideration for nude or seminude performance by such individuals.

(vi) The commercial exploitation of nude and seminude acts, exhibitions, and nude entertainment occurs frequently at commercial establishments either selling or allowing consumption of alcoholic beverages on the premises.

(vii) There is a direct relationship between the consumption of alcoholic beverages and the nude and seminude activities mentioned above, and an increase in criminal activities, disturbances of the peace and good order of the community. The occurrence of these activities is hazardous to the health and the safety of those persons in attendance and tends to depreciate the value of adjoining property and harm the economic welfare of the community as a whole.

(viii) The combination of the sale and consumption of alcoholic beverages with the performance of nude and seminude acts, exhibitions and entertainment is adverse to the public's interest and the quality of life, tone of commerce, and total community environment in the City.

(ix) To promote and preserve the public peace and good order and to safeguard the health, safety, and welfare of the community and its citizens, it is necessary and advisable for the City to prohibit certain forms of nude and seminude acts, exhibitions, entertainment, and commercial establishments at which alcoholic beverages are, or are available to be, sold or consumed.

(x) There is a direct relationship between the display or depiction of specified anatomical areas as defined in this subsection and an increase in criminal activities and disturbances of the peace and good order of the community, and the occurrence of these activities is hazardous to the health and safety of those persons in attendance and tends to depreciate the value of adjoining property and harm the economic welfare of the community as a whole. These secondary effects are adverse to the public's interest and quality of life, tone of commerce, and total community environment in the City.

(xi) When the activities described in subsections (c)(i) and (ii) take place in establishments within the City, other activities that are illegal or unhealthy tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited to, prostitution, solicitation for prostitution, lewd and lascivious behavior, possession, distribution and transportation of obscene materials, sale or possession of controlled substances, and violent crimes against persons and property.

(xii) When the activities described in subsections (c)(i) and (ii) are present in establishments within the City, they tend to blight neighborhoods, adversely affect neighboring businesses, lower property values, foster an atmosphere that promotes crime, and ultimately lead residents and businesses to move to other locations.

(xiii) The establishments used for the activities described in subsections (c)(i) and (ii) are frequently used for unlawful and unhealthy sexual activities, including prostitution and sexual liaisons of a casual nature.

(2) Definitions.

The following words, terms and phrases, when used in this subsection D., shall have the meanings ascribed to them in this subsection D.(2), except where the context clearly indicates a different meaning.

"Adult bookstore/adult novelty store/adult video store" shall mean an adult-related business which offers adult material for sale or rent for commercial gain, or having such materials as a substantial percentage or significant portion of its sale or stock in trade, or an establishment with a substantial or significant portion or section devoted to the sale or display of such material, or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising, displays, or actual sales. A substantial or significant portion of its stock in trade shall be deemed to occur when: (1) forty (40) percent or 600 square feet (whichever is less) of the floor area of the establishment contains the items listed above; or (2) the items listed above comprise at least forty (40) percent of the value of the stock in trade of the establishment.

"Adult booth" or "booth" shall mean a small enclosed or partitioned area inside an adult-related business that is:

- (a) Designed or used for the viewing of adult material by one or more persons; and
- (b) Accessible to all persons, regardless of whether a fee is charged for access.

The term "adult booth" includes but is not limited to a "peep show" booth, or other booth used to view "adult material." The term "adult booth" does not include a foyer through which a person can enter or exit the establishment, or a rest room.

"Adult dancing establishment" shall mean an establishment where employees display or expose specified anatomical areas to others, regardless of whether the employees actually engage in dancing.

"Adult domination/submission parlor" shall mean an adult-related business specializing in bondage, sadomasochism, humiliating activities or other similar activities which depicts, describes or relates to the "specified sexual activities" or "specified anatomical areas," as defined below.

"Adult entertainment" shall mean any action intended to amuse which is distinguished or characterized by an emphasis on material depicting, describing or relating to specified sexual activities or specified anatomical areas or which features topless dancers, exotic dancers, strippers, male or female impersonators, the modeling of clothing revealing or less than completely and opaquely covering specified anatomical areas, lap dancing or similar activities.

"Adult-related business" shall mean:

(a) Any adult theater, adult mini motion picture theater, adult bookstore/adult novelty store/adult video store, adult motel, adult domination/submission parlor, encounter studio/modeling studio, or adult dancing establishment as these uses are defined in this subsection; or any other establishment or business operated for commercial gain where any employee, operator or owner exposes his or her specified anatomical area for viewing by patrons, including but not limited to massage establishments, whether or not licensed pursuant to Chapter 480, Florida Statutes, tanning salons, modeling studios, or lingerie studios.

(b) Any establishment where an action is taken which is intended to amuse and which is distinguished or characterized by an emphasis on adult entertainment or material depicting, describing or relating to specified sexual activities or specified anatomical areas or which features topless dancers, exotic dancers, strippers, male or female impersonators, the modeling of clothing revealing, or less than completely and opaquely covering, specified anatomical areas, or similar activities.

(c) An adult-related business shall include the entire site or premises on which the adult-related business is located, including the exterior and interior of the establishment, or any portion thereof, upon which the activities or operations described in subsection (a) and (b) above are being conducted for commercial

gain.

(d) Excluded from this definition are any educational institutions, as defined herein, where the exposure of specified anatomical areas is associated with a curriculum or program.

(e) An establishment that possesses an adult-related business license is presumed to be an adult-related business.

"Adult material" shall mean one (1) or more of the following, regardless of whether it is new or used:

(a) Books, magazines, periodicals, or other printed matter, photographs, films, motion pictures, video cassettes, slides or other visual representations; recordings or other audio materials; and novelties or devices that have, as their primary or dominant theme, subject matter depicting, exhibiting, illustrating, describing, or relating to specified sexual activities or specified anatomical areas, as defined below; or

(b) Instruments, novelties, devices, or paraphernalia, which are designed for use in connection with specified sexual activities, excluding bona fide birth control devices.

"Adult mini motion picture theater" shall mean an enclosed building (with theatre style seating or viewing booths) with a capacity of less than fifty (50) persons regularly used for presenting adult material, for observation by patrons therein, which activity requires the exclusion of minors under Chapter 847, F.S. The viewing or adult "booth" referenced in this definition is defined as a small enclosed or partitioned area inside the theater designed or used for the viewing of adult material by one or more persons, which is accessible to all persons, regardless of whether a fee is charged for access. A "booth" shall not include a foyer through which a person can enter or exit the establishment, or a rest room.

"Adult motel" shall mean a hotel, motel, boarding house or rooming house or other place of temporary lodging presenting adult material by means of closed circuit television, for observation by patrons therein.

"Adult motion picture theater" or "adult theater" shall mean an enclosed building with a capacity of 50 or more persons regularly used for presenting adult material for observation by patrons therein, which material may not be exposed to minors under Chapter 847, F.S. Theaters designed to allow the outdoor viewing of adult material are not permitted. An establishment which has adult booths is considered to be an adult theater.

"Alcoholic beverage" shall mean any beverage containing more than 1 percent of alcohol by weight, measured in the manner described in § 561.01(4)(b), F.S., and successor provisions thereto.

"Day care center" shall mean a nonresidential facility that provides supervision and care of children under the age of 18 for periods of less than twenty-four (24) hours a day.

"Encounter studio/modeling studio" shall mean an establishment offering nude or semi-nude encounter/modeling sessions, sessions between opposite or same sex adult individuals, nude dance/photo sessions, or sexual consultations, which have as their dominant or primary theme matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below.

"Establishment" shall mean the site or premises on which the adult-related business is located, including the interior of the premises, or portion of it, upon which certain activities or operations are being conducted for commercial gain.

"Instructional school" shall mean a premises or site upon which a business offers instruction for gymnastics, martial arts, dance, or any other similar skill activities.

"Lap dance" or "lap dancing", also known as a "straddle dance," "face dance," "friction dancing," or "flash dance," shall mean the use by an employee, whether clothed or partially or totally nude, of a part of his or her body to touch, massage, rub, stroke, caress, or fondle the genital or pubic area of a person while at the establishment, or the touching of the genital or pubic area of an employee by a person while at the establishment. It shall be a "lap dance" regardless of whether the "touch" or "touching" occurs while the employee is displaying or exposing a specified anatomical area. It shall also be a "lap dance" regardless of whether the "touch" or "touching" is direct or through a medium. However, incidental touching shall not constitute lap dancing.

"Massage establishment" shall mean:

(1) Any shop, parlor, establishment or place of business wherein all of any one (1) or more of the following named subjects and methods of treatments are administered or practiced: body massage either by hand or by any mechanical or electrical apparatus or device (excluding fever therapy), applying such movements as stroking, friction, rolling, vibration, kneading, cupping, petrissage, rubbing, effleurage, or tapotement.

(2) Provided, however, that, for the purpose of this chapter, the term "massage establishment" shall not include any massage establishment wherein at least fifty (50) percent of the employees on duty full time during the hours that the establishment is open for business are State of Florida licensed massage therapist or other licensed professional listed in the preceding sentence.

(3) Nothing in this chapter shall be construed as applying to state licensed massage therapists, barbers, cosmetologists, manicurists, pedicurists, occupational therapists, physical therapists, physical therapists' assistants, midwives, practical nurses, agents, servants or employees in licensed hospitals, nursing homes or other licensed medical institutions, licensed physicians, osteopaths, chiropractors, podiatrists, naturopathic physicians or other licensed medical practitioners, or their agents, servants

or employees acting in the course of such agency, service or employment under the supervision of the licensee.

"Patron" shall mean any natural person other than an employee, operator, licensee, or governmental officer while such persons are performing duties pursuant to this Code or other law.

"School," for purposes of this subsection, includes premises or a site upon which there is a day care center, nursery school, pre-kindergarten, elementary school, middle school, high school, or library.

"Specified anatomical areas" shall mean:

(a) Less than completely and opaquely covered:

(i) Human genitals and pubic region; or

(ii) Cleavage of the human buttocks; or

(iii) That portion of the human female breast encompassed within an area falling below the horizontal line one would have to draw to intersect a point immediately above the top of the areola, including the areola; this definition shall include the entire lower portion of the human female breast, but shall not include a portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola is not so exposed; and

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified sexual activities" shall mean:

(a) Human genitals in a state of sexual stimulation, arousal, or tumescence; or

(b) Acts of human anilingus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellatio, flagellation, masochism, masturbation, necrophilia, pederasty, pedophilia, sadism, sadomasochism, sexual intercourse or sodomy; or

(c) Fondling or other erotic touching of human genitals, pubic region, buttock, anus, or female breast; or

(d) Excretory functions as part of or in connection with the activities set forth in subsections (a)—(c).

(3) Supplemental regulations.

(a) Permitted locations. No adult-related business use shall be established, operated or maintained within the City except on property located within the Abraham Tract District. The zoning district regulations for any other zoning district in the City shall not be construed to permit the establishment, operation or

maintenance of any adult-related business use. In no event shall an adult-related business use be established, operated or maintained within the City in which a person shall be allowed to expose specified anatomical areas to public view. Except as otherwise provided by this Code, adult-related business uses may have accessory uses that are incidentally and customarily associated with the principal adult-related business use.

(b) Required distances. No adult-related business use shall be established, operated or maintained within the following specified distances of any of the following uses located within the City:

- (i) 300 feet from any other adult-related business use.
- (ii) 500 feet from any residentially zoned district or any parcel which is used for single-family or multi-family residential use.
- (iii) 500 feet from any religious facility.
- (iv) 500 feet from any public or private school which caters to the instruction of children under the age of 18.
- (v) 500 feet from any day care center or instructional school whose primary use caters to the care or instruction of children under the age of 18.
- (vi) 500 feet from any park.

(c) Measurement of required distances. The minimum required distances in subsection D.(3)(b) shall be measured by following a straight line from any portion of the building used by the adult-related business use, to the nearest point of a parcel located in the City containing one of the uses listed in subsection D.(3)(b)(ii) – (vi). The minimum required distance between adult-related business uses shall be measured by following a straight line between the respective portions of the buildings used by the two adult-related business uses.

(d) Survey required. For purposes of establishing the required distances between adult-related business uses and the uses listed in subsection D.(3)(b), an applicant for a license for an adult-related business pursuant to Code Chapter 119, "Adult-Related Businesses Code," Article II, "Adult-Related Business Licensing" shall furnish a certified survey from a registered surveyor. Such survey shall indicate the distance between the adult-related business use and any of the uses listed in subsection D.(3)(b), as measured in accordance with the requirements of subsection D.(3)(c). In case of any dispute, the measurement scaled by the Planning and Zoning Director shall govern.

(e) Strict compliance required. No adult-related business use shall be established, operated or maintained within the City unless it is in compliance with the Code and any other local, state, or federal law. No variance shall be granted to any requirement of this subsection D.

(f) Review of applications for adult-related business uses. Notwithstanding any other section of this Code applicable to adult-related businesses, applications to establish an adult-related business use shall be reviewed as follows:

(i) The Planning and Zoning Director shall review all of the information submitted to determine the conformity of the application with this subsection.

(ii) The submitted application will be reviewed for completeness within twenty (20) business days, and any corrections, revisions or deficiencies shall be provided to the applicant within that twenty-day period.

(iii) Upon resubmittal of corrected plans, the Planning and Zoning Director shall have ten (10) business days to review the resubmittal and provide any corrections, revisions or deficiencies to the applicant. This process shall continue until the applicant has submitted a complete application or demands that the application be reviewed as is, without further revision.

(iv) If the applicant fails to provide additional information requested by the Planning and Zoning Director, or respond indicating the time that the information will be provided, within forty (40) days of the date of the request, the application shall be deemed withdrawn by the applicant. The applicant shall be entitled to one forty (40) day extension of this timeframe, upon request made within the original forty (40) day timeframe.

(v) The Planning and Zoning Director shall approve or deny the application within forty (40) days of the City's receipt of the complete application, or the date that the applicant demands review as submitted. The Planning and Zoning Director's decision shall be based upon whether the application complies with the requirements of this subsection. Written notice of the decision shall be provided to the applicant, in the form of an approval or a notice of denial. Any notice of denial shall describe the applicant's appeal rights, and be provided to the applicant within ten (10) business days of the decision.

Section 3. Severability. That, if any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 4. Conflicts. That all Ordinances or parts of Ordinances, and all sections and parts of sections, in conflict herewith are repealed to the extent of such conflict.

Section 5. Codification. That the codifiers are hereby directed to codify this Ordinance in accordance with their discretion and their prior codification of the City of Miami Springs Code of Ordinances.

Section 6. Effective Date. That this Ordinance shall take effect in the manner provided by law.

PASSED AND ADOPTED by the City Council of the City of Miami Springs, Florida, this

___ day of _____, 2013.

The motion to adopt the foregoing Ordinance was offered on second reading by _____, seconded by _____, and on roll call the following vote ensued:

Vice Mayor Ator	_____
Councilman Best	_____
Councilwoman Bain	_____
Councilwoman Lob	_____
Mayor Garcia	_____

Zavier M. Garcia
Mayor

ATTEST :

Magali Valls, CMC
City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Jan K. Seiden, Esquire
City Attorney

First Reading:
Second Reading:

Words ~~stricken through~~ shall be deleted. Underscored words constitute the amendment proposed. Words remaining are now in effect and remain unchanged.



AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS AMENDING THE CODE OF ORDINANCES BY PROVIDING FOR CREATION OF CHAPTER 119 "ADULT-RELATED BUSINESSES CODE," TO PROVIDE FOR LICENSING REQUIREMENTS AND BUSINESS REGULATIONS FOR ADULT-RELATED BUSINESSES; PROVIDING FOR REPEAL OF ARTICLE II "SEX-RELATED BUSINESS ACTIVITIES" OF CHAPTER 132 "SEX OFFENSES;" ESTABLISHING INTENT AND PURPOSE RELATED THERETO; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; EFFECTIVE DATE.

WHEREAS, the City Council of the City of Miami Springs, Florida ("City Council") recognizes that changes to the adopted Code of Ordinances are periodically necessary in order to ensure that the City's regulations are current and consistent with the needs of the City and the requirements of law; and

WHEREAS, the City Council finds that adult-related businesses require special supervision and regulations to protect and preserve the health, safety and welfare of the employees, patrons and neighbors of adult-related businesses, and the citizens of the City; and

WHEREAS, based on the evidence and testimony which has been presented to the City Council, and based upon the findings incorporated in the following studies:

1. The "Survey of Texas Appraisers – Secondary Effects of Sexually-Oriented Businesses on Market Values" study by Connie B. Cooper, FAICP and Eric Damian Kelly, FAICP in association with David C. Keuhl, Ph.D. and Shawn Wilson, MAI (2008)(Texas);
2. The "Crime-Related Secondary Effects – Secondary Effects of "Off-Site" Sexually Oriented Businesses" study by Richard McCleary, Ph.D. in association with Alexi Alexander, J.D., Larry Bush, M.A., and Mark Vasquez, B.A. (2008)(Texas);
3. "Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report To The City Attorney" by Richard McCleary, Ph.D. (2007)(Los Angeles, California);
4. "Survey of Findings and Recommendations of Sexually Oriented Businesses" by Eric Damian Kelly, PhD, FAICP and Connie B. Cooper, FAICP (August 2002) (Toledo, Ohio);
5. "A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver," by the Zoning Administration, Office of Planning and Development, Department of Public Safety, Department of Excise and Licenses, Assessor's

- Office, and in consultation with the City's Attorney's Office, Denver, Colorado (January 1998);
6. "Sexually Oriented Business Ordinance Revision Committee Legislative Report, Houston, Texas (January 7, 1997);
 7. "Adult Use Study," by the Newport News Department of Planning and Development, Newport News, Virginia (March 1996);
 8. "Report to American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses," by Peter R. Hecht, Ph.D. of the Environmental Research Group (March 31, 1996);
 9. "Adult Entertainment Study" by Department of City Planning, City of New York (November 1994);
 10. The "Adams County Nude Entertainment Study" by the Adam's County Sheriff's Department (1991)(Colorado);
 11. "Effects of Adult Entertainment Businesses on Residential Neighborhoods," by the Department of Planning, Research and Development, City of El Paso, TX (Sept. 26, 1986); and
 12. "NLC Summaries of "SOB Land Use" Studies, Crime Impact Studies by Municipal and State Governments on Harmful Secondary Effects of Sexually-oriented Businesses," National Law Center for Children and Families, 1991, 1994, 1996, 1997, 1999, 2000, 2001, 2002, 2005;

the City Council finds that there is convincing documented evidence that adult-related businesses, because of their very nature, have deleterious effects on existing and future business establishments and residential areas, causing increased crime and the deterioration of property values; and

WHEREAS, the City Council finds that adult-related businesses, because of their very nature, have serious objectionable operational characteristics; and

WHEREAS, the City Council finds that the regulation of the operation of adult-related businesses is necessary to prevent undesirable adverse secondary impacts on surrounding areas; and

WHEREAS, the City Council desires to minimize and control these adverse secondary impacts and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of adjacent areas; and deter the spread of blight; and

WHEREAS, the City Council, although concerned about these adverse secondary impacts, upholds constitutionally protected speech and expression and does not desire to infringe on or censor constitutionally protected speech and expression; and

WHEREAS, the City Council desires to enact a content-neutral ordinance that addresses only the adverse secondary impacts of adult-related businesses; and

WHEREAS, the City Council has determined that it is in the best interests of the City and its citizens to adopt this Ordinance in order to provide for regulations of adult-related businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA:

Section 1. Recitals. That the preceding "Whereas" clauses are ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Amendment. That Chapter 119 "Adult-Related Businesses Code" is hereby created to read as follows:

CHAPTER 119. ADULT-RELATED BUSINESSES CODE

ARTICLE I. GENERAL PROVISIONS

Sec. 119-01. Title.

This Chapter shall be known and may be cited as the "Miami Springs Adult-Related Businesses Code."

Sec. 119-02. Authority.

This Chapter is enacted pursuant to the City's power to enact regulations to protect the public health, safety, and general welfare of the residents of the City; Chapter 166, F.S.; and the City's authority to regulate the sale and consumption of alcoholic beverages under the Twenty-First Amendment of the Constitution of the United States.

Sec. 119-03. Findings.

Based on the evidence and testimony presented before the City Council and on the findings incorporated in:

I. "Survey of Texas Appraisers – Secondary Effects of Sexually-Oriented Businesses on Market Values" study by Connie B. Cooper, FAICP and Eric Damian Kelly, FAICP in association with David C. Keuhl, Ph.D. and Shawn Wilson, MAI (2008)(Texas);

II. "Crime-Related Secondary Effects – Secondary Effects of "Off-Site" Sexually Oriented Businesses" study by Richard McCleary, Ph.D. in association with Alexi Alexander, J.D., Larry Bush, M.A., and Mark Vasquez, B.A. (2008)(Texas);

III. "Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report To The City Attorney" by Richard McCleary, Ph.D. (2007)(Los Angeles, California);

IV. "Survey of Findings and Recommendations of Sexually Oriented Businesses" by Eric Damian Kelly, PhD, FAICP and Connie B. Cooper, FAICP (August 2002) (Toledo, Ohio);

V. "A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver," by the Zoning Administration, Office of Planning and Development, Department of Public Safety, Department of Excise and Licenses, Assessor's Office, and in consultation with the City's Attorney's Office, Denver, Colorado (January 1998);

VI. "Sexually Oriented Business Ordinance Revision Committee Legislative Report, Houston, Texas (January 7, 1997);

VII. "Adult Use Study," by the Newport News Department of Planning and Development, Newport News, Virginia (March 1996);

VIII. "Report to American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses," by Peter R. Hecht, Ph.D. of the Environmental Research Group (March 31, 1996);

IX. "Adult Entertainment Study" by Department of City Planning, City of New York (November 1994);

X. The "Adams County Nude Entertainment Study" by the Adam's County Sheriff's Department (1991)(Colorado);

XI. "Effects of Adult Entertainment Businesses on Residential Neighborhoods," by the Department of Planning, Research and Development, City of El Paso, TX (Sept. 26, 1986); and

XII. "NLC Summaries of "SOB Land Use" Studies, Crime Impact Studies by Municipal and State Governments on Harmful Secondary Effects of Sexually-oriented Businesses," National Law Center for Children and Families, 1991, 1994, 1996, 1997, 1999, 2000, 2001, 2002, 2005;

the City Council finds as follows:

(1) Establishments exist or may exist within the City where books, magazines, motion pictures, videos, prints, photographs, periodicals, records, novelties, and devices that depict, illustrate, describe, or relate to specified sexual activities are possessed, displayed, exhibited, distributed, and sold.

(2) Establishments exist or may exist within the City where:

(a) The superficial tissues of one person are manipulated, rubbed, stroked, kneaded, or tapped by a second person, accompanied by the display or exposure of specified anatomical areas;

(b) Dancers, entertainers, performers, or other individuals, who, for forms of commercial gain, perform or are presented while displaying or exposing specified anatomical areas; or

(c) Lap dancing occurs.

(3) The activities described in subsections (1) and (2) occur at establishments for the purpose of making a profit and, as such, are subject to regulation by the City in the interest of the health, safety, and general welfare of City residents.

(4) The competitive commercial exploitation of such nudity and seminudity is adverse to the public's interest, quality of life, tone of commerce, and total community environment.

(5) The commercial exploitation of nudity and seminudity consists of the use of nude and seminude entertainment in connection with or for the promotion of the sale of goods or services, and the receipt of money by the person engaging in nude or seminude entertainment in exchange for or as consideration for nude or seminude performance by such individuals.

(6) The commercial exploitation of nude and seminude acts, exhibitions, and nude entertainment occurs frequently at commercial establishments either selling or allowing consumption of alcoholic beverages on the premises.

(7) There is a direct relationship between the consumption of alcoholic beverages and the nude and seminude activities mentioned above, and an increase in criminal activities, disturbances of the peace and good order of the community. The occurrence of these activities is hazardous to the health and the safety of those persons in attendance and tends to depreciate the value of adjoining property and harm the economic welfare of the community as a whole.

(8) The combination of the sale and consumption of alcoholic beverages with the performance of nude and seminude acts, exhibitions and entertainment is adverse to the public's interest and the quality of life, tone of commerce, and total community environment in the City.

(9) To promote and preserve the public peace and good order and to safeguard the health, safety, and welfare of the community and its citizens, it is necessary and advisable for the City to prohibit certain forms of nude and seminude acts, exhibitions, entertainment, and commercial establishments at which alcoholic beverages are, or are available to be, sold or consumed.

(10) To preserve the public peace and good order, and to safeguard the health, safety, and welfare of the community and its residents, it is necessary and advisable to

regulate and restrict the conduct of owners, operators, agents, employees, entertainers, performers, patrons, spectators, and persons on the premises of the commercial establishment subject to this Chapter.

(11) There is a direct relationship between the display or depiction of specified anatomical areas as defined in this Chapter and an increase in criminal activities and disturbances of the peace and good order of the community, and the occurrence of these activities is hazardous to the health and safety of those persons in attendance and tends to depreciate the value of adjoining property and harm the economic welfare of the community as a whole. These secondary effects are adverse to the public's interest and quality of life, tone of commerce, and total community environment in the City.

(12) When the activities described in subsections (1) and (2) take place in establishments within the City, other activities that are illegal or unhealthy tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited to, prostitution, solicitation for prostitution, lewd and lascivious behavior, possession, distribution and transportation of obscene materials, sale or possession of controlled substances, and violent crimes against persons and property.

(13) When the activities described in subsections (1) and (2) are present in establishments within the City, they tend to blight neighborhoods, adversely affect neighboring businesses, lower property values, foster an atmosphere that promotes crime, and ultimately lead residents and businesses to move to other locations.

(14) Physical contact between employees exhibiting specified anatomical areas and customers within establishments at which the activities described in subsections (1) and (2) occur poses a threat to the health of both and may lead to the spread of communicable, infectious, and social diseases.

(15) To preserve and safeguard the health, safety, and general welfare of the people of the City, it is necessary and advisable for the City to regulate the conduct of owners, managers, operators, agents, employees, entertainers, performers, and customers at establishments where the activities described in subsections (1) and (2) occur.

(16) The potential dangers to the health, safety, and general welfare of the residents of the City from the activities described in subsections (1) and (2) occurring at establishments without first obtaining a license under this Chapter are so great as to require the licensure of such establishments before they are permitted to operate.

(17) "Lap dancing" does not contain an element of communication, and is therefore conduct rather than expression.

(18) "Lap dancing" in establishments poses a threat to the health of the participants and promotes the spread of communicable, infectious, and social diseases.

(19) Adult-related businesses are frequently used for unlawful and unhealthy sexual activities, including prostitution and sexual liaisons of a casual nature.

(20) The concern over sexually transmitted diseases is a legitimate health concern of the City that demands reasonable regulation of adult-related businesses in order to protect the health and well-being of the citizens.

(21) The prevention of sexual contact between patrons and employees at adult dancing establishments is unrelated to the suppression of free expression, but serves to address the concerns raised in the findings contained in this Chapter. Although the dancer's erotic message may be slightly less effective from four (4) feet away, the ability to engage in the protected expression is not significantly impaired.

(22) Separating dancers from patrons, and prohibiting dancers and patrons from engaging in sexual fondling and caressing in adult dancing establishments, would reduce the opportunity for prostitution transactions and thus should help to deter prostitution.

(23) To preserve and safeguard the health, safety, and general welfare of the people of the City, it is necessary and advisable for the City to obtain sufficient information regarding the owners of establishments where the activities described in subsections (1) and (2) occur in order to preclude the involvement of organized crime.

(24) Removal of doors on adult booths and requiring sufficient lighting in adult theaters advances the substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring at adult theaters.

(25) Requiring that the facilities of adult theaters be constructed of materials that are easy to clean, that the facilities be cleaned on a regular basis, and that the employees cleaning the facilities take reasonable precautions to avoid contact with possible disease-transmitting media is reasonably related to the protection of both employees and patrons from sexually transmitted diseases.

(26) Licensing is a legitimate, reasonable means of accountability to ensure that operators of adult-related businesses comply with the reasonable regulations within this Chapter and the location requirements of the zoning code, and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

Sec. 119-04. Rules of construction.

This Chapter shall be construed liberally to accomplish its purpose of licensing and regulating adult-related businesses.

Sec. 119-05. Purpose.

In the development and enforcement of Chapter 119 "Adult-Related Businesses Code," the City recognizes that adult-related businesses, because of their very nature,

have serious objectionable characteristics, and have a deleterious effect upon the adjacent business and residential areas. It is desirable, therefore, to protect the well-being of the youth of the City from objectionable operational characteristics of these adult-related businesses by locating them away from residential areas and public facilities used frequently by minors such as schools, religious facilities, parks, instructional schools serving minors, and day care centers. The City finds that, just as advertising is designed to stimulate one's appetite for desired goods and services, an overabundance or preoccupation with sexual displays or materials arouses the appetites of those so preoccupied, and encourages criminal sexual behavior.

In recognition of the protections afforded to the citizens of the United States under the First and Fourteenth Amendments to the Constitution of the United States, it is neither the intent nor the effect of this Chapter to:

- (a) inhibit freedom of speech or the press; or
- (b) limit or restrict the content of any communicative materials, including sexually oriented materials; or
- (c) restrict or deny access by adults to sexually oriented materials protected by the First Amendment; or
- (d) deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

This Chapter balances the legitimate governmental purposes of the City against the above-described constitutional rights, by imposing incidental, content-neutral place, time, and manner regulations of adult-related businesses without limiting alternative avenues of communication. The regulations deemed necessary to control the undesirable effects arising from these enterprises are set forth in this Chapter.

Section 119-06. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

"Adult book store/adult novelty store/adult video store" shall mean an adult-related business which offers adult material for sale or rent for commercial gain, or having such materials as a substantial percentage or significant portion of its sale or stock in trade, or an establishment with a substantial or significant portion or section devoted to the sale or display of such material, or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising, displays, or actual sales. A substantial or significant portion of its stock in trade shall be deemed to occur when: (1) forty (40) percent or 600 square feet (whichever is less) of the floor area of the establishment contains the items listed above; or (2) the items listed above comprise at least twenty-five (40) percent of the value of the stock in trade of the establishment.

"Adult booth" or "booth" shall mean a small enclosed or partitioned area inside an adult-related business that is:

- (a) Designed or used for the viewing of adult material by one or more persons; and
- (b) Accessible to all persons, regardless of whether a fee is charged for access.

The term "adult booth" includes but is not limited to a "peep show" booth, or other booth used to view "adult material." The term "adult booth" does not include a foyer through which a person can enter or exit the establishment, or a rest room.

"Adult dancing establishment" shall mean an establishment where employees display or expose specified anatomical areas to others, regardless of whether the employees actually engage in dancing.

"Adult domination/submission parlor" shall mean an adult related business specializing in bondage, sadomasochism, humiliating activities or other similar activities which depicts, describes or relates to the "specified sexual activities" or "specified anatomical areas," as defined below.

"Adult entertainment" shall mean any action intended to amuse which is distinguished or characterized by an emphasis on material depicting, describing or relating to specified sexual activities or specified anatomical areas or which features topless dancers, exotic dancers, strippers, male or female impersonators, the modeling of clothing revealing or less than completely and opaquely covering specified anatomical areas, lap dancing or similar activities.

"Adult-related business" shall mean:

- (1) Any adult theater, adult mini motion picture theater, adult bookstore/adult novelty store/adult video store, adult motel, adult domination/submission parlor, encounter studio/modeling studio, or adult dancing establishment as these uses are defined in this Chapter; or any other establishment or business operated for commercial gain where any employee, operator or owner exposes his or her specified anatomical area for viewing by patrons, including but not limited to massage establishments, whether or not licensed pursuant to Chapter 480, Florida Statutes, tanning salons, modeling studios, or lingerie studios.
- (2) Any establishment where an action is taken which is intended to amuse and which is distinguished or characterized by an emphasis on adult entertainment or material depicting, describing or relating to specified sexual activities or specified anatomical areas or which features topless dancers, exotic dancers, strippers, male or female impersonators, the modeling of clothing revealing, or less than completely and opaquely covering, specified anatomical areas, or similar activities.
- (3) An adult-related business shall include the entire site or premises on which the adult-related business is located, including the exterior and interior of the establishment, or any portion thereof, upon which the activities or operations described in subsection (1) and (2) above are being conducted for commercial

gain.

(4) Excluded from this definition are any educational institutions, as defined herein, where the exposure of specified anatomical areas is associated with a curriculum or program.

(5) An establishment that possesses an adult-related business license is presumed to be an adult-related business.

"Adult material" shall mean one (1) or more of the following, regardless of whether it is new or used:

(a) Books, magazines, periodicals, or other printed matter, photographs, films, motion pictures, video cassettes, slides or other visual representations; recordings or other audio materials; and novelties or devices that have, as their primary or dominant theme, subject matter depicting, exhibiting, illustrating, describing, or relating to specified sexual activities or specified anatomical areas, as defined below; or

(b) Instruments, novelties, devices, or paraphernalia, which are designed for use in connection with specified sexual activities, excluding bona fide birth control devices.

"Adult mini motion picture theater" shall mean an enclosed building (with theatre style seating or viewing booths) with a capacity of less than fifty (50) persons regularly used for presenting adult material, for observation by patrons therein, which activity requires the exclusion of minors under Chapter 847, F.S. The viewing or adult "booth" referenced in this definition is defined as a small enclosed or partitioned area inside the theater designed or used for the viewing of adult material by one or more persons, which is accessible to all persons, regardless of whether a fee is charged for access. A "booth" shall not include a foyer through which a person can enter or exit the establishment, or a rest room.

"Adult motel" shall mean a hotel, motel, boarding house or rooming house or other place of temporary lodging presenting adult material by means of closed circuit television, for observation by patrons therein.

"Adult motion picture theater" or *"adult theater"* shall mean an enclosed building used for presenting adult materials for observation by patrons or any material which may not be exposed to minors under Chapter 847, F.S. Theaters designed to allow the outdoor viewing of adult material are not permitted. An establishment which has adult booths is considered to be an adult theater.

"Alcoholic beverage" shall mean any beverage containing more than 1 percent of alcohol by weight, measured in the manner described in § 561.01(4)(b), F.S., and successor provisions thereto.

"Day care center" shall mean a nonresidential facility that provides supervision and care of children under the age of 18 for periods of less than twenty-four (24) hours a day.

"Educational institution" shall mean any premises or site upon which there is an institution of learning, whether public or private, which conducts regular classes, courses of study, or both, required for accreditation by or membership in the State Department of Education of Florida, Southern Association of Colleges and Secondary Schools, or the Florida Council of Independent Schools. This term also includes art galleries and museums open to the public; or special institution of learning.

"Encounter studio/modeling studio" shall mean an establishment offering nude or semi-nude encounter/modeling sessions, sessions between opposite or same sex adult individuals, nude dance/photo sessions, or sexual consultations, which have as their dominant or primary theme matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below.

"Establishment" shall mean the site or premises on which the adult-related business is located, including the interior of the establishment, or portion of it, upon which certain activities or operations are being conducted for commercial gain.

"Instructional school" shall mean a premises or site upon which a business offers instruction for gymnastics, martial arts, dance, or any other similar skill activities.

"Lap dance" or "lap dancing" also known as a "straddle dance," "face dance," "friction dancing," or "flash dance," shall mean the use by an employee, whether clothed or partially or totally nude, of a part of his or her body to touch, massage, rub, stroke, caress, or fondle the genital or pubic area of a person while at the establishment, or the touching of the genital or pubic area of an employee by a person while at the establishment. It shall be a "lap dance" regardless of whether the "touch" or "touching" occurs while the employee is displaying or exposing a specified anatomical area. It shall also be a "lap dance" regardless of whether the "touch" or "touching" is direct or through a medium. However, incidental touching shall not constitute lap dancing.

"Licensed premises" See *"Establishment."*

"Licensee" shall mean a person who has or is required to have an adult-related business license.

"Massage establishment" shall mean:

(1) Any shop, parlor, establishment or place of business wherein all of any one (1) or more of the following named subjects and methods of treatments are administered or practiced: body massage either by hand or by any mechanical or electrical apparatus or device (excluding fever therapy), applying such movements as stroking, friction, rolling, vibration, kneading, cupping, petrissage, rubbing, effleurage, or tapotement.

(2) Provided, however, that, for the purpose of this Chapter, the term "massage establishment" shall not include any massage establishment wherein at least fifty (50) percent of the employees on duty full time during the hours that the establishment is open for business are State of Florida licensed

massage therapist or other licensed professional listed in the preceding sentence.

(3) Nothing in this Chapter shall be construed as applying to state licensed massage therapists, barbers, cosmetologists, manicurists, pedicurists, occupational therapists, physical therapists, physical therapists' assistants, midwives, practical nurses, agents, servants or employees in licensed hospitals, nursing homes or other licensed medical institutions, licensed physicians, osteopaths, chiropractors, podiatrists, naturopathic physicians or other licensed medical practitioners, or their agents, servants or employees acting in the course of such agency, service or employment under the supervision of the licensee.

"Nudity, full" shall mean the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola.

"Patron" shall mean any natural person other than an employee, operator, licensee, or governmental officer while such persons are performing duties pursuant to this Code or other law.

"Principal stockholder" shall mean an individual, partnership or corporation that owns or controls, legally or beneficially, thirty-three (33) percent or more of a corporation's capital stock and includes the officers, directors, and principal stockholders of a corporation that is a principal stockholder under this Chapter; provided, that if a corporation is registered with the Securities and Exchange Commission or pursuant to Chapter 517, Florida Statutes, and its stock is for sale to the general public, it shall not be considered to have any principal stockholders.

"Private performance" shall mean the display or exposure of any specified anatomical area by an employee of an adult-related business to a person other than another employee while the person is in an area not accessible during such display to all other persons in the establishment, or while the person is in an area in which the person is totally or partially screened or partitioned during such display from the view of all persons outside the area.

"Specified anatomical areas" shall mean:

- (1) Less than completely and opaquely covered:
 - a. Human genitals and pubic region; or
 - b. Cleavage of the human buttocks; or

c. That portion of the human female breast encompassed within an area falling below the horizontal line one would have to draw to intersect a point immediately above the top of the areola, including the areola; this definition shall include the entire lower portion of the human female breast, but shall not include a portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola is not so exposed; and

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"*Specified criminal offense*" shall mean:

- (1) A conviction under § 60.05, F.S. (Nuisance Abatement);
- (2) A conviction under Chapter 480, F.S. (Massage Practice);
- (3) A conviction under Chapter 561, F.S. (Beverage Law: Administration) or Chapter 562, F.S. (Beverage Law: Enforcement); or
- (4) A judgment against or conviction under Chapter 823, F.S. (Public Nuisances).

"*Specified sexual activities*" shall mean:

- (1) Human genitals in a state of sexual stimulation, arousal, or tumescence; or
- (2) Acts of human anilingus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellatio, flagellation, masochism, masturbation, necrophilia, pederasty, pedophilia, sadism, sadomasochism, sexual intercourse or sodomy; or
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock, anus, or female breast; or
- (4) Excretory functions as part of or in connection with the activities set forth in subsections (1)—(3).

Sec. 119-07. Regulation of obscenity subject to state law.

It is not the intent of the City Council to legislate with respect to matters of obscenity. These matters are regulated and preempted by general law.

Sec. 119-08. Regulation of massage establishments subject to state law.

It is not the intent of the City Council to legislate, limit, or conflict with respect to matters pertaining to massage establishments that are regulated by state agency, the department of business and professional regulation, board of massage, and by general law (Chapter 480, F.S.).

ARTICLE II. ADULT-RELATED BUSINESS LICENSING

Sec. 119-12. Adult-related business license.

(a) No adult-related business shall be allowed to operate without first having been issued an adult-related business license by the Department of Building and Code Compliance pursuant to this Chapter.

(b) Adult-related business licenses referred to in this Chapter shall be licenses limited to the following classifications:

- (1) Adult bookstore/adult novelty store/adult video store;
- (2) Adult theater;
- (3) Adult dancing establishment;
- (4) Adult domination/submission parlor;
- (5) Adult motel;
- (6) Encounter studio/modeling studio;
- (7) Massage establishment; or
- (8) Any other adult-related business use as defined in this Chapter.

(c) An adult-related business license for a particular adult-related business shall be limited to one (1) classification of license.

(d) An adult-related business may hold more than one (1) classification of adult-related business license.

(e) No adult-related business license shall be issued to any establishment engaging in any display of full nudity, as defined in this Chapter.

Sec. 119-13. Administration.

The ultimate responsibility for the administration of this Chapter is vested in the City Council. Several agencies have been delegated responsibility pursuant to the provisions outlined in this Chapter:

(1) The Building and Code Compliance Director or designee shall be the "business licensing section" responsible for issuing the official notice of the grant, denial, revocation, renewal, suspension, or cancellation of adult-related business licenses for existing or proposed adult-related businesses.

(2) The Chief of Police or designee is responsible for verifying information contained in an application for an adult-related business license by means of a criminal background check, and for inspecting a proposed, licensed, or unlicensed establishment in the City in order to ascertain whether it is in compliance with applicable Articles and criminal statutes, and for enforcing applicable ordinances and criminal statutes, including those provisions set forth in Articles II and III of this Chapter.

(3) The Building Official or designee is responsible for inspecting a proposed establishment for which a license is being sought in order to ascertain whether it complies with or is complying with Article III of this Chapter and all applicable building codes, statutes, ordinances, and regulations in effect in the City. The Building Official or designee shall compare and certify that all aspects of the submitted floor plan, site plan, and certified survey accurately depict the actual structure, and comply with the provisions of this Chapter.

(4) The Fire Department is responsible for the inspection of licensed premises or a proposed establishment to ascertain whether it complies with or is complying with Article III and all applicable fire codes, statutes, ordinances, and regulations in effect in the City.

(5) The Planning and Zoning Director or designee is responsible for ascertaining whether a proposed establishment for which a license is being sought complies with §150-165 of the City Code, the applicable portions of Article III, and all applicable zoning regulations in effect in the City.

(6) Any employee of the agencies referenced in subsections (2) through (5) above who is authorized by the person in charge of the agency shall at any reasonable hour, when the agency has reasonable cause to believe that a violation of this Chapter may exist, have access to and shall have the right to inspect the premises of all licensees under this Chapter for compliance with any or all of the applicable codes, statutes, ordinances, and regulations in effect in the City and within the responsibilities of their respective agencies as outlined in this Chapter.

Sec. 119-14. Application.

(a) *Filing.* A person desiring to operate an adult-related business shall file with the business licensing section a sworn license application on a standard application form supplied by the business licensing section.

(b) *Contents.* The application shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is:

a. An individual, his or her legal name, aliases, and date of birth, driver's license number or a state or federally issued identification card number;

b. A partnership, the full and complete name of the partners, dates of birth, driver's license numbers or state or federally issued identification card numbers of all partners, and all aliases used by all of the partners, whether the partnership is general or limited, and, if in existence, a copy of the partnership agreement; or

c. A corporation, the exact and complete corporate name, the date of its incorporation, evidence that the corporation is in good standing, the legal names and dates of birth, driver's license numbers or state or federally issued identification card numbers of all officers, directors and principal stockholders, and all aliases used, the capacity of all officers, directors, and principal stockholders, and, if applicable, the name of the registered corporate agent, and the address of the registered office for service of process; and

(2) The application shall list the current local and legal domiciliary residential addresses of all individual applicants, partners in a partnership application, and the principal stockholders of the corporation in a corporation application; for purposes of this subsection, principal stockholders are natural persons and not corporate or other legal entities; when the principal stockholder is a corporate or other legal entity, the application must trace back the ownership through layers of corporate organization to the eventual principal stockholder who is a natural person; and

(3) If the applicant intends to conduct business under a name other than that of the applicant, the applicant shall state the establishment's fictitious name and the county of registration under § 865.09, F.S., all legal names, dates of birth, addresses and all aliases used by all interested persons; and

(4) Whether the applicant, or other individuals listed pursuant to subsection (1) above, has within the five-year period immediately preceding the date of the application, ever been convicted of a specified criminal offense and, if so, the specified criminal offense involved, the date of conviction, and the place of conviction; and

(5) Whether the applicant, or other individuals listed pursuant to subsection (1) above, has (i) had a previous license issued under this Chapter suspended or revoked, or by court order, been required to cease operation, including the name and location of the establishment for which the license was suspended or revoked, as well as the date of the suspension or revocation, and (ii) whether the applicant, or any other individuals listed pursuant to subsection (1), has been a partner in a partnership or an officer, director or principal stockholder of a corporation whose license issued under this Chapter has previously been suspended or revoked, including the name and location of the establishment for which the license was suspended or revoked, as well as the date of the suspension or revocation; and

(6) Whether the applicant, or other individuals listed pursuant to subsection (1) above, holds other licenses under this Chapter and, if so, the names and locations of such other licensed establishments; and

(7) The single classification of license for which the applicant is filing and the general nature of adult-related business for which the applicant is seeking a license, including a statement concerning the degree to which the anticipated

activities at the adult-related business meet the definitions of the enumerated adult-related business classifications listed in the definitions section (§119-06); such a characterization shall serve as an initial basis for the permitted activities allowed under the license issued as well as a basis for the fee charged; and

(8) The location of the proposed establishment, including a legal description of the property site, and a legal street address; and

(9) The names of all employees, dates of birth, and aliases used for the proposed establishment, if known, or, if currently unknown, a statement to that effect; and

(10) The applicant's mailing address, residential address and residential telephone number (if any); and

(11) A site plan and certified survey drawn to appropriate scale of the proposed establishment including, but not limited to, all property lines, rights-of-way, and the location of buildings, parking areas and spaces, curb cuts, and driveways and shall state and indicate on the survey that the distance and location requirements of §150-165 have been satisfied; and

(12) A floor plan drawn to appropriate scale of the proposed establishment including, but not limited to:

a. All windows, all doors, all entrances and exits; and

b. Proposed seating arrangement; and

c. All fixed structural interior features including, but not limited to, doors, aisles, walls, stages, partitions, projection booths, admission booths, adult booths, concession booths, stands, counters, platforms, and similar structures; and

d. All proposed improvements or enlargements to be made, which shall be indicated and calculated in terms of percentage of increase in floor size; and

(13) The name, address and phone number of the person whom the building official should contact to schedule the inspection; and

(14) The phone number and address of the existing or proposed establishment; and

(15) The name, phone number and address of the manager; and

(16) A detailed security plan; and

(17) A notarized, signed, and sworn statement that the information within the application is truthful, independently verifiable, and complete and that the photocopies of the attached driver's licenses or state or federally issued identification cards are true and correct copies of the originals.

(c) *Copies.* In addition to the requirements of subsection (b) above, the applicant shall supply a minimum of five (5) copies of the application, or more as may be required, to the business licensing section.

(d) *Completeness.* An application shall not be considered complete until the application satisfies the requirements of subsection (b) and subsection (c)(1) above.

(1) The Building and Code Compliance Director shall review all of the information submitted to determine the conformity of the application with this subsection.

(2) The submitted application will be reviewed for completeness within twenty (20) business days following receipt, and any corrections, revisions or deficiencies shall be provided to the applicant within that twenty-day period.

(3) Upon resubmittal of corrected plans, the Building and Code Compliance Director shall have ten (10) business days to review the resubmittal and provide any corrections, revisions or deficiencies to the applicant. This process shall continue until the applicant has submitted a complete application or demands that the application be reviewed as is, without further revision.

(4) If the applicant fails to provide additional information requested by the Building and Code Compliance Director, or respond indicating the time that the information will be provided, within forty (40) days of the date of the request, the application shall be deemed withdrawn by the applicant. The applicant shall be entitled to one forty (40) day extension of this timeframe, upon request made within the original forty (40) day timeframe.

(e) *Application fee.* Each application shall be accompanied by a nonrefundable fee to be established by resolution of the City Council to recoup the costs related to administering the licensing program. If the application for a license is approved and a license is granted, half of the application fee shall be applied as a credit towards the annual license fee required for the first year pursuant to subsection 119-17(f).

(f) *Rejection of application.* In the event the business licensing section is notified by one of the agencies listed in subsections 119-13(2) through (5) above, that the applicant has not satisfied the application requirements for a proposed establishment, the applicant shall be notified of such fact within the time frame specified in this Chapter with a detailed list of reasons and the application shall be denied.

Sec. 119-15. Investigation of application.

(a) Upon receipt of a complete application filed properly with the business licensing section and upon payment of the nonrefundable application fee, the business licensing section shall send the attached photocopies of the application to the Chief of Police, the Fire Department, Building Official, and Planning and Zoning Director. Each agency shall promptly conduct an investigation of the applicant and the proposed establishment in accordance with its responsibilities outlined in Article III. At the conclusion of its investigation, each agency shall indicate on the photocopy of the application whether the application satisfies each requirement of this Chapter, and shall date and sign the application.

(b) Any of the foregoing reviewers shall recommend denial of an application if one (1) or more finds that the proposed establishment will be in violation of a provision of Article III or of any building, fire, or zoning code, statute, ordinance or regulation. If the application fails to satisfy this Code or any building, fire or zoning code, statute, ordinance or regulation, the reviewer shall state specifically its reasons on a separate letter attached to the photocopy of the application.

Sec. 119-16. Administrative review.

(a) The date of the filing of the complete application shall be the date the applicant furnishes the fully completed and sworn application, the application fee, and the required number of copies. The reviewers shall conduct and complete an investigation of the application within twenty-one (21) days of receipt of the complete application. If a provision of this Chapter, any building, fire, zoning, or any other applicable code, statute, ordinance or regulation is found to be applicable to the applicant who is in violation of any such provision, the respective reviewer shall notify the business licensing section of the violation, state the reasons, and offer suggestions for correction. Upon receipt of notice of a violation from a reviewer, the business licensing section shall wait until day twenty-one (21) for the review from the other agencies. Then, the business licensing section shall notify the applicant of the denial in writing within thirty (30) days of receipt of the complete application. All communications regarding approval or denial shall be issued by and through the business licensing section. Oral statements issued directly or independently by the reviewers shall not be deemed to create a reliance or estoppel situation as to the provisions of this Chapter.

(b) The business licensing section shall issue or deny an application for an adult-related business license within forty (40) days from the date of the filing of a complete application, or from the date that the applicant demands review as submitted as the case may be. Upon the expiration of the forty-day period without issuance of a decision, the applicant may demand a license and begin operating the establishment for which a license is sought.

(c) If the applicant has satisfied the requirements of this Chapter, the business licensing section shall notify the applicant in writing, and issue the license to the applicant upon payment of the appropriate annual license fee provided in subsection 119-17(f), with credit as provided in subsection 119-14(e).

(d) The business licensing section shall deny the application upon notification by one of the reviewers that:

(1) The application violates or fails to meet the provisions of this Chapter, any building, fire, zoning, or any other applicable code, statute, ordinance or regulation;

(2) The application contains material false information, or information material to the decision was omitted; failure to list an individual required to be listed, and whose listing would result in a denial, is presumed to be "material false

information” for purposes of denial of the application; the certification that the licensee owns, possesses, operates and exercises control over the proposed or existing adult-related business is a “material representation” for purposes of this section;

(3) The applicant, or other individuals listed pursuant to subsection 119-14(b)(1) has a license under this Chapter, or has had a license under this Chapter, which has been suspended or revoked;

(4) The granting of the application would violate a statute or ordinance, or an order from a court of law that effectively prohibits the applicant from obtaining an adult-related business license; or

(5) An applicant, or any other individual required to be listed, has been convicted of a specified criminal offense;

a. For which:

i. Less than two (2) years has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or

ii. Less than five (5) years has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense; or

iii. Less than five (5) years has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or a combination of misdemeanor offenses occurring within any twenty-four-month period.

b. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

c. An applicant who has been convicted of a specified criminal offense may qualify for an adult-related business license only when the time period set forth above has elapsed, and if his or her civil rights have been restored.

(e) If a person applies for a license at a particular location within a period of one (1) year from the date of denial of a previous application for a license at the location, and there has not been an intervening change in the circumstances material to the decision regarding the former reason(s) for denial, the application shall not be accepted for consideration.

Sec. 119-17. License.

(a) *Contents.* An adult-related business license shall state on its face the name of the licensee, the business name, local residential and legal domiciliary residential address of the licensee, the name of the establishment, the street address of the establishment, the classification of the license, a twenty-four-hour working phone number, the date of issuance, and the date of expiration.

(b) *Term.* All licenses issued under this Chapter shall be annual licenses which shall commence running on October 1, on which date they shall have been paid for, and shall expire on September 30 of the following year. If a license is issued after October 1, but prior to March 31 of the following year, the applicant shall pay the prorated license fee. If a license is issued after March 31, but prior to October 1 of the same year, the applicant shall pay one-half ($\frac{1}{2}$) the appropriate license fee.

(c) *Renewal.* Licenses shall be entitled to renewal annually subject to the provisions of this Chapter. Before the October 1 expiration date, the annual license may be renewed by presenting the license for the previous year, by paying the appropriate license fee, and by updating the information supplied with the latest application or certifying that the information supplied previously remains unchanged.

(d) *Expiration.* A license shall expire for failure to obtain a renewal pursuant to this Chapter by October 1. An expired license may be renewed no later than November 30 of the same year upon:

- (1) The submission of an affidavit stating that the establishment has not been operated as an adult-related business from the date of expiration of the license;
- (2) The payment of the appropriate license fee; and
- (3) Payment of a penalty of ten (10) percent of the appropriate license fee for the month of October and, if renewed after October 31, an additional penalty of five (5) percent of the appropriate license fee for the month of November.

(e) *Cancellation.* All licenses not renewed by November 30 shall be deemed expired by the business licensing section unless such license is involved in litigation. The applicant may reapply for an adult-related business license. Upon the payment of the application fee, satisfaction of the application requirements, and payment of the license fee, operation of the adult-related business may continue.

(f) *Annual license fees.* The annual license fees under this Chapter for an adult-related business shall be set by resolution of the City Council.

(g) *Collection of fees.* The business licensing section shall be responsible for the collection of the application and annual license fees pursuant to this Chapter.

Sec. 119-18. Transfer of license.

(a) A licensee shall not transfer his or her license to another person, or surrender possession, control, or operation of the licensed establishment to such other person.

(b) A licensee shall not transfer his or her license to another location.

(c) An attempted transfer of a license either directly or indirectly in violation of this section is declared void and, in that event, the license shall be deemed abandoned, and the license shall be forfeited.

Sec. 119-19. Changed name.

No licensee may change the name of an adult-related business unless and until he or she satisfies all of the following requirements:

(a) Provides the business licensing section with thirty (30) days' notice in writing of the proposed name change;

(b) Pays to the business licensing section a change-name fee to be set by resolution of the City Council; and

(c) Complies with § 865.09, F.S., the Florida Fictitious Name Statute.

Sec. 119-20. Enforcement.

(a) *Suspension.*

(1) *Violation of regulations.* In the event a licensed adult-related business is operating in violation of a building, fire, or zoning code, statute, ordinance or regulation, whether federal, state, or local, or the respective requirements of Article III, the appropriate agency shall notify promptly a code enforcement officer, who shall notify the licensee of the violation. The licensee shall have ten (10) business days in which to correct the violation. If the licensee fails to correct the violation within ten (10) business days, the agency shall notify a code enforcement officer, who shall schedule a hearing before the code enforcement board. If the code enforcement board determines that a licensed establishment is in violation of a building, fire, or zoning statute, code, ordinance, or regulation, whether federal, state, or local, or the respective general requirements of §119-23, the code enforcement officer shall notify the business licensing section, which shall forthwith suspend the license and shall notify the licensee of the suspension. The suspension shall remain in effect until the code enforcement officer notifies the business licensing section in writing that the violation of the provision in question has been corrected. Nothing in this section shall take away other enforcement powers of the code enforcement board or any other agency provided by the City Code or statute.

(2) *Illegal transfer.* Upon the written notification by one of the agencies that a licensee is engaged in a license transfer contrary to §119-18, the business licensing section shall officially suspend the license and notify the licensee of the suspension. The suspension shall remain in effect until all of the requirements of this section have been satisfied and a new license has been issued by the business licensing section.

(3) *Violations of Article III of this Chapter.*

a. In the event two (2) or more convictions for violations of the rules and regulations within Article III or of any health code, statute or regulation occur within a two-year period, the business licensing section shall, upon notification of the date of the second conviction, suspend the license and notify the licensee of the suspension. The suspension shall remain in effect for a period of sixty (60) days.

b. In the event one (1) or more convictions for violations of the rules and regulations of Article III or of any health code, statute or regulation occur within a period of two (2) years from the date of the violation from which the conviction resulted for which the license was suspended for sixty (60) days under subsection a. above, the business licensing section shall, upon notification of the date of the first conviction, suspend the license again and notify the licensee of the suspension. The time during which the license was previously suspended for sixty (60) days shall not be included within the two-year period. The suspension shall remain in effect for a period of ninety (90) days.

c. In the event one (1) or more convictions for violations of a rule or regulation of Article III or of any health code, statute or regulation occur within a period of two (2) years from the date of the violation from which the conviction resulted for which the license was suspended for ninety (90) days under subsection b. above, the business licensing section shall, upon notification of the date of the first conviction, suspend the license again and notify the licensee of the suspension. The time during which the license was previously suspended for ninety (90) days shall not be included within the two-year period. The suspension shall remain in effect for a period of one hundred eighty (180) days.

d. The renewal of, or new application for, a license pursuant to this Chapter shall not defeat the terms of this section.

(4) *Effect of suspension.* If a license is suspended, all operations within the adult-related business shall cease for the period of the suspension, and the license shall be suspended for the suspension period. The State of Florida, Division of Alcoholic Beverages and Tobacco and the Department of Business and Professional Regulation shall be notified of the suspension, and no other person shall be allowed to operate an adult-related business at that location for a period of one hundred eighty (180) days.

(5) *Effective date of suspension.* All periods of suspension shall begin fifteen (15) calendar days after the date the business licensing section mails the notice of suspension to the licensee, or on the date the licensee surrenders his or her license to the business licensing section, whichever occurs first.

(b) *Revocation.*

(1) *False information.* In the event it is learned or found, or upon sufficient cause determined that a license was granted based upon false information, misrepresentation of fact, or mistake of fact by the licensee or his or her agent, the respective agency that has knowledge of the false information shall notify the business licensing section. The business licensing section shall notify the licensee in writing of the business licensing section's intent to revoke the license. The licensee shall have ten (10) days from the date of receipt of the notification to request a hearing. The hearing shall be scheduled before the code enforcement board. If the licensee does not request a hearing, the license shall be considered revoked ten (10) days after the receipt of the notification. If the licensee does request a hearing, the license shall remain in effect during the pendency of the action before the code enforcement board.

(2) *Convictions for violations of Article III.* In the event one (1) or more convictions for violations of Article III or of any applicable health code, statute or regulation occur within a period of two (2) years from the date of the violation from which the conviction resulted for which the license was suspended for a period of one hundred eighty (180) days pursuant to subsection (a)(4), the business licensing section shall forthwith revoke the license and notify the licensee of the revocation. The time during which the license was previously suspended for one hundred eighty (180) days shall not be included within the two-year period.

(3) *Effect of revocation.* If a license is revoked, the licensee shall not be allowed to obtain another adult-related business license for a period of two (2) years, and no license shall be issued during that time period to another person for the location and premises upon which the adult-related business was situated.

(4) *Effective date.* The revocation shall take effect fifteen (15) calendar days after the date the business licensing section mails the notice of revocation to the licensee, or on the date the licensee surrenders his or her license to the business licensing section, whichever occurs first.

Sec. 119-21. Records and reports; consent.

(a) Each licensee shall keep such records and make such reports as may be required by the business licensing section and the agencies to implement this Chapter and to carry out its purpose.

(b) By holding a license under this Chapter, the licensee shall be deemed to have consented to the provisions of this Chapter and to the exercise by the applicable agencies of their respective responsibilities under this Chapter.

ARTICLE III. ADULT-RELATED BUSINESSES: BUSINESS REGULATION

Sec. 119-23. General requirements.

Each adult-related business shall observe the following general requirements:

- (1) Conform to all applicable building statutes, codes, ordinances, and regulations, whether federal, state, or local; and
- (2) Conform to all applicable fire statutes, codes, ordinances, and regulations, whether federal, state, or local; and
- (3) Conform to all applicable health statutes, codes, ordinances, and regulations, whether federal, state, or local; and
- (4) Conform to all applicable zoning regulations and land use laws, whether state or local, including but not limited to §150-165 of the Land Development Code (location restrictions); and
- (5) Keep the original of the adult-related business license posted in a conspicuous place at the establishment at all times, which license shall be available for inspection upon request at all times by the public; and
- (6) Opaquely cover each nonopaque area through which a person outside the establishment may otherwise see inside the establishment; and
- (7) Maintain a continuously updated compilation of the required records.

Sec. 119-24. Hours of operation.

(1) It shall be unlawful for an operator of an adult-related business to allow such establishment to remain open for business, or to allow an employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 3:00 a.m. and 7:00 a.m. on all days.

(2) It shall be unlawful for an employee of an adult-related business to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 3:00 a.m. and 7:00 a.m. on all days.

Sec. 119-25. Alcoholic beverages prohibited.

(1) No alcoholic beverages shall be sold, served, or consumed in an adult-related business.

(2) No person or employee shall expose to public view his or her specified anatomical areas, or simulation thereof, in an establishment selling, serving, or allowing the consumption of alcoholic beverages.

(3) No person maintaining, owning or operating an establishment selling, serving or allowing the consumption of alcoholic beverages shall allow a person or employee to expose to public view his or her specified anatomical areas, or simulation thereof, within the establishment.

(4) No person maintaining, owning or operating an establishment selling, serving or allowing the consumption of alcoholic beverages shall allow the exposure to public view of specified anatomical areas, or the simulation thereof, within the establishment.

(5) No person shall cause and no person maintaining, owning or operating an establishment selling, serving or allowing the consumption of alcoholic beverages shall allow the exposition of graphic representation, including pictures or projection of film, which depicts specified anatomical areas engaged in specified sexual activities, or other sexual acts prohibited by law, or simulation thereof, within the establishment.

Sec. 119-26. Supplementary requirements; prohibitions.

(1) *Adult theater*: In addition to the general requirements for an adult-related business contained in this Article, an adult theater shall comply with the following special requirements:

(a) If the adult theater contains a hall or auditorium area, the area shall comply with each of the following provisions:

1. Have individual or separate seats, not couches, benches, beds, or the like, to accommodate the maximum number of persons who may occupy the area; and
2. Have a continuous main aisle alongside of the seating areas in order that each person seated in the areas shall be visible from the aisle at all times; and
3. Have a sign posted in a conspicuous place at or near each entrance way to the hall or auditorium area listing the maximum number of persons who may occupy the hall or auditorium area, which number shall not exceed the number of seats within the auditorium area; and
4. Have premises equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 1 foot-candle as measured at floor level; and
5. It shall be the duty of the licensee, the owners, and operator and it shall also be the duty of any agents and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises; and
6. Have an AIDS crisis sign visible to all patrons on the side of the door that opens and allows patrons to enter the theater.

(b) Furnishing of adult theaters:

1. Each adult theater subject to this Article shall cover the floor of areas accessible to patrons with smooth and nonpermeable flooring material which can withstand frequent effective cleaning in accordance with subsection (1)(c)3. Carpeting of any type is prohibited; and
2. Each adult theater shall use smooth and non-permeable upholstery material which can withstand frequent cleaning in accordance with paragraph (1)(c)3. to cover furniture permitted by this Chapter for use of patrons; and

3. Each adult theater shall have, in areas accessible to patrons, interior wall surfaces which can withstand frequent cleaning in accordance with paragraph (1)(c)3; and

4. Each adult theater shall use only those shades, blinds and vertical blinds which can withstand frequent cleaning in accordance with paragraph (1)(c)3. Draperies are prohibited.

(c) Sanitation:

1. All areas of each adult theater which are accessible to patrons shall be maintained in a clean and sanitary condition. The surfaces of all floors, furniture, counter tops, shades, blinds, vertical blinds, doors and walls of areas accessible to patrons shall be cleaned in accordance with paragraph (1)(c)3;

2. All floors, furniture, counter tops, shades, blinds, vertical blinds, doors and walls of areas accessible to patrons of adult theaters subject to this Chapter shall be renovated or be replaced as needed. All furniture must be kept free from holes and rips; and

3. Any individual cleaning or sanitizing of the areas accessible to patrons shall be accomplished a minimum of 1 time each 24 hours with a 1:10 bleach solution (1 part bleach to 10 parts water), mixed daily, as recommended by the U.S. Center for Disease Control as a precaution for the prevention of transmission of the HIV virus and other diseases. A copy of the approved procedure shall be kept on file at the adult theater and a copy shall be provided to each person cleaning or sanitizing the areas accessible to the patrons. Each such individual shall certify that he or she has read and understood the procedure. Records of the sanitation performed on the premises as required herein shall be kept and maintained on the premises and posted in a conspicuous place. The signed copy of the sanitation procedure executed by each sanitation employee and the sanitation record referenced above shall be kept as a part of the records of the adult theater, and open for inspection by the applicable agencies.

(2) *Adult dancing establishment:* In addition to the general requirements for an adult-related business contained in this Article, an adult dancing establishment shall observe the following special requirements:

(a) It shall have a stage provided for the display or exposure of specified anatomical areas by an employee to a person other than another employee consisting of a permanent platform (or other similar permanent structure) raised a minimum of 18 inches above the surrounding floor and encompassing an area of at least 100 square feet; and

(b) The exposure by an employee of specified anatomical areas, or simulation thereof, to public view shall be restricted to the stage required above; and nonemployees or patrons shall not be allowed closer than 4 feet to the stage edge when an employee exposes those anatomical areas; and

(c) The establishment provides at least two (2) security officers consisting of sworn law enforcement officers or identified security personnel if the occupant capacity is less than or equal to 150 persons, and an additional sworn law enforcement officer or identified security personnel for each additional increase of occupant capacity of 100 persons. The security officers or personnel shall be granted unfettered access to all parts of the establishment in order to monitor the interior and exterior of the establishment; and

(d) The establishment provides at least 1 responsible person under the supervision of a manager to check identification at the door to ensure that minors do not enter; and

(e) In all areas in which a private performance shall occur:

1. The private performance area shall be at least 100 square feet in size; and
2. Have a permanently open entrance way not less than 7 feet wide and not less than 7 feet high, which entrance way will never be closed or partially closed by a curtain, door or other partition which would be capable of wholly or partially obscuring a person situated in the area; and
3. Have a wall-to-wall, floor-to-ceiling partition of solid construction without holes or openings, which partition may be completely or partially transparent and which partition separates the employee from the person viewing the display; and
4. Have, except for the entrance way, walls or partitions of solid construction without holes or openings in such walls or partitions; and

(f) Sign. All adult dancing establishments shall post in a conspicuous area at least 1 sign which states that patrons may not touch employees and that drugs are prohibited.

(g) Food service.

1. No person shall cause and no person maintaining, owning or operating an establishment storing, preparing, serving, selling, or allowing the consumption of food shall allow the exposition of graphic representation, including pictures or projection of film, which depicts specified anatomical areas engaged in specified sexual activities, or other sexual acts prohibited by law, or simulation thereof, within the establishment.
2. Notwithstanding the foregoing, any person maintaining, owning or operating an adult-related business may sell, serve or allow the consumption of customary bar snacks on the premises.

Sec. 119-27. Violations of Chapter.

It shall be unlawful for a person to be an operator of an adult-related business which does not satisfy all of the requirements of Article III of this Chapter.

Sec. 119-28. Allowing employee to engage in prohibited acts.

It shall be unlawful for an operator of an adult-related business to knowingly, or with reason to know, allow an employee:

- (1) To engage in a lap dance with a person at the establishment; or
- (2) To contract or otherwise agree with a person to engage in a lap dance with a person at the establishment; or
- (3) To contract or otherwise agree with a person to engage in specified sexual activity at the establishment; or
- (4) To display or expose a specified anatomical area while simulating a specified sexual activity with another person at the establishment, including with another employee; or
- (5) To allow a person, excluding another employee, to touch a portion of the clothed or unclothed body of the employee below the neck and above the knee, excluding that part of the employee's arm below the wrist, referred to as the hand; or
- (6) To engage in a private performance unless such employee is in an area that complies with the special requirements set forth in §119-26(2)(e); or
- (7) To intentionally touch the clothed or unclothed body of a person at the adult-related business, excluding another employee, at a point below the neck and above the knee of the person, excluding that part of the person's arm below the wrist, referred to as the hand.
- (8) To display or expose at the establishment a specified anatomical area unless such employee is continuously positioned away from a person other than another employee, and unless such employee is in an area as described in §119-26(2).

Sec. 119-29. Engaging in prohibited activity.

It shall be unlawful for an employee of an adult-related business:

- (1) To engage in a lap dance with a person at an establishment; or
- (2) To contract or otherwise agree with a person to engage in a lap dance with a person at an establishment; or
- (3) To contract or otherwise agree with a person to engage in specified sexual activity at the establishment; or
- (4) To display or expose at the establishment a specified anatomical area unless such employee is continuously positioned away from a person other than another employee, and unless such employee is in an area as described in §119-26(2); or
- (5) To display or expose a specified anatomical area while simulating a specified sexual activity with another person at the establishment, including with another employee; or
- (6) To engage in a private performance unless such employee is in an area which complies with the special requirements set forth in §119-26(2)(e); or
- (7) To intentionally touch the clothed or unclothed body of a person at the adult-related business, excluding another employee, at a point below the neck and above the knee of the person, excluding that part of the person's arm below the wrist, referred to as the hand; or

(8) To allow a person, excluding another employee, to touch a portion of the clothed or unclothed body of the employee below the neck and above the knee, excluding that part of the employee's arm below the wrist, referred to as the hand.

Sec. 119-30. Advertising prohibited activity.

It shall be unlawful for an operator of an adult-related business to advertise the presentation of an activity prohibited by an applicable state statute or local ordinance.

Sec. 119-31. Specified criminal offense.

It shall be a violation of this Code if the operator is convicted or is adjudged guilty of a specified criminal offense that occurred at the establishment.

Sec. 119-32. Minors prohibited.

It shall be unlawful for an operator of an adult-related business to knowingly, or with reason to know, allow:

- (1) Admittance to the establishment of a person under 18 years of age; or
- (2) A person under 18 years of age to remain at the establishment; or
- (3) A person under 18 years of age to purchase goods or services at the establishment; or
- (4) A person to work at the establishment as an employee who is under 18 years of age.

Sec. 119-33. Touching of employee by nonemployee.

It shall be unlawful for a person in an adult-related business, other than another employee, to intentionally touch the unclothed or clothed body of an employee at a point below the neck and above the knee of the employee, excluding that part of the employee's arm below the wrist, referred to as the hand.

Sec. 119-34. Use of rest rooms or dressing rooms.

(1) Notwithstanding any provision of this Code to the contrary, it shall not be unlawful for an employee of an adult-related business to expose a specified anatomical area during the employee's bona fide use of a rest room, or during the employee's bona fide use of a dressing room, which is accessible only and restricted to employees.

(2) The restrictions of this Article also apply to all rest rooms and dressing rooms.

(3) Notwithstanding any provision of this Code to the contrary, it shall not be deemed unlawful for a person to expose a specified anatomical area during that person's bona fide use of a rest room.

Sec. 119-35. Violation subject to prosecution.

A violation of any requirement of this Article may be prosecuted by the City Attorney in a court of competent jurisdiction and/or before the City Code Enforcement Board in accordance with Article VIII "Code Enforcement Board" of Chapter 32.

Sec. 119-36. Miscellaneous.

(a) *Appeal process.* Subject to Article II, after a denial of an application for a license, or a notice of suspension or revocation of a license, the aggrieved party may timely file a notice of appeal with any court of competent jurisdiction in accordance with applicable law and court rules.

(b) *Notice.* A notice required under this Chapter shall be accomplished by sending a written notification by certified mail, return receipt requested, to the mailing address set forth on the application for the license. This mailing address shall be considered the correct mailing address unless the business licensing section has been otherwise notified in writing by certified mail, return receipt requested, by the licensee of the new address. The licensee shall have the burden of proving the business licensing section received the new address.

(c) *Immunity from prosecution.* The City or an agency of the City shall be immune from prosecution, civil or criminal, for reasonable, good-faith trespass upon an adult-related business while acting within the scope of its authority under this Chapter.

(d) *Enforcement of this Chapter.* The City Council, Chief of Police, or state attorney may bring suit in any court of competent jurisdiction to restrain, enjoin, or otherwise present the violation of this Chapter.

Section 2. Repeal. That Chapter 132 "Sex Offenses", Article II "Sex-Related Business Activities" is hereby repealed as follows:

CHAPTER 132. SEX OFFENSES

* * *

~~ARTICLE II. SEX-RELATED BUSINESS ACTIVITIES~~

~~Sec. 132-10. Definitions.~~

~~For the purposes of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~(A) *Licensee.* Person having or required to have a City license in full force and effect to operate a business within the City.~~

~~(B) *Sex-related business activity or use.* A commercial activity or use which takes place in taverns, stores, shops, and places of public entertainment, accommodation, amusement, massage, or manipulation, wherein there is offered to the public for any~~

~~type of consideration, sexual conduct or the display of materials emphasizing or involving sexual conduct, or the display of specified anatomical areas, and which:~~

- ~~(1) Provides entertainment, with or without services of foods or alcoholic drink, depicting sexual conduct or the display of any specified anatomical areas, or~~
- ~~(2) Displays either in person or by visual media, films, books, magazines, photographs, paraphernalia, or materials that depict or describe sexual conduct or the display of any specified anatomical areas, or~~
- ~~(3) Provides massage, alcohol rub, administration of vapors, electric or magnetic treatments, or any other treatment or manipulation of the human body or parts thereof in connection with sexual conduct or the display of any specified anatomical area without medical or health purposes, or~~
- ~~(4) Provides treatment, manipulation, or the exposing of specified anatomical areas without medical or health purposes, or~~
- ~~(5) Provides places where three or more persons, not all members of the same family, gathered for the purpose of engaging in sexual conduct or for the exposing of specified anatomical areas, or~~
- ~~(6) Provides places where a person or persons display anatomical areas so as to permit themselves to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by a person paying a consideration or gratuity or purchasing alcoholic drinks or food.~~

~~(C) Sex-related businesses. Including but not limited to the following:~~

- ~~(1) Establishments displaying on its premises either in person or by visual media including films, books, magazines, or photographs, a person or product presenting material distinguished or characterized by an emphasis on depicting or describing sexual conduct or specified anatomical areas.~~
- ~~(2) Massage parlors where for any form of consideration or gratuity a massage, alcohol rub, administration of vapors, electrical or magnetic treatment, or any other treatment or manipulation of the human body occurs as a part of or in conjunction with sexual conduct or specified anatomical areas.~~
- ~~(3) Places where for any form of consideration or gratuity three or more person not all members of the same family may congregate, assemble, or associate for the purpose of engaging in sexual conduct or exposing specified anatomical areas.~~
- ~~(4) Places where for any form of consideration or gratuity a person or persons displaying specified anatomical areas are observed, sketched, drawn, photographed, painted, sculptured, or similarly depicted to or by a person paying such consideration or gratuity.~~
- ~~(5) Adult book stores. An establishment having as a portion of its stock in trade, books, magazines, films for sale or viewing on the premises by use of motion picture devices or any other coin-operated means, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or uses or specified anatomical areas or an establishment with a segment or section devoted to the sale or display of such material.~~
- ~~(6) Adult motion picture theater. An enclosed building with a capacity or 50 or more persons having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to~~

~~specified sexual activities or specified anatomical areas for observation by patrons therein.~~

~~(7) Adult mini-motion picture theater. An enclosed building with a capacity for less than 50 persons used for presenting materials distinguished or characterized by an emphasis or matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.~~

~~(8) Adult entertainment cabaret. A public or private establishment which is licensed to serve food or alcoholic beverages, which features topless or bottomless dancers, strippers, male or female impersonators, or similar entertainers.~~

~~(D) Sexual activity or use. Includes conduct or the display of materials on any land within the City which may be viewed by the public for any type of consideration or gratuity involving:~~

~~(1) The fondling or touching of human or animal genitals, pubic regions, buttocks, or female breasts.~~

~~(2) Sex acts, actual or simulated, including intercourse, oral copulation, sodomy, masturbation, and the display of excretory functions as part of or in connection with these activities.~~

~~(3) The display of specified anatomical areas.~~

~~(E) Specified anatomical areas:~~

~~(1) Less than completely and opaquely covered human or animal genitals, pubic regions, buttocks, or the female breasts below a point immediately above the top of the areola, and~~

~~(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.~~

~~(F) Specified criminal act. Includes any violation of this Code; soliciting for prostitution; pandering; prostitution; keeping a house of ill fame; lewd and lascivious behavior; exposing minors to harmful materials; possession of obscene materials; transporting obscene materials; sale or possession of a controlled substance or narcotic; or any felony under the laws of the State of Florida, the United States, or any other state.~~

~~Sec. 132-11. Regulations.~~

~~Any person, firm, corporation, or association who establishes, operates, or engages in a sex-related activity or use either separately or from or as a part of any licensed business or use within the City shall:~~

~~(A) Conduct the business activity or use in such manner so as not to violate the laws of the State of Florida relating but not limited to:~~

~~(1) Sexual battery (F.S.A. Chapter 794).~~

~~(2) Prostitution (F.S.A. Chapter 796).~~

~~(3) Adultery and fornication (F.S.A. Chapter 798).~~

~~(4) Crime against nature; indecent exposure (F.S.A. Chapter 800).~~

~~(5) Obscene literature; profanity (F.S.A. Chapter 847).~~

~~(B) Comply with all laws of the State of Florida and ordinances, rules, and regulations of Metropolitan Dade County and the City and propounded thereunder.~~

~~(C) Engage in sex-related business activity or use only in B-2 commercial zoned districts provided:~~

~~(1) No sex-related business activity or use shall be allowed within 1,000 feet of another existing sex-related business activity or use. Distance shall be measured from the main entrance of the proposed sex-related business to the main entrance of the existing sex-related business by the most direct pedestrian route.~~

~~(2) No sex-related business activity or use shall be located within 200 feet of any zoning district which is zoned for residential use. Distance shall be measured from the main entrance of the sex-related business to the boundary of the district zoned for residential use by the most direct pedestrian route.~~

~~(3) No sex-related business activity or use shall be located within 500 feet of the preexisting school or place of worship. Distance shall be measured from the main entrance of the sex-related business activity or use to the main entrance of the school or place of worship by the most direct pedestrian route.~~

~~(D) File with the City Manager a "notice of intent" to establish, operate, conduct, or maintain a sex-related business or use within the City at any location where such use is permitted 30 days prior to the filing of any application for an occupational license for the business use associated with the sex-related business. The notice of intent to establish a sex-related use shall be filed on forms to be prepared and made available by the City Manager and shall set forth under oath the following information:~~

~~(1) The names and addresses of all persons having any proprietary interest in the business to be licensed in connection with the sex-related use.~~

~~(2) The names and addresses of stockholders of any corporation as well as names and addresses of the officers and directors thereof.~~

~~(3) An exact description of the nature of the sex-related use in such detail as shall permit the City Manager to determine whether or not the use violates any of the laws of the State of Florida or of the City in relation thereto.~~

~~(4) A statement executed by a person who assumes the responsibility for the operation and conduct of the sex-related business:~~

~~(a) That the sex-related business activity shall not during the license year violate the laws of the State of Florida or the ordinances of the City, and~~

~~(b) That in the event the person is no longer employed or associated with the conduct of the sex-related business a notice thereof shall be filed with the City Manager within five days by the business.~~

~~(5) A drawing or survey showing the main entrance of the business and its distance by pedestrian travel to any residential district, school, or church, and any other sex-related use.~~

~~(6) A statement describing, or a photograph showing, the proposed exterior of the building in which the sex-related use will take place.~~

~~(7) A statement by the person responsible for the operation and conduct of the sex-related business that no person having an interest in the business to be licensed in connection with the sex-related use has been convicted of a specified criminal act within five years of the date of the notice of intent.~~

~~(8) The maximum number of patrons or customers which the place of operation of the sex-related business is designed to accommodate.~~

~~(9) A description of the method of conduct of the licensed business in connection with the sex-related use including:~~

~~(a) Hours of operation of the sex-related business.~~

~~(b) Whether or not alcoholic beverages are served and if so the time during which they are served.~~

~~(10) The names and addresses and number of employees and attendants at the place of operation of the sex-related business. In the event such employees and attendants are from time to time changed at such place of business, notice of the names and addresses of new employees shall be given to the chief of police and the City Manager within three days.~~

~~(11) Such other information as the chief of police and City Manager shall find reasonably necessary to effectuate the purpose of this section and to arrive at a fair determination of whether the terms of this Code relating to the business have been complied with.~~

~~(12) If alcoholic beverages are served by the licensed business, a statement setting forth the number of the beverage license and a statement acknowledging that the applicant has knowledge of the provisions of this section prohibiting the conduct of any sex-related business activity or use during the hours when alcoholic beverages are permitted to be sold.~~

~~(E) Where a conflict in distance limitation exists between any two or more sex-related business uses, the first use or activity established, if otherwise in compliance with the terms of this subchapter, shall be deemed conforming and the conflicting activity or use shall terminate as provided herein.~~

~~Sec. 132-12. Alcoholic beverage licenses.~~

~~Notwithstanding the hours of business during which the sale of alcoholic beverages is permitted by this Code for businesses licensed under the beverage laws of the State of Florida to sell alcoholic beverages, the sale of alcoholic beverages and consumption thereof on the licensed premises is prohibited during the hours when any sex-related business activity or use takes place on the licensed premise.~~

~~Sec. 132-13. Exterior display.~~

~~Each sex-related business shall have only one main entrance through which customers shall pass, exclusive of emergency doors. No sex-related business activity or use shall be conducted in any manner that permits the observation of any material depicting, describing, or relating to specified sexual activities or specified anatomical areas from any public way or from any property not a sex-related business activity or use. This provision shall apply to any display, decoration, sign, show window, main entrance, or other opening.~~

~~Sec. 132-14. Nonconforming or unlawful activities or uses.~~

~~(A) All sex-related business activities and uses contrary to the provisions of this subchapter in existence on the effective date of this subchapter shall terminate within one year. Whenever such activity or use has been discontinued for a period of more than 30 days, it shall not thereafter be reestablished and all future activity and use shall be in conformity with the provisions of this subchapter.~~

~~(B) No sex-related business activity or use existing at the time of passage of this subchapter may be extended or increased contrary to the terms of this subchapter.~~

~~(C) No sex-related business activity or use in existence on the effective date of this subchapter shall become or continue as a public or private nuisance.~~

~~(D) Nothing herein contained shall validate or render lawful any sex-related business activity or use existing at the effective date of this subchapter which is unlawful or contrary to the laws, rules, or regulations of the United States, the State of Florida, Dade County, and the City.~~

~~**Sec. 132-15. Filing of notice of intent.**~~

~~The annual filing of the "notice of intent" to conduct a sex-related business is declared to be a material representation and necessary in order for the City to determine whether or not such sex-related activity is permitted at the location of the business license.~~

~~(A) Failure to file a notice as required shall be grounds for revocation of any license of any business upon whose premises the sex-related activity occurs. Proceedings for suspension or revocation shall be in accordance with the ordinances of the City relating thereto. In the event it is found by the City Manager that a licensee has failed to give notice as required herein prior to the use of any licensed premises or a sex-related business, the license of the business shall be suspended for a period of one calendar year from the date of the entry of the order of the manager or in the event of an appeal, then from the date of the denial of the appeal by the City Council.~~

~~(B) Lack of knowledge of the provisions of this Code and the "notice of intent" or failure to give timely notice as required herein shall not constitute a defense in any proceeding to revoke or suspend the license of any business. Further, all businesses presently existing as nonconforming to the requirements of this Code relating to sex-related business shall, notwithstanding the nonconforming nature of the business, be required to file the notice of intent to comply.~~

~~**Sec. 132-99. Penalty.**~~

~~Any person, firm, or corporation violating any of the provisions of §§ 132-11—132-15 shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not exceeding \$500.00 or imprisoned not exceeding 60 days or both, in the discretion of the county court. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.~~

Section 4. Severability. That, if any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 5. Conflicts. That all Ordinances or parts of Ordinances, and all sections and parts of sections, in conflict herewith are repealed to the extent of such conflict.

Section 6. Codification. That the codifiers are hereby directed to codify this Ordinance in accordance with their discretion and their prior codification of the City of Miami Springs Code of Ordinances.

Section 7. Effective Date. This Ordinance shall take effect in the manner provided by law.

PASSED AND ADOPTED by the City Council of the City of Miami Springs, Florida, this ____ day of _____, 2013.

The motion to adopt the foregoing Ordinance was offered on second reading by _____, seconded by _____, and on roll call the following vote ensued:

Vice Mayor Ator	_____
Councilman Best	_____
Councilwoman Bain	_____
Councilwoman Lob	_____
Mayor Garcia	_____

Zavier M. Garcia
Mayor

ATTEST :

Magali Valls, CMC
City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Jan K. Seiden, Esquire
City Attorney

First Reading:
Second Reading:

Words ~~stricken through~~ shall be deleted. Underscored words constitute the amendment proposed. Words remaining are now in effect and remain unchanged.

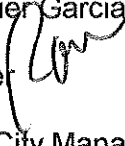



CITY OF MIAMI SPRINGS
Finance Department
201 Westward Drive
Miami Springs, FL 33166-5289
Phone: (305) 805-5014
Fax: (305) 805-5018

Agenda Item No.

City Council Meeting of:

02-11-2013

To: The Honorable Mayor Xavier Garcia and Members of the City Council
Via: Ron Gorland, City Manager 
From: William Alonso, Assistant City Manager/Finance Director 
Date: January 29, 2013
Subject: Audit Firm Selection Committee

The City's three year contract with our external auditors Albani, Caballero, and Castellanos L.P. has expired with the conclusion of the FY2012 audit. The City is currently in the process of preparing a Request for Proposal (RFP) for the upcoming FY2013, 2014, and 2015 financial statement audits.

In accordance with State of Florida Statutes an audit firm selection committee must be appointed to go through the firm selection process and present Council with their recommendations. During our last process in 2009, the committee members were:

1. Ron Gorland, Assistant City Manager
2. Jan Seiden, City Attorney
3. Pete Baan, Police Chief

We would respectfully request that Council approve the following three appointees to make up the selection committee for 2013:

1. Ron Gorland, City Manager
2. Jan Seiden, City Attorney
3. Pete Bann, Police Chief

These appointees are experienced in the selection process and provide both financial and legal expertise to the process.

RESOLUTION NO. 2013-3570

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MIAMI SPRINGS, FLORIDA;
RELATING TO EARTH HOUR PARTICIPATION
ON MARCH 23, 2013; URGING OTHER
MUNICIPALITIES TO REGISTER AND
PARTICIPATE IN EARTH HOUR; EFFECTIVE
DATE

WHEREAS, Earth Hour is an annual international event that since its inception has been associated with the World Wildlife Fund; and,

WHEREAS, the purpose of Earth Hour is to draw attention to climate change and to encourage people, communities, municipalities and nations to address the issue and make proactive changes; and,

WHEREAS, this year the signature annual event, when people and municipalities turn off the lights for an hour, is scheduled for March 23, 2013, between 8:30 and 9:30 p.m.; and,

WHEREAS, according to the Earth Hour website, in 2012, more than 6,950 cities and towns across 152 countries and territories participated in Earth Hour; and,

WHEREAS, to date only one municipality, located in Broward County, has registered to participate in Earth Hour; and,

WHEREAS, the Mayor and City Council have directed the City Administration to register for participation in Earth Hour, the City shall participate in providing information to City residents to participate and will attempt to make this Earth Hour a community event with activities; and,

WHEREAS, the Mayor and City Council urge the Florida League of Cities, the counties and municipalities of Florida to participate in the Earth Hour event scheduled for March 23, 2013; and,

WHEREAS, during the Earth Hour participants shall turn off the lights in support of Earth Hour; and,

WHEREAS, the Mayor and City Council desire to participate in Earth Hour on March 23, 2013 between 8:30 and 9:30 p.m. and urge other municipalities and counties in Florida to participate as well:

Resolution No. 2012-3570

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA:

Section 1: That the above WHEREAS clauses are incorporated by reference.

Section 2: That the City Clerk is authorized to register the City's participation in Earth Hour 2013.

Section 3: That the City Clerk is authorized to distribute a copy of this resolution to the Florida League of Cities, to local municipalities and to Miami-Dade County to encourage their participation in Earth Hour 2013.

Section 4: That the provisions of this Resolution shall become effective immediately upon adoption by the City Council.

(THIS SPACE INTENTIONALLY LEFT BLANK)

Resolution No. 2012-3570

PASSED AND ADOPTED by the City Council of the City of Miami Springs, Florida, this 11th day of February, 2013.

The motion to adopt the foregoing resolution was offered by _____, seconded by _____, and on roll call the following vote ensued:

Vice Mayor Ator	“ _____ ”
Councilman Best	“ _____ ”
Councilwoman Bain	“ _____ ”
Councilman Lob	“ _____ ”
Mayor Garcia	“ _____ ”

Zavier M. Garcia
Mayor

ATTEST:

Magalí Valls, CMC
City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



Jan K. Seiden, Esquire
City Attorney

Resolution No. 2012-3570



CITY OF MIAMI SPRINGS
Planning & Zoning Department
201 Westward Drive
Miami Springs, FL 33166-5259
Phone: (305) 805-5034
Fax: (305) 805-5036

TO: Honorable Mayor Garcia and Members of the City Council

VIA: Ronald Gorland, City Manager

FROM: James H. Holland, AICP, Planning & Zoning Director

DATE: February 6, 2013

**SUBJECT: RECOMMENDATION FOR SITE PLAN APPROVAL FOR
HYATT PLACE HOTEL
3549 LEJEUNE ROAD**

DEVELOPMENT PROPOSAL

The developer, Travelers Hotel Group, LLC, is proposing the construction of a 135-room, six-story hotel on the site of the former Shoney's Restaurant. The ground floor level consists of a service core, motor lobby, and parking under the upper floors. The second level consists of guest amenities, registration, business functions and seven guestrooms. Among the amenities are an open pool and deck, a fitness center, a lounge and dining facilities. Floors three through six are devoted to 32 guestrooms per floor. LEED Certification (Silver) certification will be sought. This will be the City's first green building. No variances to the Code are required.

ZONING ANALYSIS

The subject property is zoned AT, Abraham Tract District. This District, which has been codified as Chapter 150-165, was adopted by the City Council last August. It is the intent of the District to encourage large-scale development of a wide range of compatible and complimentary uses, along with uses not permitted elsewhere in the City. Hotel development is specifically encouraged, vis-à-vis Floor Area Ratio (FAR) bonuses, much like the NW 36 Street District, but without its cumbersome requirements, such as thematic architectural styles.

Floor Area Ratio

The net land area of the site is 48,615 square feet, or 1.12 acres. The base FAR within the AT District is 1.0, with bonuses up to 3.0. The gross floor area of the building is 86,691 square feet. The resultant FAR is 1.78. The FAR bonuses of the proposed development could reach the maximum allowable. With application of the base FAR and just the hotel room bonus, the allowable FAR would be 2.35.

Parking

The Code requirement for parking is one space for the first 20 guestrooms and one space for each two spaces, thereafter. The number of spaces required is 78. In addition, the Code requires that additional spaces be provided for bars, restaurants, retail uses, and the like. However, since it is anticipated and has been represented that the amenities of the proposed hotel will be limited to hotel guests and employee additional spaces will not be required. Seventy eight spaces have been provided; four of these are handicapped accessible. Although not included in the spaces provided, there are four additional tandem spaces which could be utilized.

Landscaping

Both the Planning and Zoning Department and the City Arborist have found that the landscaping and open space requirements have been met. The Arborist has pointed out that the transplantation of three live oaks is proposed. Consistent with City policy, if the transplantation is unsuccessful, mitigation of the loss through replacement or restitution to the Tree Trust Fund will be required.

UTILITIES

Drainage

The site will be graded such that there will be no run-off onto neighboring properties or rights-of-way. On-site treatment will be by a series of exfiltration trenches. The approval of the Miami-Dade County Department of Regulatory and Economic Resources (RER; formerly DERM) will be required prior to the issuance of a building permit.

Water and Sewer

Water and sewer services are provided by Miami-Dade County. The site is presently served by a 12-inch water main and an eight-inch gravity sewer line. An availability letter from the County is attached, hereto. This gravity line flows to Lift Station 1247 (MS 10), which is located nearby. The status of the operation of this lift station is unknown. Because of dormant growth in the area, it is not expected that the lift station will be problematic. An allocation letter will be required before the issuance of a building permit.

RECOMMENDATION

The Zoning and Planning Board, by unanimous vote recommends the approval of the site plan for Hyatt Place to the City Council subject to the approvals of the Miami-Dade Aviation Department, RER and any other appropriate County agencies prior to building permit issuance. A further condition will be the proffering of a recorded covenant restricting the use of the hotel amenities to hotel employees and guests.



City Council Meeting of:

02-11-2013

A handwritten signature in black ink, appearing to be "WJ", written over a circular stamp or mark.

Interlocal Agreement Between
Miami-Dade County and the City of Miami Springs
for the Provision of Public Transportation Services

This is an Interlocal Agreement, made and entered into by and between Miami-Dade County, a political subdivision of the State of Florida, hereinafter referred to as "the County" and the City of Miami Springs, a municipal corporation of the State of Florida, hereinafter referred to as "the City".

WITNESSETH:

WHEREAS, residents of the City of Miami Springs wish to enhance their transit mobility, and the operation of a municipal circulator provides the opportunity of transit to match the travel needs of the residents of Miami Springs; and

WHEREAS, the provision of regularly scheduled transit circulator services can help decrease the need for specialized transportation services by the County; and

WHEREAS, the provision of regularly scheduled transit circulator service will connect with existing Miami-Dade Transit (MDT) services and help increase the use of services provided by MDT; and

WHEREAS, the City has sponsored and is willing to provide an alternative form of supplemental public transit throughout the City and has secured and obligated the necessary funds to provide;

NOW THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, the County and the City agree as follows:

ARTICLE 1

DEFINITIONS

- 1.1 "ADA" shall mean the Americans with Disabilities Act of 1990, as amended
- 1.2 "Contractor" shall mean any entity, public or private providing public circulator services as described in this Agreement under contract to the City.
- 1.3 "Circulator" shall mean fixed route or semi-fixed route public transportation circulator services where at least seventy (70%) percent of the route is within the City and said circulator service is operated by the City, directly or by contract, pursuant to this Agreement and Chapter 31 of the code of Miami-Dade County.
- 1.4 "The County" shall include Miami-Dade County, the Miami-Dade Transit Miami-Dade Consumer Services Department, and authorized representatives thereof.
- 1.5 "The City" shall mean City of Miami Springs and authorized representatives there.
- 1.6 "FDOT" shall mean the Florida Department of Transportation and authorized.
- 1.7 "MDT" shall mean the Miami-Dade Transit and authorized representatives thereof.
- 1.8 "US DOT" shall refer to the U.S. Department of Transportation, its rules and regulations and representatives thereof.
- 1.9 "FTA" shall mean the Federal Transit Administration, its rules and regulations, representatives thereof.
- 1.10 "CSD" shall mean the Consumer Services Department of Miami-Dade County
- 1.11 "PTRD" shall refer to the Passenger Transportation Regulatory division of CSD.
- 1.12 "Federal Reporting Requirements" shall mean those requirements referenced in 49 CFR Section 5335(a), as may be amended from time to time, and found in the National Transit Database Reporting Manual published by the FTA.
- 1.13 "Fares" for the circulator service shall mean individual transportation fees paid by public transit passengers in accordance with a schedule of fares adopted by County Ordinance.
- 1.14 "STS", Special Transportation Service, is the component of the conventional transit system designed to provide comparable circulator service to disabled individuals as mandated in the ADA.

ARTICLE 2

GENERAL REQUIREMENTS

- 2.1 Compliance with Applicable Laws and Regulations. The City and its contractors, if any, shall comply with all existing and future laws, statutes, ordinances, codes, rules, regulations and procedural requirements, whether federal, state, or local, which are applicable to or in any manner affect, the provision of City of Miami Springs Circulator Services. The City shall be responsible for ensuring compliance of its employees, contractors, agents, or assigns with all applicable county, state and federal requirements, including, but not limited to, all safety, mechanical, and vehicular standards mandated by MDT and CSD. The City shall be responsible for obtaining copies of the appropriate laws, regulations, ordinances, and documents and complying therewith.
- 2.2 The County Regulatory Requirements. Prior to the commencement of the circulator service under this Agreement, the City and/or its contractors, if any, shall have current and valid certificates of transportation, permits, and chauffeur registrations as required by Chapter 31 of the Code of Miami-Dade County. The City and its contractors shall maintain such certificates, registrations and permits current during the Period of this Agreement. In no event shall the City or any of its contractors provide any transportation services contemplated by this Agreement until any and all County regulatory requirements are satisfied.
- 2.3 Vehicle Licensing. All vehicles utilized to provide transportation services shall at all times be properly licensed and permitted in accordance with applicable federal, state and county requirements. Vehicle operators shall comply with all safety, mechanical and vehicular standards mandated by any applicable county, state and federal requirements including, but not limited to, all safety, mechanical and vehicular standards mandated by MDT and CSD.
- 2.4 Vehicle Standards. Vehicles shall comply with all of the Requirements contained in Chapter 30 and 31 of the Code of Miami-Dade County, pertinent state statutes and other directives as may be prescribed and required by CSD or MDT. All vehicles utilized to provide transportation services authorized by this Agreement shall at all times display a current and valid county permit and shall comply with safety, mechanical and vehicular requirements mandated by applicable county, state or federal requirements, including ADA.
- 2.5 Chauffeur Requirements. Vehicle chauffeurs shall at all times have a current and valid county chauffeur's registration, vehicle chauffeurs shall also comply with any safety, mechanical and vehicle standards mandated by applicable county, state and federal requirements and as may be prescribed and required by CSD or MDT.
- 2.6 Proof of Compliance Prior to Operation. The City and/or its contractors, if any shall provide the County with proof of compliance with licensure, insurance and any other requirements mandated by the Code of Miami-Dade County, state statute or federal law prior to commencement of the circulator service.
- 2.7 Purchase of Services/Sole Responsibility. The parties agree that this Agreement is a contract for the purchase of transportation services provided by the City for the benefit of

citizens of City of Miami Springs and of the County. City employees, agents and contractors providing transportation services shall be considered to be, at all times, solely employees, agents and contractors of the City under its sole direction and not employees, agents or contractors of the County.

- 2.8 Compliance with ADA. The City's circulator services shall comply with all applicable requirements of the ADA. The City and the County recognize their joint obligation to provide STS in the area served by the City's Circulator service. In fulfillment of the City's obligation, the City hereby contracts with the County to provide STS service at no cost to the City. To the extent that any terms in the Agreement are in conflict with ADA, the requirements of the ADA shall control.
- 2.9 Compliance with Procurement Requirements. The City agrees to comply with applicable federal and state procurement requirements, as may be amended from time to time, when entering into contracts with third parties to fulfill the obligations under this Agreement.
- 2.10 County's Right to Submit Proposals and Bids. The County shall be given the opportunity to bid upon any Requests for Proposals, Requests for Qualifications, or Requests for bids, which the City shall be considered, along with private contractors, for provision of services to be provided by the City pursuant to this Agreement.
- 2.11 Drug-free Workplace and Testing. In accordance with the Code of Miami-Dade County, the City shall certify that it will have drug-free workplace program. Further, the City shall require pre-employment drug testing and other periodic drug testing for all persons holding safety-sensitive positions, as defined by US DOT, related to transit operation. Effective upon execution of the Agreement, the City shall require that its employees or contractor if applicable, comply with all applicable requirements of the US DOT regulations for drug and alcohol testing. To the extent that any terms in this Agreement are inconsistent with the US DOT regulation, the requirements of the US DOT shall control.
- 2.12 City Representative. The City shall designate individual(s) to act as liaison to the County and notify the County thereof. The City shall promptly notify the County of any changes.
- 2.13 County Representative. The County shall designate individual(s) to act as liaison to the City and notify the City thereof. The County shall promptly notify the City of any changes.
- 2.14 Amendments or modifications. Unless provided otherwise elsewhere in this Agreement, amendments and modifications to this Agreement must be in writing and shall require the signatures of the County Mayor or designee and the Mayor, or their designees, subject to authorization by their respective Boards. Notwithstanding the foregoing, amendments to this Agreement regarding alignments, schedules, and fares, as described in Section 2-150 (c) of the Miami-Dade County Code, may be approved by the County Mayor or designee and the Miami Springs City Manager or their designees.

ARTICLE 3

CITY OF MIAMI SPRINGS TRANSPORTATION SERVICES

- 3.1 Provision of City Circulator. The City shall provide public transportation service on one or more routes within the City of Miami Springs as contained in **Figure 1** a copy of which is attached. Changes to **Figure 1** shall be consistent with Chapter 31 of the Code of Miami-Dade County and be effective only upon the written consent of the County Mayor or designee and the Miami Springs City Manager or their designees.
- 3.2 Fares. The City shall operate the Circulator charging a Circulator fare in accordance with public transit fares established by the County, as may be modified from time to time pursuant to Section 2-150 of the Code of Miami-Dade County. Notwithstanding the foregoing, the City may, upon approval of the County Mayor or designee, charge passengers another fare for the use of the Circulator, in accordance with public transit fares established by the County, as may be modified from time to time pursuant to Section 2-150 of the Code of Miami-Dade County. Qualified passengers shall pay no fare. MDT Easy Cards and Tickets, or identification entitling a passenger shall be accepted to enable passengers to ride the Circulator without paying an additional fare.
- 3.3 Connection and Coordination with County Bus Routes. The Circulator shall connect with regular County Metro routes at points where the routes, intersect, merge or diverge.
- 3.4 Operation of Routes Their Entirety. The City shall be responsible for ensuring that Circulator routes are operated in their entirety with no deviation from the approved routes and schedules unless otherwise authorized by the City.
- 3.5 Shuttle Shown on County Bus Schedules. The County shall provide information on the City's Circulator service through MDT's routine and customary public information dissemination processes, including its transit information telephone service, and transit website.
- 3.6 Issuance of Circulator Schedules. The County shall make available to its Metrobus, Metrorail and Metromover passengers map and schedules provided by the City to MDT.
- 3.7 Planning and Scheduling of Circulator Routes. The County, through the MDT Director or his designee, may assist the City staff with technical support for planning and scheduling of City circulator services.
- 3.8 Use of Logo. The City may wish to design a logo uniquely identifying its circulator service. If they do so, such logo shall at all times be displayed on the exterior of all vehicles operation pursuant to this Agreement. The County shall allow the display of the Circulator logo on the County's bus stop signs at all stops common to the City and the County bus routes does not interfere with previously placed signage, and is done in coordination with MDT staff. The City shall be responsible for placing the logo on the pertinent signs.

Figure 2

See attached brochures for route schedules

- 3.9 Bus Stop Signs and Signposts. The City may provide, install and maintain bus stop signs and signposts at stops along the City's Circulator routes. In the event that the City, its contractor, licensee, permittee, or assignee installs sign facilities that can accommodate Metrobus bus stop information, the County may elect to utilize the City's sign facility to display Metrobus bus stop information. If such election is made, MDT shall provide to the City the materials to be displayed on the bus stop sign facility, in the size and format to be specified by the City and the City will remove the County's signs and return the signs to the County. The City shall be responsible for installing the Metrobus stop information in/on the bus stop sign facility.
- 3.10 Bus Passenger Shelters and Benches
The City agrees that it will be the responsibility of the City to comply with all ADA standards regulations with regards to accessibility to and from bus passengers stops and bus shelters, which the City installs.
- 3.11 Bus Stops and Bus Bays or Pull-outs. The City shall, at its sole option, provide, install, and maintain bus stop sites, including bus bays or pull-outs at Shuttle stops along the City's circulator routes, provided that any proposed bus bays or pull-outs shall be first reviewed and approved by the County or State, as appropriate.
- 3.12 Non-Interference and Non-Disturbance. The County and the City hereby mutually agree not to interfere with or unreasonably impede the free flow of pedestrian movement or of each other's public transit vehicular traffic or passengers accessing or egressing Metrobus or Miami Springs Circulator in-service vehicles.

ARTICLE 4

RECORDS AND REPORTS

- 4.1 Reporting Requirements. The City shall collect or assure the collection of all information required for Federal and State reporting purposes, and shall provide collected and compiled information to the County no less often than quarterly. The City shall annually prepare and submit to the County a copy of said reports no later than ninety (90) days after the close of the County's fiscal year.
- 4.2 Additional Information. The City shall provide additional information about the City Circulator service operations as requested by the County within thirty (30) days, unless a different time period is agreed upon by the City and the County.

ARTICLE 5

INSURANCE

The parties hereto acknowledge the City is self-insured governmental entity subject to the limitations of Section 768.28, F.S. The City shall institute and maintain a fiscally sound and prudent risk management program with regard to its obligations under this Agreement in accordance with the provision of Section 768.28, F.S. The City shall collect and keep on file documentation of insurance of any and all private providers operating in the City of Miami Springs Circulator service routes. In the event that the City contracts with a private vendor for services, the City shall require contractor to meet the insurance requirements show in **Figure 3**, as minimum. The City shall further require the private operator to include the County as a named insured and shall provide the County with a copy of the insurance policy purchased by any contractor prior to the provision of Circulator service operations.

Figure 3
Insurance Check List

1. Worker's Compensation and Employer's Liability per the statutory limits of the state of Florida.
2. Commercial General liability (occurrence form), limits of liability \$1,000,000 per occurrence for bodily injury property damage to include premises/ operations; products and completed operations; independent Contractors; broad form property damage endorsement and contractual indemnity (hold harmless endorsement exactly as written in "insurance requirements" of specifications).
3. Automobile Liability- \$ 1,000,000 each occurrence owned/non-owned/ hired automobiles included.
4. Excess Liability- \$ _____,00 per occurrence to follow the primary coverage.
5. The City must be named as an additional insured on the liability policies and it must be named as an additional insured on the liability policies; and it must be stated on the certificate.
6. Other Insurance as indicated:

_____ Builders Risk completed value	\$ _____
_____ Liquor liability	\$ _____
_____ Fire legal liability	\$ _____
_____ Protection and indemnity	\$ _____
_____ Employee dishonesty bond	\$ _____
_____ Other blanket fidelity bond	<u>\$10,000.00</u>

7. Thirty days written cancellation notice required
8. Best's guide rating B+: VI or better, latest edition.
9. The certificate must state the bid number and title.

ARTICLE 6

INDEMNIFICATION

- 6.1 The City shall, to the extent permitted by law at all time hereafter, indemnify and hold harmless the County, and its officers, agents, employees and instrumentalities from any and all liability, claims, losses and causes of action, including attorneys' fees and costs of defense which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands suits, causes of actions or proceedings of any kinds or nature arising out of, or relating to or resulting from the negligence of the City and/or its officers, employees, agents or instrumentalities, during the term of this Agreement. The City shall pay all claims and losses in connections therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments and reasonable attorneys' fees which may issue thereon. The City expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the City shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents or instrumentalities as herein provided. Nothing herein shall be deemed to indemnify the County from any liability or claim arising out of the negligent performance or failure of performance of the County, its officers, employees, agents or instrumentalities or any other related third party. This paragraph is subject to the limitations of Section 768.28, F.S.
- 6.2 The County shall, to the extent permitted by law at all times hereafter, indemnify and hold harmless the City, and its officers, agents, employees and instrumentalities from any and all liability, claims, losses, and causes of action, including attorneys' fees and costs of defense which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes, of actions or proceedings of any kind or nature arising out of, or relating to or resulting from the negligence of the County and/or its officers, employees, agents or instrumentalities, during the term of this agreement. The County shall pay all claims and losses in connections therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments and reasonable attorneys fees which may issue thereon. The County expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the County shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents or instrumentalities as herein provided. Nothing herein shall be deemed to indemnify the City from any liability or claim arising out of the negligent performance or failure of performance of the City, its officers, employees, agents or instrumentalities or any other related third party. This paragraph is subject to the limitations of Section 768.28, F.S.

6.3 In the event the City contracts for transportation services authorized by this Agreement, the contractor shall, in its contract with the City, be required to indemnify and hold harmless the County, and its officers, agents employees and instrumentalities from any and all liability, claims, liabilities, losses, and causes of action, including reasonable attorneys' fees and cost of defense which the County, the City or their officers, employees, agents and instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, or relating to or resulting from the provision of transportation services by the contractor and/or its officers, employees, agents or independent contractors. The contractor shall be required to pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County and City, where applicable, including appellate proceedings, and shall pay all costs, judgments and attorneys' fee which may issue thereon. The City shall require that the contract between and City and the contractor include a provision which states that the contractor expressly understands and agrees that any insurance protection required by this agreement or otherwise provided by the contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County and the City or their officers, employees, agents or instrumentalities as herein provided. Nothing herein shall be deemed to indemnify the County and the City from any liability or claim arising out of the negligent performance of the County and the City, their officers, employees, agents or instrumentalities or any other related third party.

ARTICLE 7

FINANCIAL ASSISTANCE

- 7.1 Grant Matching Funds. The City shall, at its sole option, provide grant-matching funds for state and/or federal grants for capital or operating funds to be used for the Transportation Services. The County, upon agreement with the City, may, but shall not be required to, provide all or part of cash or other types of matches required for state and federal grants which may be received by the City for the Circulator service, or for expansion of the Circulator service, in future years.
- 7.2 Bus Shelters and Benches. The City shall, at its sole option, provide, install, and maintain bus shelters, benches and other bus stop furnishings, at those Circulator service stops along the City's route where the City, or its contractor, feels that there is a need for such furnishings.
- 7.3 City's Share of supplemental Federal Funding. Beginning with the first year in which the circulator service's operating statistics are reflected in the National Transit Database, where those operating statistics result in new or supplemental funds are solely attributable to the Circulator service's properly reported operations, the County agrees to pay the City its attributable share of federal formula funds received from US DOT no less than sixty(60) days after funding is received from the federal government, less any direct grants received by the City from the County for the Circulator, provided that the funds remitted to the City herein shall be used for the expansion, enhancement or maintenance of the Circulator service program.

As used herein, the City's attributable share shall be one half of the amount equivalent to those Supplemental Urbanized Area Formula Funds, as described in 49 U.S.C, Section 5307, as may be amended from time to time, that the County received as a direct result of Circulator serve operations provided by the City pursuant to this Agreement and as included in the National Transit Database. Said attributable share shall be calculated utilizing the following formula:

Multiply the City's properly reported annualized Bus Revenue Vehicle Miles statistic that was used in the apportioned federal programs for a fiscal year "Unit Value for Bus Vehicle Miles for Urbanized Areas over 1,000,000" as reported in the table of Unit Values for Formula Grant Apportionments, published annually in the Federal Register; and then multiply that amount by 0.5.

NOTE: Historically, apportioned funds are allocated to the County two (2) years after Bus Revenue Vehicle Miles are reported to federal government.

- 7.4 City's Share of Supplemental State Funding. In the event that the Circulator operations contribute to an increase in the County's State transportation funding, beginning with the first year in which service is reflected in State's reporting system, the County agrees to pay the City its attributable share (one half of the supplemental funding), as defined in paragraph 7.4 above, of new or supplemental state Transportation Block Grant funding received by the County from FDOT no less than sixty (60) days after funding is received

from the State less any direct grants received by the City from the Count for the Shuttle. The State funding formula can be found at Section 341.052(6), F.S.

- 7.5 Comparable Agreements. In the event that the County enters into an Interlocal Agreement with any other municipality for Circulator services which are comparable to the services provided herein, County agrees to amend this Agreement, if requested by the City, to provide substantially equivalent favorable terms to the City as those provided in such other County/ Municipal Interlocal Agreements.

ARTICLE 8

TERMS, MODIFICATIONS AND MISCELLANEOUS PROVISIONS

- 8.1 Terms of Agreement. This Agreement shall commence upon approval of the board of County Commissioners and the Council of City of Miami Springs and the execution by the County Mayor or designee and authorized Mayor and shall remain in force for five years thereafter. This Agreement is subject to two five-year automatic renewals under the same contract terms and conditions, all parties have the right to terminate (see 8.4 and 8.5).
- 8.2 Renegotiation or Modification. Any substantive changes in the level of service to be provided by the City as set forth herein shall only be implemented after the County and the City have entered into a written agreement describing the changed services and the provisions of the County Code have been exercised.
- 8.3 Title VI and VII Civil Rights Act of 1964. The City and its Contractors shall not discriminate against any person because of race, color, sex, religious background, ancestry or national origin in the performance of the Agreement.
- 8.4 Termination for Cause. This agreement may be terminated for cause by either party upon no less than thirty (30) days written notice to the other party, except when Shuttle operations are in violation of health and/or safety-related provisions of state statutes or the Code of Miami-Dade County, in which case termination shall be determined by the County Mayor or designee. Said notice shall be delivered by verified facsimile transmission or certified mail, return receipt requested. The noticed party shall have the opportunity to cure any stated cause for termination within a reasonable notice period, in which case the termination party may cancel the termination notice using the same means by which the notice of termination delivered.
- 8.5 Termination without Cause. The County or the City may terminate this Agreement without cause upon no less than sixty (60) days written notice to the other party. If the County or the City terminates this Agreement with or without cause, the City agrees to reimburse the County on a prorated basis for financial assistance it has received for the year.
- 8.6 Notices. All notices and other communications required to be remitted pursuant to this Agreement to either party hereto shall be in writing and shall be delivered by verified facsimile transmission or certified mail, return receipt requested, to the parties at the address indicated below:

FOR MIAMI-DADE COUNTY:

Miami-Dade Transit
701 NW 1st Court
Miami, Florida 33136
Attention: Director, Miami-Dade Transit
Fax: (786) 469-5406

FOR CITY OF MIAMI SPRINGS

Ron Gorland, City Manager
City of Miami Springs
201 Westward Drive
Miami Springs, FL 33166
(305)805-5000

- 8.7 Complete and Binding Agreement. This writing embodies the full and complete agreement of the parties. No other terms, conditions or modifications shall be binding upon the parties unless in writing and signed by the parties.
- 8.8 Execution. This document shall be executed in five (5) counterparts, each of which shall be deemed an original.
- 8.9 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective and duly authorized officers the day and year first above written.

ATTEST:

CITY OF MIAMI SPRINGS
A Municipal Corporation of
the State of Florida

By: _____

By: _____
Ron Gorland, City Manager
City of Miami Springs

ATTEST:

Miami-Dade County, a political
Subdivision of the State of Florida

HARVEY RUVIN, CLERK

By Its Board of County
Commissioners

By: _____

By: _____
Date

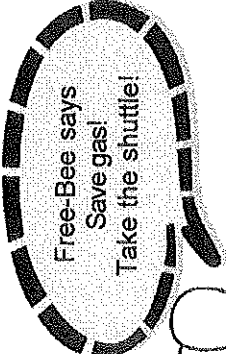
DEPUTY CLERK

Carlos A. Gimenez
Miami-Dade County Mayor

Approved by County Attorney as to
form and legal sufficiency:

By: _____
Miami-Dade County Attorney

Miami Springs City Hall
 201 Westward Drive
 Miami Springs, FL 33166
 Phone: 305-805-5000
www.miamisprings-fl.gov

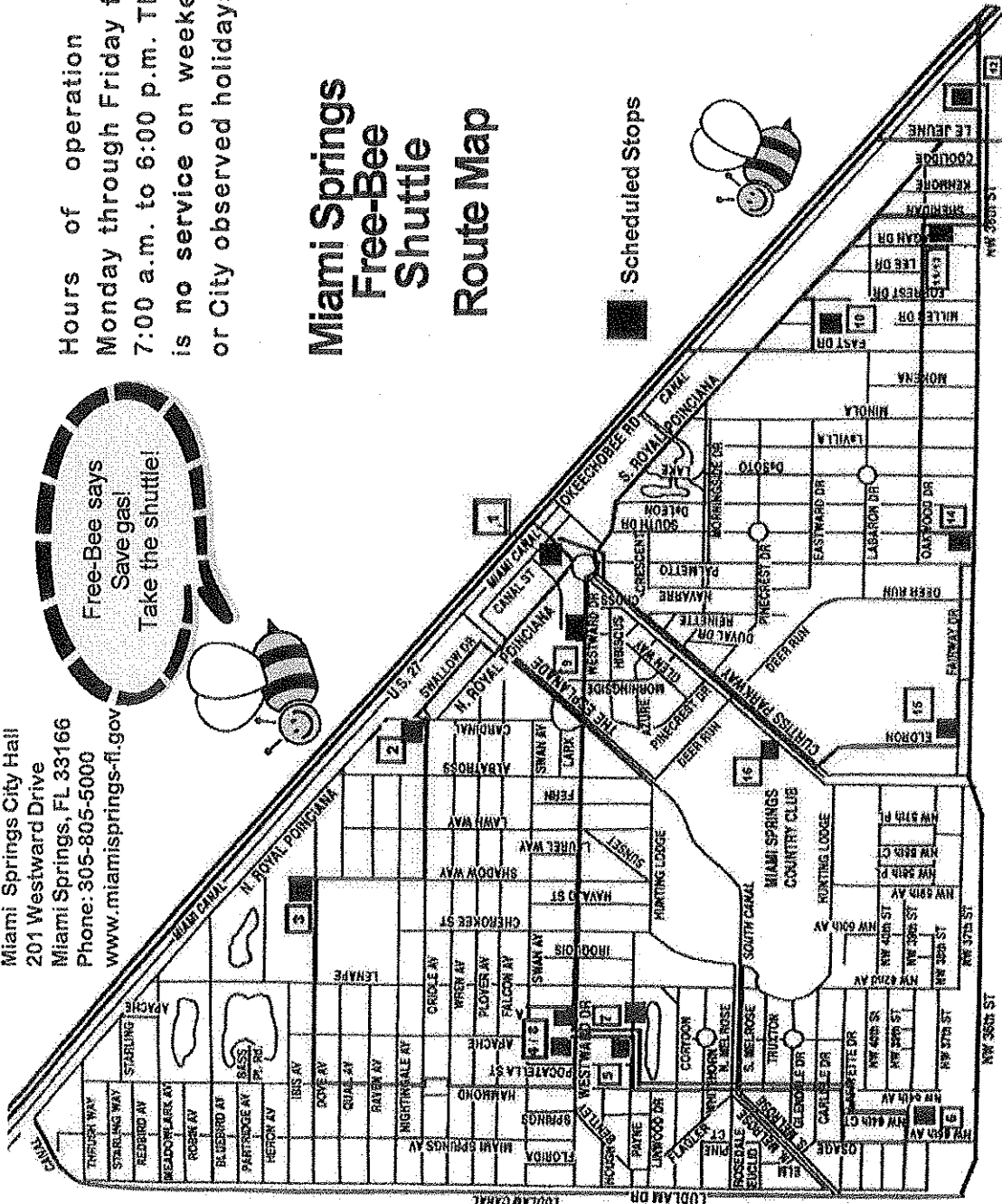


Hours of operation are:
 Monday through Friday from
 7:00 a.m. to 6:00 p.m. There
 is no service on weekends
 or City observed holidays.

Miami Springs Free-Bee Shuttle Route Map

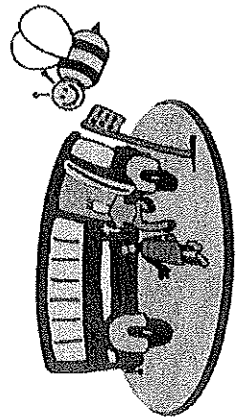
Stop #	Location	Time
1	The Circle (Canal St.)	On the hour (H)
2	N. Royal Poinciana & Oriole Ave.	H:03
3	Miami Springs Senior High School	H:05
4	Community Center	H:11
5	Senior Center	H:12
6	Virginia Gardens City Hall	H:19
7	Senior Center	H:23
8	Community Center	H:23
9	Miami Springs City Hall	H:25
10	Miami Springs Middle School	H:30
11	Sheridan Dr. & Oakwood Dr.	H:31
12	Holiday Inn*	H:35
13	Sheridan Dr. & Oakwood Dr.	H:39
14	Oakwood Dr. & South Dr.	H:44
15	Fairway Dr. & Eldron Dr.	H:46
16	Miami Springs Country Club	H:49

* Pickup at designated stop only.



The Shuttle operates as close to schedule as possible, although traffic conditions may cause it to arrive slightly late. Please allow yourself enough time when traveling.

ONLY SERVICE ANIMALS ARE PERMITTED.





CITY OF MIAMI SPRINGS
City Manager
201 Westward Drive
Miami Springs, FL 33166-5259
Phone: (305) 805-5010
Fax: (305) 805-5028

Agenda Item No.

City Council Meeting of:

02-11-2013

TO: Honorable Mayor Garcia and Members of the City Council

FROM: Ronald Gorland, City Manager

DATE: February 6, 2013

RECOMMENDATION:

Recommendation that Council waive the competitive bid process and approve an expenditure in an amount not to exceed \$ 8,000.00, to NGF Consulting, Inc. for professional consulting services related to the continued operation of the Golf and Country Club, pursuant to Section §31.11 (E)(6)(g) of the City Code.

DISCUSSION:

Attached is a proposal from NGF Consulting, Inc. They came highly recommended by John Foy (our USGA Southeastern Regional Turf Consultant) and Sandy Pell (Golf Superintendent) to provide us with their much needed professional golf course management expertise. The firm will assist the City with identifying ways to improve the operating structure, recommending additional marketing strategies, and provide insight regarding what Profit/Loss is really possible for our course. We believe their quote is very fair for what they propose to do. Additionally we need to move as quickly as possible due to the current situation at the Golf and Country Club, and I trust them based on previous contacts with NGF over the years.

COST: \$8,000.00 (\$7,500 + max \$500 travel costs)

FUNDING: Designated Fund Balance (Pool Improvement Designations)

PROFESSIONAL SERVICES APPROVAL:

January 31, 2013

Ron Gorland
City Manager
City of Miami Springs
201 Westward Drive
Miami Springs, FL 33166

Proposal #213005

Re: Miami Springs Golf & Country Club Assessment

Dear Ron:

NGF Consulting has prepared a proposal to provide professional consulting services related to the continued operation of the City's Miami Springs Golf & Country Club. It is our understanding that the revenues at the golf course are not sufficient to cover all operating expenses, and that the City is seeking assistance in understanding the most efficient structure for operating this facility in consideration of the recent departure of the long-term golf professional / manager. NGF's assessment will focus on helping the City identify the most appropriate operating structure for the facility, identify areas in marketing and operations that can be improved, and helping the City identify the most appropriate position description for the on-site facility manager of the Miami Springs Golf & Country Club.

SCOPE OF SERVICES

This proposal has been designed to provide the appropriate level of due diligence to assist the City in evaluating Miami Springs Golf & Country Club. NGF sees its role as assisting the City of Miami Springs with the following:

1. Providing an on-site two-day assessment of the Miami Springs Golf & Country Club to identify its current and recommended market positioning and effective marketing strategies and programs going forward.
2. Providing assistance to the City in evaluating the operations and management of the facility to help identify the most appropriate structure (*i.e.*, self-operation, management agreement, lease, concession, etc.).
3. Evaluate the performance of the golf course in comparison to current south Florida norms for municipal golf operations, with an emphasis on rounds activity, revenues, expenses, and staffing.

Upon receiving your authorization to proceed, NGF Consulting will arrange for the two-day visit to Miami Springs Golf & Country Club. During this time the consultant(s) will:

- Meet with key golf facility staff to obtain information on the current golf operation. During this time, NGF will collect from the City recent historical operating data (rounds played, revenues, and expenses) and budgets for Miami Springs G&CC. These materials will assist in our understanding of the golf operation and provide us with the necessary background to evaluate the facility's recent performance.

- Review with the City all relevant marketing materials, plans, and strategies to understand how, and to whom, the facility has been historically promoted.
- Review the present physical condition of the subject golf facility and identify key areas (if any) that are deficient and/or in need of improvement in order to enhance the marketability of the golf course.
- Review with the City the relative effectiveness of continuing the current self-operation structure versus employing one of the alternatives that may be available, such as concessions, leases, management agreements, or hybrid structures. Each alternative will be discussed in detail, including the advantages and disadvantages, as well as financial implications, of each option. NGF will make recommendations regarding the most appropriate structure for the City of Miami Springs.

DELIVERABLES

NGF Consulting anticipates frequent communication with City of Miami Springs senior staff during the course of this engagement. Deliverables to the client for this project include:

- Consultant activities on-site at Miami Springs G & CC, including meetings and presentations with City staff and golf course operations staff.
- Delivery of oral presentations of preliminary findings after completion of on-site facility visit and in-market research.
- A concise memo report of findings and recommendations regarding current and recommended operating and marketing strategies for Miami Springs Golf & Country Club. Recommendations will be made in the context of the competitive market place and in light of current and expected demographic and economic factors that are likely to affect the facility's performance.

PROJECT FEES AND ACCEPTANCE

NGF Consulting professional fees for this engagement will be \$7,500, plus additional direct expenses associated with the initial field visit to Miami Springs. These expenses will be billed at cost and will not exceed \$500 without the client's permission. The billing procedure for NGF will comply with City regulations and assumes billing for services as completed. Acceptance of this proposal may be indicated by signing one copy and returning it to NGF Consulting's Jupiter office. A City of Miami Springs purchase order or contract may be used as the engagement agreement.

Thank you for the opportunity to submit this proposal. Please call if there are any questions or if we can be of further assistance.

Sincerely,



Richard B. Singer
Director of Consulting Services

rsinger@ngf.org
RBS/jsc

Acceptance: _____

Date: _____

RESOLUTION NO. 2013-3571

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS; REQUESTING THE WITHDRAWAL OF THE CITY'S INDEFINITE DEFERRAL OF THE COUNTY'S CONSIDERATION OF THE CITY'S PENDING ANNEXATION APPLICATION; AUTHORIZING THE COUNTY'S IMMEDIATE REVIEW AND CONSIDERATION OF THE CITY'S PENDING ANNEXATION APPLICATION; EFFECTIVE DATE

WHEREAS, the City of Miami Springs has jointly, along with the Town of Medley, City of Doral, and Village of Virginia Gardens, sought the annexation of various properties contiguous to the four governmental entities since 2003; and,

WHEREAS, the pending annexation applications of the aforesaid governmental entities were reviewed and discussed by the County's Planning Advisory Board at its September 8, 2010 meeting; and,

WHEREAS, before any further consideration of the pending annexation applications, the four (4) cities submitted resolutions from their respective governing bodies to the County seeking the indefinite deferral of any further review or consideration of the applications at that time; and,

WHEREAS, the resolutions further provided that the indefinite deferrals, if granted by the County Commission, could only be withdrawn by the request of the governing body of each City; and,

WHEREAS, the City Council of the City of Miami Springs has determined that it is in the best interests of the City and its citizens to seek the withdrawal of the County's indefinite deferral of any further subcommittee or County Commission review and consideration of its pending annexation application at this time:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA:

Section 1: That the City Council of the City of Miami Springs hereby requests that its pending annexation application, more specifically described on Exhibit "A" attached hereto, be withdrawn from indefinite deferral by the County and subject to immediate review, consideration, action or hearing by the Miami-Dade County Commission or its subcommittees.

Section 2: That the City Council of the City of Miami Springs hereby further requests that the County's review and consideration of its pending annexation application continue forthwith and be rescheduled for review and consideration in accordance with all appropriate County procedures.

Resolution No. 2013-3571

Section 3: That the provisions of this Resolution shall be effective immediately upon adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Miami Springs, Florida, this 11th day of February, 2013.

The motion to adopt the foregoing resolution was offered by _____, seconded by _____, and on roll call the following vote ensued:


Vice Mayor Ator	“ _____ ”
Councilman Best	“ _____ ”
Councilwoman Bain	“ _____ ”
Councilman Lob	“ _____ ”
Mayor Garcia	“ _____ ”

Zavier M. Garcia
Mayor

ATTEST:

Magalí Valls, CMC
City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



Jan K. Seiden, Esquire
City Attorney

Resolution No. 2013-3571

Miami-Dade County • Planning Advisory Board
Proposed Annexation to the City of Miami Springs
Monday, June 7th, 2010 • 2:00 pm
Government Center • 111 NW 1st St. • 18th Floor



The City of Miami Springs has filed an application to annex the area depicted. As required by Chapter 20 of the County Code, a committee of the County's Planning Advisory Board (PAB) will hold a public meeting on the proposal at 2:00 p.m. on the given date. This meeting will be followed by a public hearing of the PAB at 4:00 p.m. At the conclusion of the hearing the PAB will forward its recommendation to the Board of County Commissioners.

This notice is being provided to all property owners within the proposed annexation area and within 600 feet thereof. All interested persons are invited to attend the committee meeting and the PAB public hearing.

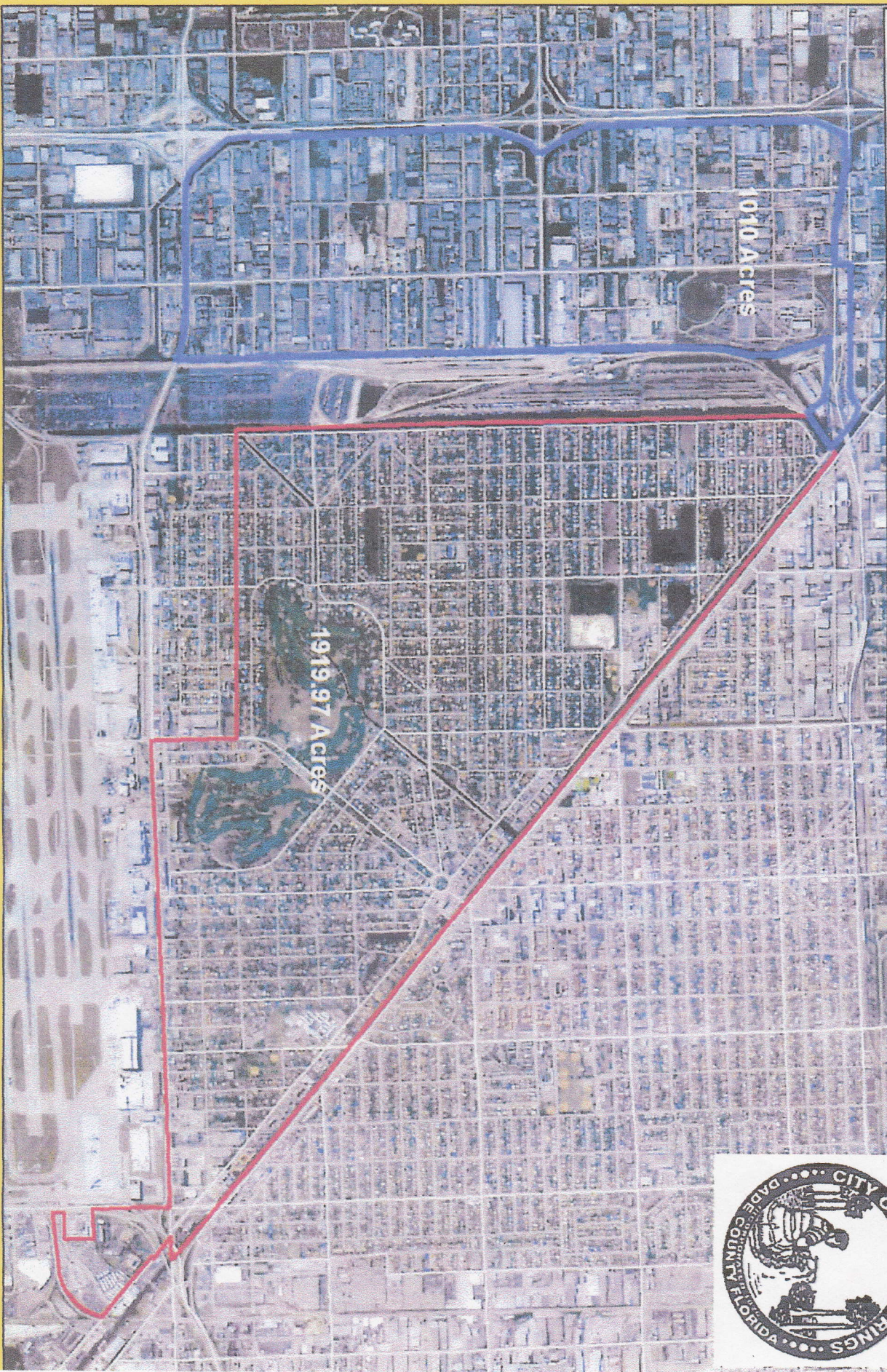
The proposed annexation area is generally bounded on the north by NW 74th St. Connector, on the west by SR 826 (Palmetto Expressway), on the south by NW 36th Street and on the east by the City of Miami Springs boundary (NW 67th Avenue).

In general, the municipal type services currently provided by the County in the proposed annexation area are local police, public works, code enforcement and building services. If the annexation is approved, the City of Miami Springs will provide these services.

The current municipal millage rate for the proposed annexation area is the adopted FY 2009-10 unincorporated millage rate of 2.0083. If the area were part of the City of Miami Springs the adopted FY 2009-10 millage rate of 6.1698 will be applied, an increase of 4.1615 mills, the average property owner would pay an additional \$4,234 in municipal taxes.

For further information regarding the proposed annexation or for sign language interpreters, materials in accessible format, or any other accommodation needed to participate in this meeting, please call the Miami-Dade County Office of Strategic Business Management at 305-375-5143 at least five days in advance of the meeting/hearing.

Proposed Annexation Area - Without FEC



Miami Springs Annexation
Sections 14, 23 and 26

 Annex Area without FEC
 MIAMI SPRINGS

 Major Roadways

