

**CITY OF BROOKSVILLE
COUNCIL WORKSHOP
JOSEPH E. JOHNSTON, III COUNCIL CHAMBERS
201 HOWELL AVENUE
BROOKSVILLE, FL 34601**

AGENDA

November 14, 2016

9:00 A.M.

A. CALL TO ORDER

B. INVOCATION AND PLEDGE OF ALLEGIANCE

C. WORKSHOP AGENDA

1. Citizens' Input Regarding Fire Assessment Fees Discussion

2. Fire Assessment Fees

Discussion of the City's "readiness to serve" fire assessment methodology.

Presentation: Christopher Roe, Attorney
Bryant Miller Olive

Attachments: Memo from City Manager dated
11/04/2016; Ordinance 830;
Resolution 2012-05; Agenda Item
from 05/21/2012

3. Citizens' Input Regarding Personnel Grievance Hearing Committee Discussion

4. Personnel Grievance Hearing Committee

Discussion of policy for Personnel Grievance Hearing Committee

Attachments: Memo from City Manager dated
11/04/2016; City Charter;
Hernando County Board of
County Commissioners Policy;
Additional Materials as provided
from Council Members

E. ADJOURNMENT

In accordance with the Americans with Disabilities Act, persons with disabilities needing a special accommodation to participate in this proceeding should contact Lynn Sosa, ADA Coordinator, no later than 48 hours in advance of the meeting at (352) 540-3810. Meeting agendas and supporting documentation are available from the City Clerk's office and on line at www.cityofbrooksville.us.

Any person desiring to appeal any decision with respect to any matter considered at this meeting, may need a record of the proceedings including the testimony and evidence upon which the appeal is to be based, and therefore must make arrangements for a court reporter to ensure that a verbatim record of the proceedings is made.



**AGENDA ITEM
MEMORANDUM**

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

VIA: T. JENNENE NORMAN-VACHA, CITY MANAGER

A handwritten signature in black ink, appearing to read "T. Jennene Norman-Vacha".

SUBJECT: SIMPLIFIED FIRE ASSESSMENT METHOD

DATE: NOVEMBER 4, 2016

To facilitate discussions regarding the City's Fire Assessment, we are providing existing City documents and information related to the adopted Fire Assessment. Attached are the following:

1. Agenda Item from May 21, 2012 – RE: Executive Summary on Simplified Fire Assessments
2. Ordinance 830
3. Resolution 2012-05

Christopher Roe, attorney with Bryant Miller Olive will be in attendance for the Workshop. He will present an overview and general information about the assessment methodology and then be available for questions/discussions.

ATTACHMENTS:

1. Agenda Item of May 21, 2012
2. Ordinance 830
3. Resolution 2012-05

Attachment 1



AGENDA ITEM MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCILMEN
VIA: T. JENNENE NORMAN-VACHA, CITY MANAGER *T. Jennene Norman-Vacha*
FROM: TIM MOSSGROVE, FIRE CHIEF *Timothy A. Mossgrove*
SUBJECT: EXECUTIVE SUMMARY ON SIMPLIFIED FIRE ASSESSMENTS
DATE: MAY 11, 2012

GENERAL SUMMARY/BACKGROUND: Attached is the Executive Summary (Attachment 1) prepared by Real Estate Research Consultants in collaboration with Bryant Miller Olive and Ennead, LLC. This Summary describes an apportionment method for allocating all or some portion of the benefits, burdens and the budgeted costs associated with the provision of fire protection services by the Brooksville Fire Department through the implementation and collection of special assessments. Utilizing Staff's input for information and data specific to our Brooksville Fire Department, the consulting team put in a considerable amount of time on this project all the while communicating status updates to City Staff. The Executive Summary has been internally reviewed by the City Manager, Assistant City Attorney Robert Battista and myself. This Summary is being provided to you this date in accordance with the target date for presentation as previously established.

We believe the Executive Summary provides the information as contractually agreed. We are particularly pleased with the flexibility offered by the contemplated approach in terms of the policy-making opportunities for the City Council, the essential adherence to the relevant legal constraints, and the fact that the exemplary budget analyzed in the summary pulls out any hint of advanced life support (which is a prohibited cost of assessment) and identifies the dollar amount of such costs.

Please note that this document is provided to the City as a decision-making tool. In essence, an exemplary fire budget has been analyzed and two distinct tiers for allocating costs to properties has been identified. We have been advised that these tiers adhere to accepted general law standards (i.e. benefit to property and fair and reasonable apportionment). The City Council is presented with the ability to make policy decisions in terms of overall funding of the fire department using both the contemplated assessments and the general fund. We believe that this Summary is exactly what was anticipated as it gives you, the policymakers, flexibility in your decision-making. Your decisions will determine what portion of the general fund is to be supplied to the fire department budget (directly affecting the amount to be contributed through assessment revenue), and which tax parcels, if any, are to be excluded from the assessment program for public policy reasons.

The Executive Summary includes various funding examples to assist City Council during the decision-making process and we have received a Critical Events Schedule (Attachment 2) for implementing the assessments. Implementation would proceed through the adoption of the attached resolution No. 2012-04 (Attachment 3) authorizing and directing City staff along with the consulting team to move forward.

BUDGET IMPACT: City Council will have the desired flexibility with respect to how much of the fire department budget is recovered each fiscal year through the special assessment. The resulting savings to the general fund may be utilized to reduce millage, to fund other essential services and/or improvements provided by the City, or some combination of the two. The exact dollar amount to be recovered through the special assessment will be determined by City Council during the assessment implementation phase during which the financial impact to every tax parcel in the City can be ascertained on the internet.

LEGAL REVIEW: The City possess home rule authority for the levy and collection of special assessments and has considerable latitude with respect to selecting an apportionment methodology and the use of the general fund which is best suited to local needs.

STAFF RECOMMENDATION: After careful review, staff recommends that the City Council fund approximately \$600,000 of the upcoming fire protection budget with assessments in accordance with the apportionment method summarized in the Executive Summary, and that the City Council directs staff and the consultants to proceed by adopting Resolution No. 2012-04 as provided.

ATTACHMENTS:

1. Executive Summary
2. Critical Events Schedule
3. Authorizing Resolution No. 2012-04

Attachment 1

MEMORANDUM

TO: T. Jennene Norman-Vacha, City Manager
Timothy A. Mossgrove, Fire Chief, City of Brooksville

FROM: Owen M. Beitsch, PhD, CRE, FAICP
Real Estate Research Consultants, Inc.

DATE: May 11, 2012

RE: **City of Brooksville, Florida**
Executive Summary; Overview of Simplified Fire Assessment Apportionment Strategy

INTRODUCTION AND PURPOSE

The Brooksville Fire Department (BFD), the local government fire protection unit associated with the City of Brooksville (the "City") in Hernando County, Florida, has expressed an interest in defraying at least some part of its annual operating and capital costs through means of a special assessment which may be collected either through the City's direct billing of affected property owners or by inclusion on the annual property tax bill, a procedure known as the *uniform collection method*.¹ Special assessments are levies made against certain real property to recover all or part of the cost of a specific service or capital improvement deemed to benefit those real properties.² Real Estate Research Consultants (RERC) was retained³ to describe and analyze an approach which focuses on special benefits or relief of burdens associated with each of the various tax parcels of property in the City⁴ should an assessment be implemented, and to provide a reasoned and equitable methodology for allocating all or some portion of such benefits and burdens and the budgeted costs associated with the provision of BFD's essential services and facilities.

This memorandum is provided for initial decision-making purposes. Included is a summary of the law governing special assessments, a description of the special benefits conveyed by fire protection services and a reasoned apportionment methodology premised upon two distinct tiers or classes of assessment allocations: Tier 1 – a sharing of benefits, burdens and costs for fire protection services and facilities based upon the *relative value of improvements* for each tax parcel in the City as compared to the value of improvements for all tax parcels in the City; and, Tier 2 – a sharing of benefits, burdens and costs for fire protection services and facilities on a

¹ See § 197.3632, Fla. Stat. (2012).

² See, e.g., *City of Gainesville v. State*, 863 So. 2d 138 (Fla. 2003).

³ This memorandum is an agreed upon deliverable; and, has been reviewed by the data consultant, Ennead LLC, special counsel, Bryant Miller Olive, and developed with collaboration and review of various City staff and officials.

⁴ The use of the maintained database of tax parcels employed by the local property appraiser and tax collector is a relatively accurate, fair and efficient means to allocate or distribute costs. For allocating costs as discussed herein, the use of tax parcels is typically fair, effective and efficient for all tax parcels, including statutorily defined parcels such as individual condominium or cooperative units.

per tax parcel allocation premised upon maintaining a continual state of preparedness and *readiness to serve* whether or not a request for actual assistance is ever received.⁵ These two distinct tiers are used to digest the BFD's estimated budget after a conservative reduction for potential advanced life support costs (ALS) is first applied to avoid any misunderstanding that any emergency medical services are being funded improperly with the resulting special assessments.⁶

Several funding examples based upon such methodology are included in order to give City decision-makers an accurate understanding of the consequences of funding varying amounts of the anticipated budget for fire protection services and facilities.⁷ Finally, an anticipated schedule of critical events necessary is also being contemporaneously provided for reference in the decision-making process.

SUMMARY OF FLORIDA LAW GOVERNING SPECIAL ASSESSMENTS

Special assessments are a dedicated revenue source available to many local governments to fund capital improvements or essential services. As established by Florida case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a **special benefit** from the improvement or service provided. Second, the assessment must be **fairly and reasonably apportioned** among the properties receiving the special benefit.⁸

Under both Florida's case law and certain statutory components, it is well settled that the benefit required for a valid special assessment may be measured or benchmarked against something other than simply an increase in real property market value.⁹ The concept of benefit also includes the relief of a burden or demand created by property as well as added use and enjoyment of the real property.¹⁰ The benefits then can be conceptual but they must be capable of being evaluated by some metric and being apportioned in some reasonable manner.

Similarly, the benefits are apt to be distinguishable or different, and Florida's case law, as well as its statutory regime relating to special assessments, suggest substantial latitude both in the means by which *benefit to or relief of burden created by* real property is defined and the subsequent manner by which an assessment itself is *calculated or apportioned*.¹¹ Though Florida law requires that special assessments funding improvements or services which specially benefit assessed properties must be fairly and reasonably apportioned, the state's Supreme Court has held that the method of an apportionment is immaterial and may vary provided that

⁵ Although either of these two tiers might be used singularly to address a significant portion of the budget for special assessment apportionment purposes, together they provide a simplified and powerful equity tool for the City to share assessable benefits, burdens and costs among assessable tax parcels in the City.

⁶ See ADDRESSING THE BUDGET – REMOVING EMS. *Infra*.

⁷ See Appendix B.

⁸ *Sarasota County v. Sarasota Church of Christ, Inc.*, 667 So.2d 180 (Fla. 1995).

⁹ *Meyer v. City of Oakland Park*, 219 So. 2d 417, 420 (Fla. 1969) (the term "benefit" as regards validity of improvement assessments, does not mean simply an advance or increase in market value but also potential or actual, or added use and enjoyment of the property)

¹⁰ *Id.* See also *Donnelly v. Marion County*, 851 So. 2d 256, 262 (Fla. 5th DCA 2003) (special assessments may be used to fund certain services required to relieve a burden created by the property, such as fire protection services, solid waste disposal, and storm water services); *Sarasota Church of Christ, Id.*

¹¹ *Sarasota Church of Christ*, 667 So. 2d at 183-84.

the amount of the assessment for each property does not exceed the proportional benefits that it receives compared to other properties.¹² It is not necessary that improvements supported with assessments be adjacent or even completely within a specially designated area although excluded parcels would reasonably receive only insignificant advantages from the activity to be funded.¹³

BENEFIT TO PROPERTY AND RELIEF OF BURDEN IDENTIFIED

It is well settled factually and legally that fire protection activities undertaken by the BFD create special benefits for real property. For the purposes of this memorandum, the reference to benefits also includes the relief of a burden to continually stand in readiness created by the very existence of the various tax parcels in the City.¹⁴ Although several of the benefits realized may overlap, it is useful for analytical purposes to think of them separately since they respond to or satisfy different expectations or needs and assume varying qualities. The method of apportionment, described in a subsequent section of this memorandum, elaborates on the collective and relative benefits enjoyed by various properties through the availability of fire protection of services and facilities budgeted for continual readiness to serve annually and made available by the BFD.

- **Assured Fire Protection On Call.** First and foremost, BFD has a combined department of approximately 20 personnel consisting as well as a small group of paid-on-call trained firefighters whose primary responsibilities are to continually stand in readiness to secure individual properties in this area from the threat of fire and to render these services if required. These persons are the dedicated *first responders* charged with continually being available to provide fire protection and associated basic medical aid.
- **Assured First Response Medical Aide On Call.** Among the responsibilities of the department and its staff is to stand in readiness to provide first response medical aide stemming from fire incidents or related emergency conditions to persons visiting, residing in, working in, or otherwise occupying and/or associated with the residential and non-residential properties in its service area. As with fire protection services that are always on call, the obvious special benefit to real property is assured life safety, and health for residents, visitors, and employees of protected parcels, residences, businesses, and institutions within the City.
- **Maintenance of Minimum Insurance Rating(s).** The Insurance Service Office, Inc. (ISO) sets minimum standards for fire and emergency response teams. These standards are a critical determinant in actual insurance rates imposed by Florida's insurers for various classes of properties. A basic complement of coverage is necessary to assure that a minimum fire rating is achieved for actuarial purposes. There are distinct differences in insurance ratings for properties protected by trained fulltime personnel and those protected by voluntary staff with comparably less equipment and training. That such ratings and the cost of individual coverage for fire insurance vary by

¹² *City of Boca Raton v. State*, 595 So. 2d 25, 31 (Fla. 1992) (while front foot or square foot methodologies for apportioning costs are more traditional, other methods are permissible).

¹³ See *Martin v. Dade Muck Land Co.*, 116 So. 449 (Fla. 1928).

¹⁴ *Sarasota Church of Christ, Id.*

location and structural conditions is itself an indicator of the value to property implied in a well-staffed and easily deployed fire unit.

- **Assured Coverage for Other Emergency Conditions.** As with most departments engaged in fire protection and associated life safety activities, the sworn fire personnel and their support team provide coverage to real property, incidental services (often to individuals living, working and visiting thereon) associated with a wide range of emergency and potentially hazardous conditions, for example, fire events, accident clearance, spilled contaminants, and control of noxious or incendiary materials.
- **Protection for the Uninsured.** Those tax parcels without mortgages and/or fire insurance are materially advantaged by supporting a fire assessment program which becomes, by default, an alternate means to shield equity in property. In this case, the benefits associated with continual readiness to deploy are easily evaluated by the value of the improvements which are the measure of potential loss when a fire incident is experienced.
- **Enjoyment of Property and Protection of Value Therein.** The combination of available fire protection for tax parcels in the City, enhanced life safety, personal security and financial advantage yields materially greater enjoyment in real property. As the basic complement of fire protection is enhanced through the assessment, the *reduced potential* for structural fire losses or liabilities stemming from incidents therein become their own benefits to real property. When calls are actually received and personnel deployed to a scene of an incident, the economic value of the department's ability to act becomes more apparent as losses are minimized or contained. The losses, or potential losses, are measured in terms of the value attributed to any improvements on the underlying real property. The more valuable the improvements associated with the tax parcel, the greater the value shielded from loss.
- **Readiness to Serve Benefits Improved and Unimproved Properties.** Clearly the improvements on improved tax parcels benefit from the readiness to provide fire protection, but unimproved properties also benefit. Unimproved tax parcels benefit from fire protection services and facilities when the BFD is ready to put out brush fires, ready to put out fires as a result of illegal dumping, ready to stop the spread of fires from vacant to improved properties, and unimproved properties benefit from the increased value and marketability of unimproved properties held for development.
- **Relief of Burden.** The benefits, burdens and costs reasonably associated with a budget that underwrites a continual readiness to serve the various tax parcels in the City in the event of fire incidents can be addressed through a direct assessment vehicle. The burden of these costs is assigned to all tax parcels to which services in the event of a fire are continually available throughout each fiscal year, while other funding sources are relieved of this financial encumbrance.
- **Economic Leverage.** The above benefits, viewed in the aggregate, provide a distinct economic advantage to the various unimproved tax parcels, as well as improved residential and non-residential tax parcels in the City. Properties protected by the availability of fulltime departments with trained personnel typically receive more

attractive insurance rates than those properties that are not so protected resulting in direct benefit to property. The availability of more attractive insurance rates positively impacts both already improved tax parcels as well as making unimproved tax parcels more attractive for development.

APPORTIONMENT METHOD – GENERAL

That local governments are afforded great latitude under Florida law with respect to legislative determinations concerning special benefit and reasonable apportionment is well settled law. No single apportionment methodology has emerged as preferable in the governing case law for a given service or improvement. So long as the apportionment is reasonable and not arbitrary, the assessment is generally capable of withstanding legal challenge. That is not to say, however, that local governments considering the use of special assessments should adopt a particular apportionment methodology solely on the basis of its use elsewhere; rather the implication is that local governments are free to select an apportionment methodology which provides competent and substantial means to share the benefits, burdens and costs of the fire protection budget and represents the best fit in terms of cost and ease of implementation, not only with respect to affected landowners but also in consideration of the staff required and resources involved with maintenance of the assessment program from year to year.

The parcel identification and classification system employed by the public database required by law to be maintained by the local property appraiser and tax collector will be continued and maintained over the years as properties within the City develop and change. The use of such classification and mass appraisal system and description of tax parcels is stable, readily accessible, reasonably accurate, maintained without cost to the City and capable of being accessed from year to year without wasteful or extraordinary consumption of resources which could be better expended to address other fire protection related issues. Accordingly, the assessment approach herein is premised upon such system as a stable, reasonable and standardized resource.

The apportionment approach herein does not rely upon demand-based fire call data maintained by the City or State Fire Marshall which can be misleading or erode the efficiency of the approach over time; nor does it rely upon attempts to categorize demand among property uses; nor does it rely upon strained statistical analysis which necessarily disregards a litany of non-specific calls and the reality that the fire protection service, first and foremost, stands ready to serve and protect real property, and is not actually mobilized to fight fires as often as the average citizen might think. An appealing alternative to demand-based approaches (which attempt to allocate costs among different property classifications on the basis of often limited annual fire call data) focuses instead upon the relative value of the improvements¹⁵ protected and the reality of the continual state of readiness to serve.

This appealing simplified alternative to demand-based approaches more simply focuses instead upon an understandable and reasoned two-tiered approach involving the value of improvements protected and the core costs of continual readiness to serve.

¹⁵ Such values are fundamental to mass appraisal systems used by the local property appraiser and are updated, or self-correcting, annually.

APPORTIONMENT METHOD – RELATIVE VALUE OF IMPROVEMENTS (TIER 1)

The manner of apportioning a given assessment is immaterial and may vary from jurisdiction to jurisdiction, as long as the assessment for each tax parcel is not in excess of the proportional benefits as compared to the assessments on other tax parcels. Therefore fire protection assessments, like other service or capital assessments may be apportioned in any number of different ways. Conceivably, the entire cost of fire protection services could be apportioned among benefited property solely on the basis of the value of improvements on each parcel relative to the total value of improvements throughout the jurisdiction. This approach removes the underlying land from the equation and focuses upon the built environment protected by fire services and facilities. This is a direct and logically related means to share costs, benefits and burdens of fire protection services and facilities. It is also clear that improvement value may be utilized as one factor among several considered in a given formula or calculus since the resulting assessments form a logical valuation base against which the special benefits, burdens and costs may be multiplied or determined.

Apportionment on the basis of relative improvement value (as determined by the latest available real property assessment roll prepared by the county property appraiser) recognizes the relatively higher benefit accruing to properties which face greater financial loss in the event of fire incident. Besides the advantage of relying upon data prepared by the property appraiser in the normal conduct of his or her responsibilities, an approach based in whole or in part upon value is also advantageous because it is self-correcting – that is, value may change from year to year in accordance with market conditions and other factors and such variation will be adjusted automatically each subsequent year in accordance with the latest value determined by the property appraiser. If the improvements on a given tax parcel were to increase or decrease in value with the passage of time relative to the improvement value city-wide, that tax parcel's percentage of the total amount assessed would also increase or decrease proportionately.

It is also well-settled that local governments are not required to fully fund a given service or improvement through a special assessment. The local government may instead determine, entirely in its own discretion, to fund some portion of the overall cost with general fund or other legally available revenues. In our experience this is usually the case with fire assessments where fully funding a given department may result in assessed amounts which are deemed politically unacceptable. Accordingly, a local government may determine to underwrite a certain portion of the fire department budget through general fund transfers, and fund the balance through a special assessment premised upon several factors – one of which may be relative improvement value.

APPORTIONMENT METHOD – READINESS TO SERVE (TIER 2)

Apportionment based upon continual readiness to serve is primarily based upon the premise that a significant portion of the benefit derived from or burden relieved by fire protection services lies in the fact that the fire department maintains a continual readiness to serve whether or not a fire-related distress call is ever received. BFD's preparedness costs are generally those *necessary to maintain the readiness of BFD's fire personnel to respond* to periodic calls and to assure an effective network of coverage for basic insurance ratings. These core costs are largely recurring, almost fixed over the course of a budgetary period, because they are strongly associated with wages, salaries, administration, and overhead which support the department's

basic manpower infrastructure without regard to the nature of an event. That is, these core costs must be absorbed even when the department's firefighting capabilities remain exclusively in standby mode. In this context, these costs *are not* an accounting concept. Rather, they represent, or are associated with, a functional concept for purposes of classification. Their characterization as *fixed* serves only to distinguish basic and nominally changing costs correlated to the department's capacity to respond to a fire event or incident.

The BFD stands alert, ready to respond to the potential of a fire and associated basic life support in such an emergency event. The constant *potential* for the outbreak of a fire represents the predominant requirement for service. The scale of this potential defines the basic underlying cost of the department's fire infrastructure. Even *prior* to an incident, BFD's personnel and equipment remain in readiness or preparedness. From a policy and public purpose standpoint, this is the predominant activity of the BFD. To limit fire loss and to preserve property values, the City and its fire unit, in this state of readiness, must consider the committable personnel, necessary equipment, and the time likely required to extinguish a fire (*planning or preparing* for the potential incident or event) prior to allocating the direct resources enabling the fire to be extinguished as quickly as possible (*deploying to or intervening* in the incident or event itself). The amount of resources made available each year is a public administration and policy decision.

The emphasis on capacity as a kind of infrastructure that *may or may not* be called into service differentiates fire protection services from most other services normally offered by local government such as garbage collection or the provision of water and wastewater treatment. In these other examples, demand is generated by discrete system users, is measurable within some level of accuracy, is typically constant, not sporadic, and can normally be programmed in advance. In any case, the immediate provision of these services is not typically required in an emergency circumstance to prevent substantial loss of property or life.

Stated somewhat differently, fixed costs associated with readiness to serve logically apply to *every* tax parcel of real property in the City and will be incurred without regard to that tax parcel's character, use or composition. On the other hand, other more variable costs can be logically associated with the relative value of the improvements to the various array of properties in the City. Most staffing stems from equipment and procedural specifications, and their costs are relatively fixed or predetermined for a budget period. The costs of fuel and equipment damage incurred in response to incidents, by contrast, are obvious examples of variable costs.

Additionally, some costs may have both fixed and variable characteristics such as capital expenditures which, although possibly required for a state of readiness, are arguably of greater benefit to more valuable properties (or which, due to the extent of development on a given parcel, place a greater burden on the fire infrastructure necessary to maintain continual readiness).

Accordingly, the apportionment methodology contemplated herein involves a two-tiered approach corresponding to fixed costs and those costs other than fixed (referred to herein as variable). This allows for a reasoned balance of these budgeted costs each fiscal year between fixed and variable costs, and also to what degree the City funds its mission of continually being ready to provide fire protection facilities and services with assessments and other legally available resources.

ADDRESSING THE BUDGET – REMOVING EMS

The estimated fire department budget utilized for the analysis summarized herein is included in Appendix A which includes an initial assignment of individual line item expenditures to each of the two tiers comprising the overall assessment. The total amount of the estimated budget, \$1,485,349, was determined through collaboration with City staff and includes an allowance for anticipated capital expenditures. In order to determine the portion of the budget appropriate for recovery through special assessment, it is important to understand certain limitations established by Florida case law regarding emergency medical services. The Florida Supreme Court has determined that advanced life support services (ALS) or emergency medical services (EMS) primarily benefit persons instead of real property and therefore such *services other than first response medical aid routinely delivered by firefighters* cannot be funded through special assessments.¹⁶ To the extent the costs of these services, if any, may be reflected in a fire department budget, such costs must be isolated from other fire related tasks or responsibilities and funded separately in order to avoid debate as to the case law validity of any fire related special assessment.

BFD does provide some medical services in support of its firefighting activities, though such services are primarily *first response*. In Florida, first response aid is considered one of the primary professional obligations of a trained firefighter, a point made clear by the Florida Supreme Court when that body affirmed these roles in the North Lauderdale case. Indeed, every fire professional must have a specified minimum number of hours of training related to the provision of such aid. Not atypically, in Florida, first response often takes the form of basic life support (BLS) provided by firefighters also trained as emergency medical technicians (EMT). Such aid is rendered as the first response to those victims, patients or others confronted with an incident, life-threatening illness, or injury needing immediate stabilization until the patient can be transported and given full medical care by other clinicians. Although the lines between first response and more intensive care may be blurred, in Brooksville the role of life support and transport falls primarily to EMS units under control of Hernando County and is a cost recognized in the county budget.

Recognizing that EMS is a county funded responsibility and that case law acknowledges the potential for integration of duties in a fire rescue unit, adjustments to BFD's budget might reconsider the role of and differences among first response medical aid and ALS as these are implemented or paid for within the procedures of BFD. Again, every BFD firefighter can be expected to have EMT certification as a requirement of employment but several also have ALS training. In future periods, it has been discussed that the County may contract EMS responsibilities to the City so the boundaries between first responder and EMS are important even at this point. That said, it should be assumed that in the future that the costs and revenues associated with those activities, if assigned to the City, will be identified and funded through sources other than special assessments so as to observe the limitations set forth in Florida case law as summarized above.

¹⁶ *City of N. Lauderdale v. SMM Properties, Inc.*, 825 So. 2d 343, 345 (Fla. 2002).

In order to ensure compliance with Florida law regarding the funding of EMS, the City should consider a conservative approach which acknowledges the potential for costs in BFD's budget that *might be* considered in some cases to be associated with EMS services (i.e. costs stemming from ALS training) and excludes such costs from the assessment. Those costs would be funded instead by other legally available means, and the balance of the budget would comprise legally assessable costs. Table 1 below summarizes the percentage allocation between the two tiers as more fully described in Appendix A.

Table 1: Range of Costs

	Tier 1 Relative Value of Improvements	Tier 2 Readiness to Serve	ALS	TOTAL
Distribution	23.7%	59.9%	16.4%	100.0%
Dollar	\$351,700.40	\$890,067.80	\$243,580.80	\$1,485,349.00

By removing emergency medical services costs which may be construed as ALS-related, the available assessable cost of fire protection services is for analytical purposes \$1,241,768.

IDENTIFYING AND ALLOCATING COSTS TO BE ASSESSED FOR READINESS TO SERVE (TIER 2)

In virtually every fire department, labor costs comprise the largest share of total costs on an annualized basis. Such costs are those associated with wages, salaries, general administration, payroll taxes and mandated contributions to retirement. They are relatively determinant based on an expected staffing level and are largely, but not altogether fixed. These are core costs of being continually ready to serve and must be incurred whether a fire event occurs or not. The functional fixed nature of these costs logically can be attributed as the result of the existence of the number of tax parcels and not the various improvements protected or other physical characteristics. Thus, sharing these core fixed costs is equitably and reasonably shared by all of the tax parcels which benefit in a substantially similar degree from the predominant readiness to serve aspect of such costs. This allocation is further strengthened from an equitable standpoint in that other fixed costs and variable costs are also shared by the relative value of improvements approach in the Tier 1 allocation.

IDENTIFYING AND ALLOCATING COSTS TO BE ASSESSED BASED UPON RELATIVE VALUE OF IMPROVEMENTS (TIER 1)

These are costs of the department, many of which are largely, but not exclusively, variable and often indeterminate. Many are a direct function of annual negotiated contracts for service or may be the result of changing demand or needs. Even when they can be anticipated in the course of budgetary planning, they may show up as a sudden rise in the budget. In this category then would be infrequent purchases of capital items, gasoline, health contracts, repair and other similar services needed periodically or on demand as well as infrequent overtime labor which together may drive costs on an occasional or, so-called, "lumpy basis". By their very nature and their level of use, capital goods depreciate, lose value, and need periodic replacement so they are properly included in this tier or class. Additionally, this tier or class could in theory, logically justifies the entirety of the assessable budget based upon the relative

value of the improvements on each tax parcel. However, by also incorporating the alternative and supplemental use of the Tier 2 (certain readiness to serve costs allocated by tax parcel) class, the City achieves a "blended" approach that achieves better equity, and allows policy-makers close to the funding consequences in their community more flexibility in achieving both a reasoned and fair approach. The combination of both approaches which have logical and identified relationships to the benefits, burdens and costs of the affected tax parcels creates a strong and reasoned equity tool.

EXCLUSION OF CERTAIN PARCELS

Today, there are a total of approximately 4,105 tax parcels within the boundaries of the City that are potentially affected by the analysis and approach outlined herein. Among these are several tax parcels which, because of their institutional or civic form (example: churches, schools), tax treatment (example: tax exempt), ownership (example: government), physical configuration (example: submerged lands), and use (example: workforce or affordable housing), may practically or legally be considered for exclusion.

Just as something less than a fully-funded assessment could serve a valid policy objective or public purpose, the selected exclusion of these parcels may also be appropriate. In this case, to provide fire protection to these tax parcels, the local legislative body must recognize that any charges to, or financial burden caused by, these parcels relative to their share of the benefits, burdens and costs of fire protection *must* be paid for through a legally available alternative revenue source. A specific determination will need to be made to satisfy legal sufficiency of the exclusions or exemptions but that determination does not affect the basic logic or approach of the program. That determination must not have any direct economic impacts within the special assessment regime relative to the cost allocated to each remaining parcel. Accordingly such costs are to be addressed in the amount of supplemental funding from the general fund or other legally available revenue.

FUNDING EXAMPLES

Various funding examples illustrating the two-tiered apportionment approach summarized herein are included in Appendix B. These are examples to assist in decision-making based upon an assumed budget.

APPLYING SOUND PUBLIC ADMINISTRATION AND POLICY DECISION-MAKING

This analysis also included, among other things, a review of budgets for multiple years, staffing, and calls as well as a review of impact fee collections to confirm that the funds realized through this fee structure were not evident in the operating capital budget but were, in fact, properly confined to capital accounts addressed elsewhere. Based on the analysis of costs as they are currently estimated and the determination that all parcels benefit similarly from services associated with certain core fixed costs as these have been defined in this analysis, there is a logically reasoned premise for BFD to employ a two-tier apportionment method. One tier simply allocates a special or non-ad valorem assessment, stemming from the identified array of fixed costs, to each benefited property on a per tax parcel basis. Then essentially the other tier allocates all or a substantial portion of the remaining fixed and variable assessable costs in some proportion to the relative value of improvements on the tax parcel (which is itself a proxy

for physical characteristics, location, structural conditions and other special attributes or features of the structure).

This memorandum strongly supports a layered or tiered assessment strategy from an equitable, legally sufficient and practical perspective. The two distinct tiers are designed to maximize public administration and policy decision-making within the legal context of using valid special or non-ad valorem assessments, and exemplary, other legally available or general funds. To reiterate the methodology is premised upon two distinct tiers or classes of assessment allocations: Tier 1 – a sharing of benefits, burdens and costs for fire protection services and facilities based upon the *relative value of improvements* for each tax parcel in the City as compared to the value of improvements for all tax parcels in the City; and, Tier 2 – a sharing of benefits, burdens and costs for fire protection services and facilities on a per tax parcel allocation premised upon maintaining a continual state of preparedness and *readiness to serve* whether or not a request for actual assistance is ever received

Accordingly, as a matter of policy or financial flexibility, the City Council as the local legislative body may find it useful to levy an assessment for the identified core fixed costs in an amount /less than the total assessable amount, supporting or offsetting the balance of the same costs through general revenues or other legally available means. The apportionment methodology described herein is responsive to the need for political flexibility and readily accommodates policy determinations regarding the relevant variables.

As directed, this approach is designed to meet the fair and reasoned legal requirement, but goes beyond that fundamental. This approach allows for a careful dissecting of a proposed budget and gives public administrators and elected officials a flexible set of parameters to meet the political and policy demands of sharing the funding source for fire protection among not only the two tiers, but to augment with greater or lesser funding by the general fund in order to achieve a blend and palatable consensus of how much each source (special assessments and general funding) to use in order to pay for these essential community services.

In determining the reasonableness of any apportionment approach, Florida courts have shown deference to the legislative determinations of the governing body imposing the assessment, and it is our reasoned belief that this executive summary and the methodology described herein consistent with the provisions of both statutory and case law with respect to allocating these assessments. Accordingly, the City has the means to proceed to augment the funding of its budget in a rational, fair and reasoned manner.

POLICY DIRECTION AND AUTHORIZATION TO IMPLEMENT

A contemporaneous critical events schedule has been provided which indicates the key dates and required actions should the City elect to proceed with development and implementation of the apportionment approach outlined above. Necessary policy direction and authorization to proceed to implement the approach can be rendered by resolution. As a courtesy, a copy or form of resolution will also be provided contemporaneously with this Executive Summary.

Appendix A – Exemplary Line Item Budget Analysis
Appendix B – Funding Examples

APPENDIX A
 EXEMPLARY LINE ITEM BUDGET ANALYSIS

Appendix A: Adjusted budget, net of staff and related costs stemming from advanced training

Category	Expense	Budget 2012	Adjusted Budget 2012	Tier 1 Costs		Tier 2 Costs	
				% of Adjusted budget	Amount	% of Adjusted budget	Amount
Group:							
51102001 014522	Financial & Administrative	\$ 71,303.00	\$ 71,303.00	0.00%	\$ -	100.00%	\$ 71,303.00
51102001 014522	Regular Salaries & Wages	\$ 693,664.00	\$ 664,831.00	0.00%	-	100.00%	\$ 664,831.00
51400001 014522	Overtime - Unscheduled	\$ 30,000.00	24,000.00	100.00%	24,000.00	0.00%	-
51400001 014522	Overtime - Scheduled	\$ 22,000.00	17,000.00	100.00%	17,000.00	0.00%	-
51600001 014522	Incentive/ Special Pay	\$ 2,520.00	2,018.00	0.00%	-	100.00%	2,018.00
51907001 014522	Razones - Public Safety	\$ 20,151.00	23,320.80	0.00%	-	100.00%	23,320.80
51812001 014522	Hazmat Team	\$ 13,323.00	10,882.40	0.00%	-	100.00%	10,882.40
52100 001 014522	FICA Taxes	\$ 65,633.00	52,746.40	0.00%	-	100.00%	52,746.40
52200 001 014522	Retirement Contributions	\$ 218,960.00	175,168.00	0.00%	-	100.00%	175,168.00
52300 001 014522	Health Insurance	\$ 100,387.00	80,293.60	100.00%	80,293.60	0.00%	-
52301 001 014522	Life Insurance	\$ 5,373.00	4,302.40	100.00%	4,302.40	0.00%	-
52303 001 014522	Long Term Disability	\$ 1,683.00	1,586.40	100.00%	1,586.40	0.00%	-
52320 001 014522	Dental employee	\$ 5,953.00	4,782.40	100.00%	4,782.40	0.00%	-
52400 001 014522	Workers Comp Insurance	\$ 27,267.00	21,813.00	100.00%	21,813.00	0.00%	-
53101 001 014 522	Medical Services	\$ 1,500.00	1,200.00	100.00%	1,200.00	0.00%	-
54000 001 014522	Travel and Per Diem	\$ 2,500.00	2,500.00	100.00%	2,500.00	0.00%	-
54100 001 014522	Communication & Freight C	\$ 9,083.00	9,083.00	100.00%	9,083.00	0.00%	-
54110001 014522	Postage	\$ 50.00	50.00	100.00%	50.00	0.00%	-
54210001 014522	Automotive Repair Service	\$ 7,000.00	7,000.00	100.00%	7,000.00	0.00%	-
54540001 014522	Fiduciary Liability Insurance	\$ 130.00	130.00	100.00%	130.00	0.00%	-
54800 001 014522	Repair & Maintenance Service	\$ 8,200.00	8,200.00	100.00%	8,200.00	0.00%	-
54910 001 014 522	Apparatus-Repair & Maint	\$ 1,800.00	1,800.00	100.00%	1,800.00	0.00%	-
54705001 014522	Printing & Binding Services	\$ 300.00	300.00	100.00%	300.00	0.00%	-
54800 001 014522	Advertising Activities	\$ 300.00	300.00	100.00%	300.00	0.00%	-
55100 001 014522	Office Supplies	\$ 760.00	760.00	100.00%	760.00	0.00%	-
55210 001 014522	Operating Supplies	\$ 1,275.00	1,275.00	100.00%	1,275.00	0.00%	-
55211 001 014522	Medical Supplies	\$ 1,443.00	1,443.00	100.00%	1,443.00	0.00%	-
55225 001 014522	Chemicals Supplies	\$ 600.00	600.00	100.00%	600.00	0.00%	-
55226001 014522	Safety Supplies & Gear	\$ 1,645.00	1,645.00	100.00%	1,645.00	0.00%	-
55230 001 014 522	Clothing and uniforms	\$ 6,660.00	6,660.00	100.00%	6,660.00	0.00%	-
55250 001 014522	Fuels & Lubricants	\$ 14,000.00	14,000.00	100.00%	14,000.00	0.00%	-
55252001 014522	Small Tools	\$ 600.00	600.00	100.00%	600.00	0.00%	-
55263 001 014522	Auto Repair Supplies	\$ 4,000.00	4,000.00	100.00%	4,000.00	0.00%	-
55400 001 014522	Books, Publications, Subscr	\$ 4,785.00	4,785.00	100.00%	4,785.00	0.00%	-
55410 001 014522	Training and Education	\$ 3,940.00	3,940.00	100.00%	3,940.00	0.00%	-
55500 001 014 522	Uncapitalized Equipment	\$ 2,190.00	2,190.00	100.00%	2,190.00	0.00%	-
55640 001 014 522	Machinery & Equipment	\$ 6,700.00	6,700.00	100.00%	6,700.00	0.00%	-
55661 001 014522	Transfer Out to 501	\$ 4,177.00	4,177.00	100.00%	4,177.00	0.00%	-
55666001 014522	Transfer Out to 600	\$ 4,500.00	4,500.00	100.00%	4,500.00	0.00%	-
57100 001 014 517	Interest	\$ 18,879.00	18,879.00	100.00%	18,879.00	0.00%	-
57200 001 014 517	Principal	\$ 38,590.00	38,590.00	100.00%	38,590.00	0.00%	-
	Anticipated Debt Service for capital	\$ 52,500.00	52,500.00	100.00%	52,500.00	0.00%	-
	Total Budget 2012	\$ 1,485,349.00			\$ 351,700.40		\$ 660,007.80
	Adj Total budget		\$ 1,241,708.20				
	% of Adj Total budget				29.32%		71.65%
	% of Total Budget 2012				23.65%		59.92%

Green items are costs net of salaries or related fringes for staff with current or pending ALS certifications. Overall at 30%

APPENDIX B FUNDING EXAMPLES

The following funding examples are provided for illustrative purposes to demonstrate application of the contemplated methodology. The dollar amounts are approximations and may reflect minor rounding errors. The annual amount of any assessments actually imposed will depend upon direction of City Council, its staff and fire officials with respect to the underlying variables (such as the tax parcels to be excluded from the assessment for legal or public policy reasons and the authorized level of assessment funding). It should be noted that the percentage of costs attributable to each tier in a given fire department's budget may vary from year to year, and the percentage allocations for the BFD budget may be quite different from the allocations for fire department budgets in other municipalities or counties. Clearly, the City Council has great policy flexibility in determining the level of assessment funding each year, and the greater the contribution from the general fund, the lower the amount of the assessment imposed against each tax parcel to fund the budget. This combination of funding sources is itself a significant tax equity tool.

The examples are based upon (i) assessable fire protection costs of \$1,241,768, (ii) Tier 1 (relative value of improvements) assessable costs of \$351,700, (iii) Tier 2 (readiness to serve per parcel) assessable costs of \$890,067, (iv) 4,105 assessable, non-excluded parcels,¹⁷ and (v) a total improvement value throughout the City of \$330,696,993.¹⁸ The examples also assume and that the City elects to partially fund the fire department budget with special assessments, with the balance funded through other legally available revenues (general fund contributions). As discussed elsewhere herein, while it is legally permissible to assess for the entire cost of providing fire protection service, most jurisdictions choose to continue to pay for some portion of the overall cost through general fund transfers so as to implement and maintain the assessment at a politically acceptable level. The level of assessment funding may increase or decrease over time, depending on the policy determinations of the governing body. Note that there is no need to distinguish between residential and commercial classification for purposes of calculating either tier of the assessment. The first tier is derived from the relative value of improvements on the tax parcel (excluding land) as determined solely by the Hernando County Property Appraiser from year to year, while the second tier focuses on the core fixed costs per tax parcel necessary to continually be ready to serve; and the latter is obviously dependent upon the number of tax parcels within the City.

The examples (with the exception of the fully funded Example 5) assume that any general or legally available funding is applied equally.

¹⁷ The total 2011 parcel count for the City, as determined by the Hernando County Property Appraiser, was 4,261. For purposes of the examples set forth herein, the estimated tax parcel count assumes all properties capable of development are assessed and does not exclude tax parcels for legal, policy or other reasons.

¹⁸ The total value of improvements within the City for 2011, as determined by the Hernando County Property Appraiser.

Example 1: City elects to collect assessments in the amount of \$500,000 (\$457,453.51 in anticipated assessment revenue net of estimated exempt tax parcels).¹⁹

Amount recovered via Tier 1 of the assessment (relative value of improvements):	\$ 140,000
<u>Amount recovered via Tier 2 of the assessment (readiness to serve per parcel):</u>	<u>\$ 360,000</u>
Total amount recovered through special assessments:	\$ 500,000

Improvement value:	\$0.00
Tier 1 assessment (relative value of improvements): =	\$0.00
Tier 2 assessment (per parcel) =	\$87.70
Base annual assessment²⁰ =	\$87.70

"Median" improvement value:	\$45,998.00
Tier 1 assessment (relative value of improvements): =	\$19.47
Tier 2 assessment (per parcel) =	\$87.70
Base annual assessment =	\$107.17

"Average" improvement value:	\$77,610.00
Tier 1 assessment (relative value of improvements): =	\$32.86
Tier 2 assessment (per parcel) =	\$87.70
Base annual assessment =	\$120.56

Improvement value:	\$150,000.00
Tier 1 assessment (relative value of improvements): =	\$63.50
Tier 2 assessment (per parcel) =	\$87.70
Base annual assessment =	\$151.20

Improvement value:	\$350,000.00
Tier 1 assessment (relative value of improvements): =	\$148.17
Tier 2 assessment (per parcel) =	\$87.70
Base annual assessment =	\$235.87

Improvement value:	\$1,000,000.00
Tier 1 assessment (relative value of improvements): =	\$423.35
Tier 2 assessment (per parcel) =	\$87.70
Base annual assessment =	\$511.05

Improvement value (Walmart):	\$5,963,271.00
Tier 1 assessment (relative value of improvements): =	\$2,524.54
Tier 2 assessment (per parcel) =	\$87.70
Base annual assessment =	\$2,612.24

¹⁹ Amounts not funded by the assessment, including the \$243,580 required to fund expenditures which may be considered ALS related, would be funded through other legally available revenues of the City.

²⁰ The base annual assessment for each tax parcel is typically adjusted or "grossed up" to include a pro rata share of administration and collection costs associated with the assessment program and, where the uniform collection method is utilized to collect the assessments, to account for the fees of the property appraiser and tax collector and the maximum statutory discount for the early payment of ad valorem taxes and non-ad valorem assessments. Such costs generally do not exceed 8% of the base annual assessment.

Example 2: City elects to collect assessments in the amount of \$600,000 (\$548,944.21 in anticipated assessment revenue net of estimated exempt tax parcels).²¹

Amount recovered via Tier 1 of the assessment (relative value of improvements):	\$ 168,000
Amount recovered via Tier 2 of the assessment (readiness to serve per parcel):	\$ 432,000
Total amount recovered via special assessments:	\$ 600,000

Improvement value:	\$0.00
Tier 1 assessment (relative value of improvements): =	\$0.00
Tier 2 assessment (per parcel) =	\$105.24
Base annual assessment²² =	\$105.24

"Median" improvement value:	\$45,998.00
Tier 1 assessment (relative value of improvements): =	\$23.37
Tier 2 assessment (per parcel) =	\$105.24
Base annual assessment =	\$128.61

"Average" improvement value:	\$77,610.00
Tier 1 assessment (relative value of improvements): =	\$39.43
Tier 2 assessment (per parcel) =	\$105.24
Base annual assessment =	\$144.66

Improvement value:	\$150,000.00
Tier 1 assessment (relative value of improvements): =	\$76.20
Tier 2 assessment (per parcel) =	\$105.24
Base annual assessment =	\$181.44

Improvement value:	\$350,000.00
Tier 1 assessment (relative value of improvements): =	\$177.81
Tier 2 assessment (per parcel) =	\$105.24
Base annual assessment =	\$283.05

Improvement value:	\$1,000,000.00
Tier 1 assessment (relative value of improvements): =	\$508.02
Tier 2 assessment (per parcel) =	\$105.24
Base annual assessment =	\$613.26

Improvement value (Walmart):	\$5,963,271.00
Tier 1 assessment (relative value of improvements): =	\$3,029.45
Tier 2 assessment (per parcel) =	\$105.24
Base annual assessment =	\$3,134.69

²¹ See Footnote 19.

²² See Footnote 20.

Example 3: City elects to collect assessments in the amount of \$700,000 (\$640,434.91 in anticipated assessment revenue net of estimated exempt tax parcels).²³

Amount recovered via Tier 1 of the assessment (relative value of improvements):	\$ 196,000
Amount recovered via Tier 2 of the assessment (readiness to serve per parcel):	\$ 504,000
Total amount recovered through special assessments:	\$ 700,000

Improvement value:	\$0.00
Tier 1 assessment (relative value of improvements): =	\$0.00
Tier 2 assessment (per parcel) =	\$122.78
Base annual assessment²⁴ =	\$122.78

“Median” improvement value:	\$45,998.00
Tier 1 assessment (relative value of improvements): =	\$27.26
Tier 2 assessment (per parcel) =	\$122.78
Base annual assessment =	\$150.04

“Average” improvement value:	\$77,610.00
Tier 1 assessment (relative value of improvements): =	\$46.00
Tier 2 assessment (per parcel) =	\$122.78
Base annual assessment =	\$168.78

Improvement value:	\$150,000.00
Tier 1 assessment (relative value of improvements): =	\$88.90
Tier 2 assessment (per parcel) =	\$122.78
Base annual assessment =	\$211.68

Improvement value:	\$350,000.00
Tier 1 assessment (relative value of improvements): =	\$207.44
Tier 2 assessment (per parcel) =	\$122.78
Base annual assessment =	\$330.22

Improvement value:	\$1,000,000.00
Tier 1 assessment (relative value of improvements): =	\$592.69
Tier 2 assessment (per parcel) =	\$122.78
Base annual assessment =	\$715.46

Improvement value (Walmart):	\$5,963,271.00
Tier 1 assessment (relative value of improvements): =	\$3,534.36
Tier 2 assessment (per parcel) =	\$122.78
Base annual assessment =	\$3,657.13

²³ See Footnote 19.

²⁴ See Footnote 20.

Example 4: City elects to collect assessments in the amount of \$800,000 (\$731,925.61 in anticipated assessment revenue net of estimated exempt tax parcels).²⁵

Amount recovered via Tier 1 of the assessment (relative value of improvements):	\$ 224,000
Amount recovered via Tier 2 of the assessment (readiness to serve per parcel):	\$ 576,000
Total amount recovered through special assessments:	\$ 800,000

Improvement value:	\$0.00
Tier 1 assessment (relative value of improvements): =	\$0.00
Tier 2 assessment (per parcel) =	\$140.32
Base annual assessment²⁶ =	\$140.32

"Median" improvement value:	\$45,998.00
Tier 1 assessment (relative value of improvements): =	\$31.16
Tier 2 assessment (per parcel) =	\$140.32
Base annual assessment =	\$171.48

"Average" improvement value:	\$77,610.00
Tier 1 assessment (relative value of improvements): =	\$52.57
Tier 2 assessment (per parcel) =	\$140.32
Base annual assessment =	\$192.89

Improvement value:	\$150,000.00
Tier 1 assessment (relative value of improvements): =	\$101.60
Tier 2 assessment (per parcel) =	\$140.32
Base annual assessment =	\$241.92

Improvement value:	\$350,000.00
Tier 1 assessment (relative value of improvements): =	\$237.08
Tier 2 assessment (per parcel) =	\$140.32
Base annual assessment =	\$377.40

Improvement value:	\$1,000,000.00
Tier 1 assessment (relative value of improvements): =	\$677.36
Tier 2 assessment (per parcel) =	\$140.32
Base annual assessment =	\$817.67

Improvement value (Walmart):	\$5,963,271.00
Tier 1 assessment (relative value of improvements): =	\$4,039.27
Tier 2 assessment (per parcel) =	\$140.32
Base annual assessment =	\$4,179.59

²⁵ See Footnote 19.

²⁶ See Footnote 20.

Example 5: City elects to collect assessments in the amount of \$1,241,768 (i.e. all assessable costs are recovered through the assessment) (\$1,136,087.62 in anticipated assessment revenue net of estimated exempt tax parcels).²⁷

Amount recovered via Tier 1 of the assessment (relative value of improvements):	\$ 347,695.04
Amount recovered via Tier 2 of the assessment (readiness to serve per parcel):	\$ 894,072.96
Total amount recovered through special assessments:	\$1,241,768.00

Improvement value:	\$0.00
Tier 1 assessment (relative value of improvements): =	\$0.00
Tier 2 assessment (per parcel) =	\$217.80
Base annual assessment²⁸ =	\$217.80

"Median" improvement value:	\$45,998.00
Tier 1 assessment (relative value of improvements): =	\$48.36
Tier 2 assessment (per parcel) =	\$217.80
Base annual assessment =	\$266.16

"Average" improvement value:	\$77,610.00
Tier 1 assessment (relative value of improvements): =	\$81.60
Tier 2 assessment (per parcel) =	\$217.80
Base annual assessment =	\$299.40

Improvement value:	\$150,000.00
Tier 1 assessment (relative value of improvements): =	\$157.71
Tier 2 assessment (per parcel) =	\$217.80
Base annual assessment =	\$375.51

Improvement value:	\$350,000.00
Tier 1 assessment (relative value of improvements): =	\$367.99
Tier 2 assessment (per parcel) =	\$217.80
Base annual assessment =	\$585.78

Improvement value:	\$1,000,000.00
Tier 1 assessment (relative value of improvements): =	\$1,051.39
Tier 2 assessment (per parcel) =	\$217.80
Base annual assessment =	\$1,269.19

Improvement value (Walmart):	\$5,963,271.00
Tier 1 assessment (relative value of improvements): =	\$6,269.71
Tier 2 assessment (per parcel) =	\$217.80
Base annual assessment =	\$6,487.51

²⁷ See Footnote 19.

²⁸ See Footnote 20.

Attachment 2

**City of Brooksville/Brooksville Fire District
2012 Fire Assessment Program
Critical Events Schedule**

	Task	By
1.	Presentation of executive summary to City Council; focus upon revenue decision making; adoption of direction resolution	May 21, 2012
2.	Prepare (update and further develop) preliminary assessment roll	By May 25, 2012
3.	Draft and revise (update and further develop) procedural ordinance; forward to City staff for inclusion in June 4 agenda package	By May 25, 2012
4.	Publish notice of June 18 public hearing	By May 25, 2012
5.	Determine capital expenditure requirements as required for validation	By May 30, 2012
6.	Draft and revise bond assessment and resolution; circulate to City staff for review and comment; update and revisit executive summary	By June 1, 2012
7.	City meeting: first reading of ordinance	June 4, 2012
8.	Draft and revise validation complaint, forward to City Attorney for review and comment; develop evidentiary documentation	By June 5, 2012
9.	Receive and address City staff comments to evidentiary documentation, assessment resolution and bond resolution; finalize and forward resolution to City for inclusion in June 18 agenda package	By June 8, 2012
10.	City Attorney provides comments on validation complaint	By June 14, 2012
11.	City meeting: second reading of ordinance, public hearing; adoption of assessment resolution; adoption of bond resolution	June 18, 2012
12.	File validation complaint	June 19, 2012
13.	Obtain hearing date	By June 22, 2012
14.	Publish first notice of validation	20 days before hearing
15.	Publish second notice of validation hearing	1 week later
16.	Conduct validation; obtain rendered final judgment	By July 31, 2012
17.	Appeal period runs	By August 30, 2012
18.	Provide text of direct bill; advise City to facilitate mailing for Fiscal Year 2012-2013 funding	By September 1, 2012
For Fiscal Year 2013-2014 Funding:		
19.	Draft and revise resolution(s) pertaining to tax bill collection, forward to City for inclusion in September agenda package	10 days in advance of agenda deadline
20.	Forward copies of intent resolution to DOR, property appraiser and tax collector	Within 1 week of adoption (prior to January 10, 2013)

City of Brooksville
 Brooksville Fire District 2012 Fire Assessment Program
 Critical Events Schedule
 Page 2 of 2

	Task	By
21.	Monitor and account for direct bill payment delinquencies	Ongoing
22.	Recurring budget and policy-making exercise; prepare proposed	Ongoing
23.	Facilitate mailing of notice for purposes of compliance with s. 197.3632, FS, anticipated to be via TRIM	By June 30, 2013
24.	Mailing of TRIM notice	By second week of August 2013
25.	Publish notices for purposes of complying with s. 197.3632, FS	By June 30, 2013
26.	Prepare assessment roll including first year delinquencies, public hearing, and adopt annual assessment resolution approving roll and certifying to tax collector for inclusion on November 2013 tax bill	By September 1, 2013
27.	City meeting; adopt resolution(s) necessary to collect assessments on tax bill commencing in November 2013	By September 1, 2013

Attachment 3

RESOLUTION NO. 2012-04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BROOKSVILLE, FLORIDA, ACCEPTING AND APPROVING THE EXECUTIVE SUMMARY PERTAINING TO THE APPORTIONMENT OF SPECIAL ASSESSMENTS TO FUND FIRE PROTECTION SERVICES; AUTHORIZING AND DIRECTING INITIATION OF THE PROCESS NECESSARY FOR CITY COUNCIL CONSIDERATION OF THE IMPOSITION AND COLLECTION OF SPECIAL ASSESSMENTS TO FUND FIRE PROTECTION SERVICES; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BROOKSVILLE, FLORIDA:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of Chapter 166, Florida Statutes, the Amended Charter of the City (the "Charter"), sections 166.021 and 166.041, Florida Statutes and other applicable provisions of law (collectively, the "Act").

SECTION 2. FINDINGS. It is hereby ascertained, determined and declared that:

(A) Through execution of the Professional Services Agreement between the City of Brooksville, Florida (the "City") and Bryant Miller Olive P.A. and related Work Order No. 2012-1, the City Council of the City engaged Bryant Miller Olive, Real Estate Research Consultants, and Ennead, LLC (collectively, the "Assessment Professionals") to prepare an Executive Summary describing an apportionment approach pertaining to special assessments for fire protection services, and such Executive Summary has been presented to, and received and considered by, the City Council at a regularly scheduled meeting and is hereby accepted.

(B) City Council desires to initiate the process necessary for consideration of the imposition and collection of such assessments, allocated substantially in accordance with the method set forth in the Executive Summary, in order to provide assessment revenue for the City's fire department budget commencing with Fiscal Year 2012-13.

SECTION 3. AUTHORITY AND DIRECTION. The City Manager, City Attorney, Fire Chief and other necessary City officials and employees along with the Assessment Professionals are authorized and directed to undertake the actions contemplated by Work Order 2012-1 necessary to initiate the public hearing process necessary for City Council consideration of a special assessment to fund fire protection services in Fiscal Year 2012-13 in conformance with the schedule presented. The City Manager and City staff are hereby authorized and directed to assist in such undertaking and to provide such information and

assistance as may be necessary in order for the City Council to determine to fund at a later date a net amount not to exceed \$600,000, through the imposition of such assessments generally apportioned in the manner set forth in the Executive Summary.

SECTION 4. ADOPTED in regular session this 21st day of May, 2012, A.D.

CITY OF BROOKSVILLE

BY: _____
Joseph E. Johnston, III, Mayor

ATTEST: _____
Janice L. Peters, CMC, City Clerk

Approved as to Form for the Reliance
of The City of Brooksville Only:

Thomas S. Hogan, Jr., City Attorney

VOTE OF CITY COUNCIL

Bernardini _____
Bradburn _____
Burnett _____
Hohn _____
Johnston _____

Attachment 2

CITY OF BROOKSVILLE, FLORIDA

FIRE SERVICE ASSESSMENT ORDINANCE

FIRST READING JUNE 4, 2012
SECOND READING AND ADOPTION JULY 2, 2012

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ORDINANCE NO. 830

AN ORDINANCE RELATING TO THE PROVISION OF FIRE PROTECTION SERVICES, FACILITIES, AND PROGRAMS IN THE CITY OF BROOKSVILLE, FLORIDA; AUTHORIZING THE IMPOSITION AND COLLECTION OF FIRE SERVICE ASSESSMENTS AGAINST PROPERTY THROUGHOUT THE CITY; PROVIDING CERTAIN DEFINITIONS; ESTABLISHING THE PROCEDURES FOR IMPOSING AND COLLECTING FIRE SERVICE ASSESSMENTS; PROVIDING THAT FIRE SERVICE ASSESSMENTS CONSTITUTE A LIEN ON ASSESSED PROPERTY EQUAL IN RANK AND DIGNITY WITH THE LIENS OF ALL STATE, COUNTY, DISTRICT, OR MUNICIPAL TAXES AND ASSESSMENTS AND SUPERIOR IN DIGNITY TO ALL OTHER PRIOR LIENS, MORTGAGES, TITLES, AND CLAIMS; AUTHORIZING THE ISSUANCE OF OBLIGATIONS SECURED BY ASSESSMENTS; PROVIDING FOR VARIOUS RIGHTS AND REMEDIES OF THE HOLDERS OF SUCH OBLIGATIONS; PROVIDING THAT SUCH OBLIGATIONS WILL NOT CREATE A GENERAL DEBT OR OBLIGATION OF THE CITY; PROVIDING FOR SEVERABILITY; REPEALING CITY ORDINANCE NOS. 682 AND 788; AND PROVIDING AN EFFECTIVE DATE.

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

ARTICLE I

INTRODUCTION

SECTION 1.01. DEFINITIONS. As used in this Ordinance, the following words and terms shall have the following meanings, unless the context clearly otherwise requires:

“Annual Assessment Resolution” means the resolution described in Article II hereof, establishing the rate at which an Assessment for a specific Fiscal Year will be

computed; and the adoption of which, after a duly noticed public hearing, shall be the final proceeding for the imposition of assessments for fire protection services and facilities.

“Assessed Property” means all Tax Parcels of land included in the Fire Service Assessment Roll that receive a special benefit from the continual availability of fire protection services and facilities.

“Assessment” or **“Fire Service Assessment”** means a special assessment imposed by the Council pursuant to this Ordinance, after a public hearing, to fund the Fire Service Assessed Cost. The term **“Assessment”** and the reference to special assessments or non-ad valorem assessments herein means those assessments which can become a lien against a homestead as permitted by Article X, Section 4 of the Florida Constitution, as amended.

“Assessment Coordinator” means the City Manager, or such person’s designee, responsible for coordinating calculation and collection of Assessments as provided herein.

“Assessment Ordinance” or **“Ordinance”** means this Ordinance.

“Assessment Roll” or **“Fire Service Assessment Roll”** means the special assessment roll relating to an Assessment confirmed by the City Council after a public hearing required in Article II hereof.

“City” means the City of Brooksville, Florida.

“City Clerk” means the Clerk to the City Council, or such person’s designee.

“City Council” means the governing body of the City of Brooksville, Florida.

“City Manager” means the chief administrative office of the City.

“Fire Service Assessed Cost” means that portion of the annual budget for any Fiscal Year representing all or some portion of the cost of maintaining continual readiness to provide fire protection to Tax Parcels within the City which will be funded through the imposition of Fire Service Assessments. In the event the City also imposes an impact fee upon new growth or development for capital improvements related to fire protection, the Fire Service Assessed Cost shall not include costs attributable to capital improvements necessitated by new growth or development which were included in the computation of such impact fee or which are otherwise funded by such impact fee.

“Fiscal Year” means that period commencing October 1st of each year and continuing through the next succeeding September 30th, or such other period as may be prescribed by law as the fiscal year for the City.

“Government Property” means property owned by the United States of America or any agency thereof, a sovereign state or nation, the State of Florida or any agency thereof, a county, a special district or a municipal corporation.

“Obligations” means bonds or other evidence of indebtedness including but not limited to, notes, commercial paper, capital leases or any other obligation issued or incurred to finance fire protection facilities and equipment and secured, in whole or in part, by proceeds of the Assessments.

“Pledged Revenue” means, as to any series of Obligations, (A) the proceeds of such Obligations, including investment earnings, (B) proceeds of the Assessments pledged to

secure the payment of such Obligations, and (C) any other legally available non-ad valorem revenue pledged, at the City Council's sole option, to secure the payment of such Obligations, as specified by this Ordinance and any resolution authorizing such Obligations.

“Property Appraiser” means the Property Appraiser of Hernando County, Florida.

“Tax Collector” means the Tax Collector of Hernando County, Florida.

“Tax Parcel” means a parcel of property to which the Property Appraiser has assigned a distinct ad valorem property tax identification number.

“Tax Roll” means the real property ad valorem tax assessment roll and data base maintained by the Property Appraiser for the purpose of the levy and collection of ad valorem taxes.

“Uniform Assessment Collection Act” means Sections 197.3632 and 197.3635, Florida Statutes, or any successor statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

SECTION 1.02. INTERPRETATION. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Ordinance; and the term “hereafter” means after, and the term “heretofore”

means before, the effective date of this Ordinance. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

SECTION 1.03. FINDINGS. It is hereby ascertained, determined, and declared that:

(A) Pursuant to Article VIII, Section 2(b) of the Florida Constitution, and Sections 166.021 and 166.041, Florida Statutes, the City Council has all powers of local self-government to perform municipal functions and render municipal services except when prohibited by law and such power may be exercised by the enactment of City ordinances.

(B) The City Council may exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law, and the City Council may legislate on any subject matter on which the Florida Legislature may act, except those subjects described in (a), (b), (c), and (d) of section 166.021(3), Florida Statutes. The subject matter of paragraphs (a), (b), (c), and (d) of section 166.021(3), Florida Statutes, are not relevant to the imposition of assessments related to fire protection services, facilities or programs.

(C) The special benefits to affected lands provided as a result of an Assessment include by way of example and not limitation, the continual availability and use of fire protection services to each tax parcel within the City, protection of public safety, stable or decreasing insurance costs, a potential increase in value to property, and an assured level of service to landowners and tenants.

(D) The constant and continued preparedness to provide fire protection services, facilities and programs possess a logical relationship to the value, use and enjoyment of real property by: (1) protecting the value of the improvements and structures through the continual availability of fire control and provision of fire protection and associated rescue services; (2) protecting the life and safety of intended occupants in the use and enjoyment of real property; (3) lowering the cost of fire insurance by the presence of a professional and comprehensive fire protection and associated rescue program within the City; (4) providing protection for uninsured or underinsured property and property owners; and (5) containing the spread of fire incidents, sometimes occurring on vacant or undeveloped property, with the potential to spread and endanger the structures and occupants of nearby improved property, thereby limiting liability.

(E) The combined fire control and associated basic life support emergency medical services of the City under its existing consolidated fire protection program enhances and strengthens the relationship of such services to the value, use and enjoyment of the parcels of property within the City.

(F) The Assessment imposed pursuant to this Ordinance is imposed by the City Council, not the Property Appraiser or Tax Collector. Any activity of the Property Appraiser or Tax Collector under the provisions of this Ordinance shall be construed as ministerial.

(G) The annual Assessments to be imposed pursuant to this Ordinance are special

assessments and may also constitute and be described as non-ad valorem assessments within the meaning and intent of the Uniform Assessment Collection Act.

(H) The purpose of this Ordinance is to: (1) provide procedures and standards for the imposition of city-wide Assessments under the home rule powers of a municipality to impose special assessments, (2) authorize a procedure for the funding of fire protection services, facilities, or programs providing special benefits to property within the City, and (3) establish a significant tax equity tool which can be used to reduce a dependence on property taxes alone as a source of funding for fire protection services, facilities and programs, reduce demand on other legally available funds, allow for local policy discretion as difficult overall budget choices are made by the City Council each year, and give the community a more equitable, balanced, sustainable and dedicated means of funding essential fire protection related services and capital improvements.

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ARTICLE II
ANNUAL FIRE SERVICE ASSESSMENTS

SECTION 2.01. GENERAL AUTHORITY.

(A) The City Council is hereby authorized to impose an annual Assessment to fund all or any portion of the Fire Service Assessed Cost upon benefitted property at a rate of assessment based on the special benefit accruing to such property from the City's provision of fire protection services, facilities, or programs. For purposes of this Ordinance, references to 'benefit', 'special benefit', 'benefitted property' or the like also include the relief of a burden to continually stand in readiness created by real property as well as improvements thereon. All Assessments shall be imposed in conformity with the procedures set forth in this Article II.

(B) The amount of the annual Assessment imposed each Fiscal Year against each parcel of Assessed Property shall be determined pursuant to an apportionment methodology based upon a fair and reasonable apportionment of the Fire Service Assessed Cost among properties on a basis reasonably related to the special benefit provided by the availability of fire protection services, facilities, or programs funded with Assessment proceeds. The amount of the annual Assessment imposed each Fiscal Year shall include administration and collection costs associated with the annual Assessment. In the event the Assessments are collected pursuant to the Uniform Assessment Collection Act, the amount of the annual Assessment will also include fees imposed by the Property Appraiser and Tax

Collector and will be adjusted as necessary to account for any statutory discounts which are necessitated when employing the efficiencies of collecting the Assessments annually on the same bill as property taxes. Nothing contained in this Ordinance shall be construed to require the imposition of Assessments against Government Property.

SECTION 2.02. PROCEEDINGS. The proceedings for the imposition of an Assessment shall include a public hearing noticed in the manner set forth in Section 2.04 hereof, and the adoption at or anytime thereafter of an Annual Assessment Resolution which shall (A) contain a brief and general description of the fire protection services, facilities or programs to be provided or made available, (B) describe the method or methods of apportioning the Fire Service Assessed Cost among affected Tax Parcels, (C) describe the Tax Parcels, if any, to be exempted from the Fire Service Assessment for legal or public policy purposes, (D) identify the rate or rates of assessment and approve and adopt the annual Assessment Roll, consistent with the requirements of Section 2.03 hereof, and (E) determine the method of collecting the Fire Service Assessment.

SECTION 2.03. ASSESSMENT ROLL.

(A) The Assessment Coordinator shall prepare, or direct the preparation of, the Assessment Roll, which shall contain the following:

- (1) A summary description of all Assessed Property by Tax Parcel conforming to the description contained on the Tax Roll.
- (2) The name of the owner of the Assessed Property.

(3) The extension or application of the rates of the proposed Assessment to be imposed against each such Tax Parcel of Assessed Property.

(B) The Assessment Roll shall be retained by the Assessment Coordinator and shall be open to public inspection. The foregoing shall not be construed to require that the Assessment Roll be in printed form if the amount of the Assessment for each Tax Parcel of property can be determined by use of the internet, a computer terminal available to the public or similar technology available to the public.

SECTION 2.04. NOTICE. At least twenty (20) days prior to the public hearing, the City shall notice the public hearing by publication in a newspaper generally circulated within the boundaries of the City. The notice shall provide the date, time and place of the hearing. The notice shall contain a general statement that the City Council will consider a special assessment throughout the City on the various parcels of property within the City to fund all or a portion of the cost to continually be available and stand ready to provide fire protection services, facilities and programs, the proposed rates or explanation of the schedule of Assessments and include general information pertaining to the proposed apportionment methodology, the method of collection and a statement that all affected property owners have a right to appear at the public hearing and the right to file written objections within twenty (20) days of the publication of the notice. The notice shall direct all interested persons to the Assessment Roll and information concerning the amount of the proposed Assessment applicable to each parcel of property; provided, however, that such

Assessment Roll need not be in printed form if the amount of the Assessment for each parcel of property can be determined by use of the internet, a computer terminal available to the public, or similar technology available to the public.

SECTION 2.05. ANNUAL ASSESSMENT RESOLUTION. At the time named in such notice, or to which an adjournment or continuance may be taken by the City Council, the City Council shall receive any written comments or objections of interested persons and may then, or at any subsequent meeting of the City Council, adopt the Annual Assessment Resolution which shall (A) establish the rate or rates of assessment to be imposed in the designated Fiscal Year; (B) approve and adopt the Assessment Roll, with such amendments and directions as it deems just and right; and (C) provide direction as to the method of collection. All parcels assessed shall derive a special benefit from the fire protection services, facilities, or programs to be provided or constructed and the Assessment shall be fairly and reasonably apportioned between the properties that receive the special benefit. All objections to the Annual Assessment Resolution shall be made in writing, and filed with the Assessment Coordinator at or before the time or adjourned time of such hearing. The Annual Assessment Resolution as confirmed shall constitute the final action necessary annually to impose or re-impose Assessments hereunder.

SECTION 2.06. EFFECT OF ANNUAL ASSESSMENT RESOLUTION. The Assessments for the initial Fiscal Year and each subsequent Fiscal Year shall be established upon adoption and confirmation of the Annual Assessment Resolution. The

adoption and confirmation of the Annual Assessment Resolution shall be the final adjudication of the issues presented (including, but not limited to, the method of apportionment and assessment, the rate or rates of assessment, the Assessment Roll, and the levy and lien of the Assessments), unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within twenty (20) days from the date of the City Council action adopting and confirming on the Annual Assessment Resolution. The initial Assessment Roll, as approved by the Annual Assessment Resolution, shall be delivered for collection using the traditional direct billing method of collection described in Section 3.02 hereof to collect the Assessments, or such other method as the City Council by resolution shall designate.

SECTION 2.07. ADOPTION OF SUBSEQUENT ANNUAL ASSESSMENT RESOLUTIONS. The City Council may adopt subsequent Annual Assessment Resolutions as a part of and during its budget adoption process for each Fiscal Year following the initial Fiscal Year for which an Assessment is imposed hereunder. The Annual Assessment Resolution shall approve the Assessment Roll for the upcoming Fiscal Year. The Assessment Roll may be prepared in accordance with the methods of apportionment set forth in the prior Assessment Resolution but may include modifications as a matter of policy as to what, if any, portion or portions of the City's budget is paid for from legally available funds other than Assessment revenues. Failure to adopt an Annual Assessment Resolution during the budget adoption process may be cured at any time.

**SECTION 2.08. ALTERNATIVE USE OF UNIFORM ASSESSMENT
COLLECTION ACT.**

(A) The City may determine to use the uniform method of collection provided for in the Uniform Assessment Collection Act; provided, however that all of the extraordinary procedures required by the Uniform Assessment Collection Act can be and are timely complied with.

(B) In the event the uniform method of collection provided for in the Uniform Assessment Collection Act is determined to be used, the Assessment Coordinator shall publish notice which shall conform to the requirements set forth in the Uniform Assessment Collection Act and, in addition to the requirements set forth in this Ordinance, the Assessment Coordinator shall provide notice of the proposed Assessment by first class mail to the owner of each parcel of property subject to the Assessment which shall conform to the requirements set forth in the Uniform Assessment Collection Act. Such mailed notice may be provided by including the Assessment in the Property Appraiser's notice of proposed property taxes and proposed or adopted non-ad valorem assessments under s. 200.069, Florida Statutes, or its successor in function. The Assessment Coordinator may provide proof of such notice by affidavit. Failure of the owner to receive notice due to mistake or inadvertence shall nevertheless not affect the validity of the Assessment Roll nor release or discharge any obligation for payment of an Assessment imposed by the City Council pursuant to this Ordinance.

(C) The City Council may also establish by resolution or directive such reasonable procedures or directions to confirm and comply with the Uniform Assessment Collection Act as may be practicable and necessary.

(D) Nothing herein shall preclude the City Council from establishing by resolution a maximum rate of assessment provided that notice of such maximum assessment rate is provided pursuant to the Uniform Assessment Collection Act. In the event that the uniform method of collection provided for in the Uniform Assessment Collection Act is used and (1) the proposed Assessment for any Fiscal Year exceeds the maximum rate of assessment adopted by the City Council and included in notice previously provided to the owners of Assessed Property pursuant to the Uniform Assessment Collection Act, (2) the method of apportionment is changed or the purpose for which the Assessment is imposed is substantially changed from that represented by notice previously provided to the owners of Assessed Property pursuant to the Uniform Assessment Collection Act, (3) Assessed Property is reclassified in a manner which results in an increased Assessment from that represented by notice previously provided to the owners of Assessed Property pursuant to the Uniform Assessment Collection Act, or (4) an Assessment Roll contains Assessed Property that was not included on the Assessment Roll approved for the prior Fiscal Year, notice and opportunity to be heard shall be provided to the owners of such Assessed Property. Such notice shall substantially conform to the notice requirements set forth in the Uniform Assessment Collection Act and inform the owner of

the time, date and place for adoption of the Annual Assessment Resolution. The failure of the owner to receive such notice due to mistake or inadvertence shall not affect the validity of the Assessment Roll nor release or discharge any obligation for payment of an Assessment imposed by the City Council pursuant to this Ordinance.

(E) The Assessment Roll, as approved by the Annual Assessment Resolution, shall be certified and delivered to the Tax Collector as required by the Uniform Assessment Collection Act.

SECTION 2.09. LIEN OF FIRE SERVICE ASSESSMENTS. Upon the adoption of the Assessment Roll, all Assessments shall constitute a lien against such property equal in rank and dignity with the liens of all state, county, district, or municipal taxes and special assessments. Except as otherwise provided by law, until paid such lien shall be superior in dignity to all other prior liens, mortgages, titles, and claims. The lien for an Assessment shall be deemed perfected upon adoption by the City Council of the Annual Assessment Resolution. The lien for an Assessment collected under the Uniform Assessment Collection Method shall attach to the property included on the Assessment Roll as of the prior January 1, the lien date for ad valorem taxes imposed under the Tax Roll. The lien for an Assessment collected under the traditional method of collection provided in Section 3.02 hereof shall be deemed perfected upon adoption and confirmation by the City Council of the Annual Assessment Resolution, after a public hearing, and shall attach to the property on such date of each such Annual Assessment Resolution.

SECTION 2.10. REVISIONS TO FIRE SERVICE ASSESSMENTS. If any Assessment made under the provisions of this Ordinance is either in whole or in part annulled, vacated, or set aside by the judgment of any court, or if the City Council is satisfied that any such Assessment is so irregular or defective that the same cannot be enforced or collected, or if the City Council has omitted any property on the Assessment Roll which property should have been so included, the City Council may take all necessary steps to impose a new Assessment against any property benefited by the Fire Service Assessed Costs, following as nearly as may be practicable, the provisions of this Ordinance and in case such second Assessment is annulled, vacated, or set aside, the City Council may obtain and impose other Assessments until a valid Assessment is imposed.

SECTION 2.11. PROCEDURAL IRREGULARITIES. Any informality or irregularity in the proceedings in connection with the levy of any Assessment under the provisions of this Ordinance shall not affect the validity of the same after the approval thereof, and any Assessment as finally approved shall be competent and sufficient evidence that such Assessment was duly levied, that the Assessment was duly made and adopted, and that all other proceedings adequate to such Assessment were duly had, taken, and performed as required by this Ordinance; and no variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby. Notwithstanding the provisions of this Section, any party objecting to an

Assessment imposed pursuant to this Ordinance must file an objection with a court of competent jurisdiction within the time periods prescribed herein.

SECTION 2.12. CORRECTION OF ERRORS AND OMISSIONS.

(A) No act of error or omission on the part of the Property Appraiser, Tax Collector, Assessment Coordinator, City Council, or their deputies, employees, or agents shall operate to release or discharge any obligation for payment of an Assessment imposed by the City Council under the provision of this Ordinance.

(B) When it shall appear that any Assessment should have been imposed under this Ordinance against a parcel of property specially benefited by the provision of fire protection services, facilities, or programs, but that such property was omitted from the Assessment Roll, the City Council may, upon provision of notice to the owner by first class mail, impose the applicable Assessment for the Fiscal Year in which such error is discovered, in addition to the applicable Assessment due for the prior two Fiscal Years. Such total Assessment shall become delinquent if not fully paid upon the expiration of sixty (60) days from the date of the adoption of said resolution. The Assessment so imposed shall constitute a lien against such property equal in rank and dignity with the liens of all state, county, district, or municipal taxes and special assessments, and superior in rank and dignity to all other prior liens, mortgages, titles and claims in and to or against the real property involved and may be collected as provided in Article III hereof.

(C) The Assessment Coordinator shall have the authority at any time, upon his or her own initiative or in response to a timely filed petition from the owner of any property subject to an Assessment, based upon presentation of competent and substantial evidence, to correct any error in annually applying the Assessment apportionment method to any particular parcel of property not otherwise requiring the provision of mailed notice pursuant to this Ordinance or the Uniform Assessment Collection Act. Additionally, because the size and nature of the Tax Roll may yield anomalies, the Assessment Coordinator is authorized to apply sound public administration judgment and delete or remove individual Tax Parcels from the Assessment Roll that due to specific circumstances do not receive a special benefit, are not developable (e.g. subsurface rights, submerged, slivers, right-of-way, common elements) or are reasonably determined to be inappropriate, infeasible or impracticable to assess, and do not merit the expenditure of public funds and resources to impose or collect such Assessments. Unless the Assessment Coordinator determines that a Tax Parcel does benefit, for any Tax Parcel with a just or market value of less than \$1,000 (as determined solely by the Property Appraiser), such value may be used as a prima facie determination that the Tax Parcel need not be included on the Assessment Roll. Any such corrections shall be considered valid ab initio and shall in no way affect the enforcement of the Assessment imposed under the provisions of this Ordinance. All requests from affected property owners for any such changes, modifications or corrections

shall be referred to, and processed by, the Assessment Coordinator and not the Property Appraiser or Tax Collector.

(D) After the Assessment Roll has been delivered to the Tax Collector in accordance with the Uniform Assessment Collection Act, any changes, modifications, or corrections thereto shall be made in accordance with the procedures applicable to correcting errors and insolvencies on the Tax Roll upon timely written request and direction of the Assessment Coordinator.

SECTION 2.13. INTERIM ASSESSMENTS.

(A) An interim Assessment shall be imposed against all property for which a Certificate of Occupancy is issued after adoption and confirmation of the Annual Assessment Resolution. The amount of the interim Assessment shall be calculated upon a monthly rate, which shall be one-twelfth of the annual rate for such property computed in accordance with the Annual Assessment Resolution for the Fiscal Year in which the Certificate of Occupancy is issued. Such monthly rate shall be imposed for each full calendar month remaining in the Fiscal Year. In addition to the monthly rate, the interim Assessment shall also include an estimate of the subsequent year's Assessment. No Certificate of Occupancy shall be issued until full payment of the interim Assessment is received by the City. Issuance of the Certificate of Occupancy by mistake or inadvertence, and without the payment in full of the interim Assessment, shall not relieve the owner of such property of the obligation of full payment. For the purpose of this provision, such

interim Assessment shall be deemed due and payable on the date the Certificate of Occupancy was issued and shall constitute a lien against such property as of that date. Said lien shall be equal in rank and dignity with the liens of all State, county, district or municipal taxes and special assessments, and superior in rank and dignity to all other liens, encumbrances, titles and claims in and to or against the real property involved.

(B) Exclusive of property for which an interim Assessment was paid pursuant to subsection (A) hereof, an interim Assessment shall also be imposed against any property which for any reason was omitted from the Fire Service Assessment Roll or was not listed on the Tax Roll as an individual Tax Parcel as of the effective date of the Assessment Roll approved by the Annual Assessment Resolution for any upcoming Fiscal Year. For the purpose of this provision, such interim Assessment shall be deemed due and payable and shall constitute a lien against such property for which it is imposed. Said lien shall be equal in rank and dignity with the liens of all State, county, district or municipal taxes and special assessments, and superior in rank and dignity to all other liens, encumbrances, titles and claims in and to or against the real property involved.

SECTION 2.14. ADMINISTRATIVE HARDSHIP DEFERMENT.

(A) Annually upon application of the Owner of a Tax Parcel subject to the Assessments contemplated herein, the Assessment Coordinator may grant a hardship deferment, in which case the Tax Parcel in question will receive a deferral. The owner shall be required to execute a binding agreement encumbering the Tax Parcel and otherwise

assure the City that payment in full of the Assessment and any recording cost, plus interest at an estimated cost of City funds compounded annually, shall be due over a period of time or upon sale or transfer of the property. Such agreement or a memorandum thereof shall be recorded in the Official Records of Hernando County, Florida. Dependent upon the volume or demand for such deferment, the City Council may determine to release such deferments in the future. However, all funding for such hardship deferment, or the consequences of the deferment or any future release, shall be from legally available funds other than direct proceeds of other Assessments. The Assessment Coordinator is authorized to use sound public administration judgment in applying this authority and considering such applications.

(B) This provision serves to promote a public purpose and the general welfare, morals and contentment of the inhabitants and residents of the City.

[Remainder of page intentionally left blank.]

ARTICLE III
COLLECTION OF FIRE SERVICE ASSESSMENTS

SECTION 3.01. COLLECTION.

(A) The process of collection is driven by many equitable, practical and economic factors. The traditional direct billing method is initially far less expensive and provides fair and adequate notice and opportunity to be heard through publication in a newspaper of general circulation. The uniform method of collection additionally provides extraordinary notice by individual mailing, but such notice is many times more expensive than published notice. The individually mailed notice required by the Uniform Assessment Collection Act is extraordinary and unique to collection of an Assessment occurring along with and included on the same bill as for ad valorem taxes.

(B) Unless otherwise directed by the City Council, the Assessments shall be collected pursuant to the traditional direct billing method provided in Section 3.02 hereof. Any hearing or notice required by this Ordinance may be combined with any other hearing or notice required by this Ordinance or the Uniform Assessment Collection Act.

SECTION 3.02. TRADITIONAL METHOD OF COLLECTION. The City may elect to collect the Assessments by any other method which is authorized by law or provided by this Section as follows:

(A) The City shall provide Assessment bills by first class mail to the owner of each affected parcel of property, other than Government Property. The bill or

accompanying explanatory material shall include (1) a brief explanation of the Assessment, (2) a description of the unit of measurement or method used to determine the amount of the Assessment, (3) the number of units contained within the Tax Parcel, (4) the rate or rates applied to the units of measurement or method and the total amount of the Assessment imposed against the Tax Parcel for the appropriate period, (5) the location at which payment will be accepted, (6) the date on which the Assessment is due, and (7) a statement that the Assessment constitutes a lien against Assessed Property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments.

(B) A general notice of the lien resulting from imposition of the Assessments throughout the City may be recorded in the Official Records of the County. Nothing herein shall be construed to require that individual liens or releases be filed in the Official Records.

(C) The City shall have the right to appoint or retain an agent to foreclose and collect all delinquent Assessments in the manner provided by law.

(D) An Assessment shall become delinquent if it is not paid within thirty (30) days from the date any installment is due. The City or its agent shall notify any property owner who is delinquent in payment of his or her Assessment within ninety (90) days from the date such assessment was due. Such notice shall state in effect that the City or its agent may either (1) initiate a foreclosure action or suit in equity and cause the foreclosure of such property subject to a delinquent Assessment in a method now or hereafter provided by law

for foreclosure of mortgages on real property; or (2) cause an amount equivalent to the delinquent Assessment, not previously subject to collection using the uniform method under the Uniform Assessment Collection Act, to be collected on the tax bill for a subsequent year.

(E) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any foreclosure action as described herein shall be included in any judgment or decree rendered therein. At the sale pursuant to decree in any such action, the City may be the purchaser to the same extent as an individual person or corporation. The City may join in one foreclosure action the collection of Assessments against any or all property assessed in accordance with the provisions hereof. All delinquent owners whose property is foreclosed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the City and its agents, including reasonable attorney fees, in collection of such delinquent Assessments and any other costs incurred by the City as a result of such delinquent Assessments and the same shall be collectible as a part of or in addition to, the costs of the action.

(F) In lieu of foreclosure, any delinquent Assessment and the costs, fees and expenses otherwise reasonably attributable thereto, may be collected subsequently pursuant to the Uniform Assessment Collection Act; provided however, that (1) notice is provided to the owner in the manner required by the Uniform Assessment Collection Act and this Ordinance, and (2) any existing lien of record on the affected parcel for the

delinquent Assessment is supplanted by the lien resulting from certification of the Assessment Roll, as applicable, to the Tax Collector.

(G) Any City Council action required in the collection of Assessments may be by resolution.

SECTION 3.03. UNIFORM METHOD OF COLLECTION.

(A) In lieu of utilizing any other method of collection available to the City, the City may elect to collect Assessments using the uniform method pursuant to the Uniform Assessment Collection Act; and, for any specific parcel of benefitted property may include an amount equivalent to the payment delinquency, delinquency fees and expenses and recording costs for a prior year's assessment for a comparable service, facility, or program provided, (1) the collection method used in connection with the prior year's assessment did not employ the use of the uniform method of collection authorized by the Uniform Assessment Collection Act, (2) notice is provided to the owner, and (3) any lien on the affected parcel for the prior year's assessment is supplanted and transferred to such Assessment upon certification of a non-ad valorem roll to the Tax Collector by the City.

(B) If the City Council determines the Assessments are to be collected on the same bill as for ad valorem taxes, then the Assessment coordinator shall comply and conform to the extraordinary requirements of the Uniform Assessment Collection Act.

SECTION 3.04. GOVERNMENT PROPERTY.

(A) To the extent permitted by law, the City reserves the right to impose a charge or fee comparable in amount to Assessments on Governmental Property. As used in this section, the context of the term 'Assessment' shall refer to such a charge or fee. If Assessments are imposed against Government Property, the City shall provide Assessment bills by first class mail to the owner or agent of each affected parcel of Government Property. The bill or accompanying explanatory material shall include (1) a brief explanation of the Assessment, (2) a description of the unit of measurement used to determine the amount of the Assessment, (3) the number of units contained within the Tax Parcel, (4) the rate or rates applicable to the units of measurement or method and the total amount of the Assessment imposed against the Tax Parcel for the appropriate period, (5) the location at which payment will be accepted, and (6) the date on which the Assessment is due.

(B) Assessments imposed against Government Property shall be due on the same date as all other Assessments and, if applicable, shall be subject to the same discounts for early payment.

(C) An Assessment shall become delinquent if it is not paid within thirty (30) days from the date any installment is due. The City shall notify the owner of any Government Property that is delinquent in payment of its Assessment within ninety (90)

days from the date such assessment was due. Such notice shall state that the City will initiate a mandamus or other appropriate judicial action to compel payment.

(D) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any mandamus or other action as described herein shall be included in any judgment or decree rendered therein. All delinquent owners of Government Property against which a mandamus or other appropriate action is filed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the City, including reasonable attorney fees, in collection of such delinquent Assessments and any other costs incurred by the City as a result of such delinquent Assessments and the same shall be collectible as a part of or in addition to, the costs of the action.

(E) As an alternative to the foregoing, an Assessment imposed against Government Property may be collected as a surcharge on a utility bill provided to such Government Property in twelve installments with a remedy of a mandamus action in the event of non-payment. The City Council may also contract for such billing services with any utility not otherwise owned by the City.

[Remainder of page intentionally left blank.]

ARTICLE IV
ISSUANCE OF OBLIGATIONS

SECTION 4.01. GENERAL AUTHORITY.

(A) The City Council shall have the power and is hereby authorized to provide by ordinance or resolution, at one time or from time to time in series, for the issuance of Obligations to fund fire protection facilities and equipment and any amounts to be paid or accrued in connection with issuance of such Obligations including but not limited to capitalized interest, transaction costs and reserve account deposits.

(B) The principal of and interest on each series of Obligations shall be payable from Pledged Revenue. The City Council may agree, by ordinance or resolution, to budget and appropriate funds to make up any deficiency in the reserve account established for the Obligations or in the payment of the Obligations, from other non-ad valorem revenue sources. The City Council may also provide, by ordinance or resolution, for a pledge of or lien upon proceeds of such non-ad valorem revenue sources for the benefit of the holders of the Obligations. Any such ordinance or resolution shall determine the nature and extent of any pledge of or lien upon proceeds of such non-ad valorem revenue sources.

SECTION 4.02. TERMS OF THE OBLIGATIONS. The Obligations shall be dated, shall bear interest at such rate or rates, shall mature at such times as may be determined by ordinance or resolution of the City Council, and may be made redeemable before maturity, at the option of the City, at such price or prices and under such terms and

conditions, all as may be fixed by the City Council. Said Obligations shall mature not later than forty (40) years after their issuance. The City Council shall determine by ordinance or resolution the form of the Obligations, the manner of executing such Obligations, and shall fix the denominations of such Obligations, the place or places of payment of the principal and interest, which may be at any bank or trust company within or outside of the State of Florida, and such other terms and provisions of the Obligations as it deems appropriate. The Obligations may be sold at public or private sale for such price or prices as the City Council shall determine by ordinance or resolution. The Obligations may be delivered to any contractor to pay for the provision of fire protection facilities and equipment or may be sold in such manner and for such price as the City Council may determine by ordinance or resolution to be for the best interests of the City.

SECTION 4.03. VARIABLE RATE OBLIGATIONS. At the option of the City Council, Obligations may bear interest at a variable rate.

SECTION 4.04. TEMPORARY OBLIGATIONS. Prior to the preparation of definitive Obligations of any series, the City Council may, under like restrictions, issue interim receipts, interim certificates, or temporary Obligations, exchangeable for definitive Obligations when such Obligations have been executed and are available for delivery. The City Council may also provide for the replacement of any Obligations which shall become mutilated, destroyed or lost. Obligations may be issued without any other proceedings or

the happening of any other conditions or things other than those proceedings, conditions or things which are specifically required by this Ordinance.

SECTION 4.05. ANTICIPATION NOTES. In anticipation of the sale of Obligations, the City Council may, by ordinance or resolution, issue notes and may renew the same from time to time. Such notes may be paid from the proceeds of the Obligations, the proceeds of the Assessments, the proceeds of the notes and such other legally available moneys as the City Council deems appropriate by ordinance or resolution. Said notes shall mature within five (5) years of their issuance and shall bear interest at a rate not exceeding the maximum rate provided by law. The City Council may issue Obligations or renewal notes to repay the notes. The notes shall be issued in the same manner as the Obligations.

SECTION 4.06. TAXING POWER NOT PLEDGED. Obligations issued under the provisions of this Ordinance shall not be deemed to constitute a general obligation or pledge of the full faith and credit of the City within the meaning of the Constitution of the State of Florida, but such Obligations shall be payable only from Pledged Revenue and, if applicable, proceeds of the Assessments, in the manner provided herein and by the ordinance or resolution authorizing the Obligations. The issuance of Obligations under the provisions of this Ordinance shall not directly or indirectly obligate the City to levy or to pledge any form of ad valorem taxation whatsoever. No holder of any such Obligations shall ever have the right to compel any exercise of the ad valorem taxing power on the part of the City to pay any such Obligations or the interest thereon or

to enforce payment of such Obligations or the interest thereon against any property of the City, nor shall such Obligations constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City, except the Pledged Revenue.

SECTION 4.07. TRUST FUNDS. The Pledged Revenue received pursuant to the authority of this Ordinance shall be deemed to be trust funds, to be held and applied solely as provided in this Ordinance and in the ordinance or resolution authorizing issuance of the Obligations. Such Pledged Revenue may be invested by the City, or its designee, in the manner provided by the ordinance or resolution authorizing issuance of the Obligations. The Pledged Revenue upon receipt thereof by the City shall be subject to the lien and pledge of the holders of any Obligations or any entity other than the City providing credit enhancement on the Obligations.

SECTION 4.08. REMEDIES OF HOLDERS. Any holder of Obligations, except to the extent the rights herein given may be restricted by the ordinance or resolution authorizing issuance of the Obligations, may, whether at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such ordinance or resolution, and may enforce and compel the performance of all duties required by this part, or by such ordinance or resolution, to be performed by the City.

SECTION 4.09. REFUNDING OBLIGATIONS. The City may, by ordinance or resolution of the City Council, issue Obligations to refund any Obligations

issued pursuant to this Ordinance, or any other obligations of the City issued to finance fire protection facilities and equipment, and provide for the rights of the holders hereof. Such refunding Obligations may be issued in an amount sufficient to provide for the payment of the principal of, redemption premium, if any, and interest on the outstanding Obligations to be refunded. If the issuance of such refunding Obligations results in an annual Assessment that exceeds the estimated maximum annual Assessments set forth in an Annual Assessment Resolution or other resolution, the City Council shall provide notice to the affected property owners and conduct a public hearing in the manner required by this Ordinance.

[Remainder of page intentionally left blank.]

ARTICLE V

GENERAL PROVISIONS

SECTION 5.01. APPLICABILITY This Ordinance and the City's authority to impose assessments pursuant hereto shall be applicable throughout the City.

SECTION 5.02. SEVERABILITY. The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

SECTION 5.03. ALTERNATIVE METHOD. This Ordinance shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may hereafter come into existence. This Ordinance, being necessary for the welfare of the inhabitants of the City, shall be liberally construed to effect the purposes hereof.

SECTION 5.04. REPEALER. City Ordinance Nos. 682 and 788 are hereby repealed. All ordinances, resolution or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 5.05. EFFECTIVE DATE. This Ordinance shall be in force and take effect immediately upon its passage and adoption by the City Council.

**CITY COUNCIL OF
THE CITY OF BROOKSVILLE, FLORIDA**

(SEAL)

By: s/ Joseph E. Johnston, III
Joseph E. Johnson, III, Mayor

ATTEST:

s/Janice L. Peters
Janice L. Peters, CMC, City Clerk

PASSED on First Reading June 4, 2012
NOTICE Published on June 8, 2012
Passed on Second and Final Reading July 2, 2012

Approved as to form for the Reliance
of The City of Brooksville Only:

VOTE OF CITY COUNCIL

s/Robert B. Battista
Thomas S. Hogan, Jr., City Attorney

Bernardini NAY
Bradburn AYE
Burnett AYE
Hohn AYE
Johnston AYE

Attachment 3

2

CITY OF BROOKSVILLE, FLORIDA

**FIRE SERVICE ASSESSMENT
ANNUAL ASSESSMENT RESOLUTION**

**PUBLISHED NOTICE OF PUBLIC HEARING MAY 26, 2012
ASSESSMENT ROLL POSTED ON CITY WEBSITE MAY 27, 2012
PUBLIC HEARING AND ADOPTION (JUNE 18, 2012 and) JULY 2, 2012**

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APPENDIX A FORM OF PUBLISHED NOTICE

RESOLUTION NO. 2012-05

A RESOLUTION OF THE CITY COUNCIL OF BROOKSVILLE, FLORIDA, RELATING TO THE AVAILABILITY AND FUNDING OF FIRE PROTECTION AND RELATED ESSENTIAL SERVICES WITHIN THE CITY; PROVIDING FOR THE IMPOSITION OF SPECIAL ASSESSMENTS WITHIN THE CITY TO FUND, IN PART, THE SERVICES, FACILITIES AND PROGRAMS ASSOCIATED WITH THE CONTINUAL READINESS TO PROVIDE FIRE PROTECTION; IDENTIFYING BENEFITS, BURDENS AND COSTS TO BE ASSESSED; ESTABLISHING THE METHOD OF APPORTIONING BENEFITS, BURDENS AND COSTS AMONG SPECIALLY BENEFITED PROPERTY; ADOPTING AN ASSESSMENT ROLL; PROVIDING THE METHOD OF COLLECTION; PROVIDING FOR ASSOCIATED POLICY DIRECTION; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BROOKSVILLE, FLORIDA, AS FOLLOWS:

ARTICLE I

INTRODUCTION

SECTION 1.01. AUTHORITY. This Resolution of the City of Brooksville, Florida is adopted pursuant to Ordinance No. 830 (the "Assessment Ordinance"), Sections 166.021 and 166.041, Florida Statutes, and other applicable provisions of law.

SECTION 1.02. DEFINITIONS. This Resolution constitutes the Annual Assessment Resolution as defined in the Assessment Ordinance. All capitalized words and terms not otherwise defined herein shall have the meaning set forth in the Assessment Ordinance, unless the context hereof otherwise requires.

SECTION 1.03. INTERPRETATION. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Resolution; and the term "hereafter" means after, and the term "heretofore" means before, the effective date of this Resolution. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise.

SECTION 1.04. FINDINGS. It is hereby ascertained, determined and declared as follows:

(A) The constant and continued preparedness to provide fire protection services, facilities and programs possesses a logical relationship to the use and enjoyment of real property by: (1) protecting the value of the improvements and structures through the continual availability of fire control and provision of fire protection and associated rescue services; (2) protecting the life and safety of intended occupants in the use and enjoyment of real property; (3) lowering the cost of fire insurance by the presence of a professional and comprehensive fire protection and associated rescue program within the City; (4) providing protection for uninsured or underinsured property and property owners; and (5) containing the spread of fire incidents, sometimes occurring on vacant or undeveloped property, with the potential to spread and endanger the structures and occupants of nearby improved property, thereby limiting liability.

(B) The sharing of benefits, burdens and costs for fire protection services and facilities based upon the relative value of improvements for each Tax Parcel in the City as compared to the value of improvements for all Tax Parcels in the City could conceivably serve alone as a fair and reasonable means to apportion entirely the Fire Service Assessed Cost. Such approach substantially removes the underlying land values from consideration and reasonably focuses upon the built environment on the land protected by fire services, facilities and programs. This is a direct and logically related means to share benefits, burdens and costs of fire protection services, facilities and programs.

(C) It is also clear that the relative improvement value of improvements to land may be utilized as one factor among others considered in a given formula or calculus since the resulting Assessments are formed from a reasoned or logical base against which the special benefits, burdens and costs may be multiplied or determined.

(D) Apportionment on the basis of relative improvement value (as determined by data derived from Tax Roll prepared by the Property Appraiser) recognizes the relatively higher benefit accruing to properties which face greater financial loss in the event of fire incident.

(E) Besides the advantage of relying upon data prepared by the Property Appraiser in the normal conduct of his or her responsibilities, an approach based in whole or in part upon relative improvement value is also advantageous because it is self-correcting. Relative value of improvements may change from year to year in accordance

with market conditions and other factors and such variation will be adjusted automatically each subsequent year in accordance with the updated improvement value determined by the Property Appraiser. If the improvements on a given Tax Parcel were to increase or decrease in value with the passage of time relative to the updated improvement value city-wide, that Tax Parcel's relative percentage to the total amount assessed for that Tax Parcel and all Tax Parcels would also increase or decrease proportionately.

(F) The mere availability of fire protection services and facilities benefits each Tax Parcel of real property in the City in a substantially uniform fashion by relieving the common burden placed upon City services and facilities collectively created by individual Tax Parcels whether a fire event occurs or not. Fundamentally, the presence of each Tax Parcel within the City creates a comparable and similar requirement to stand ready to serve and continually maintain a preparedness to provide fire protection and associated services and facilities for all Tax Parcels.

(G) The City's core preparedness costs are generally those necessary to maintain the readiness of fire personnel to respond in the event of random emergency calls and to assure an effective network of coverage for basic insurance ratings. Such preparedness is continual and predominantly lies in wait for the emergency of a fire incident.

(H) The Council has carefully considered the report prepared by Real Estate Research Consultants describing a special assessment apportionment methodology designed to fund all or some portion of the City's annual budget expenditures

corresponding to fixed (as opposed to more variable) costs incurred in maintaining common or similar continual readiness to provide fire protection to all parcels.

(I) These core preparedness costs of lying in wait are largely recurring, almost fixed over the course of a budgetary period, because they are strongly associated with wages, salaries, administration, and overhead which support the constant availability of services and facilities. Such core costs must be absorbed even when firefighting capabilities remain exclusively in standby mode.

(J) Fixed costs can generally be described as those costs incurred in providing services, facilities and programs required for readiness to provide fire protection which do not necessarily vary from parcel to parcel based upon property classification, parcel-specific physical characteristics (improvements) or actual demand in the event of deployment. Variable costs are those dependent upon or which more closely bear a direct relationship to property classification and/or parcel-specific physical characteristics such as value of improvements, and therefore are more likely to vary from parcel to parcel.

(K) The constant potential for the outbreak of a fire represents the predominant requirement for service. When and where a fire incident occurs is essentially an unknown and difficult variable to accurately predict. The scale of this potential defines the basic underlying cost of being prepared to limit fire loss and to protect property values. From a policy and public purpose standpoint, preparedness is the predominant activity of the City's fire services and facilities. The City, in this state of readiness, must consider the

committable personnel, necessary equipment and facilities, and the time likely required to extinguish a fire (planning or preparing for the potential incident or event) prior to the emergency allocation of direct resources enabling a fire to be extinguished as quickly as possible (deploying to or intervening in the incident or event itself). The amount of resources for fire protection service, facilities and programs made available in such a continual preparedness exercise each year is a public administration and policy decision which necessarily focuses in the aggregate on all property within the City.

(L) In developing a recurring revenue source to fund a portion of the core fixed cost component of the City's annual budget associated with a continued readiness to provide fire protection services, facilities and programs, it is not necessary to solely focus on the size, value or physical characteristics of individual Tax Parcels for fire protection. Instead, in this context, each individual Tax Parcel contributes similarly to the required state of readiness, and similarly and substantially shares the same benefits from such core fixed cost component; and, therefore it is fair and reasonable to ask the owner of each Tax Parcel to contribute equally toward funding all or a portion of the core fixed costs associated with such continual readiness to provide fire protection services and facilities.

(M) The findings contained herein are premised upon information, input, analysis and review from City staff, officials and experts, and public comment, as well as careful consideration by the City Council. A combination of the foregoing yields a reasoned apportionment methodology premised upon two distinct tiers or classes of apportionment

allocation: Tier 1 – a sharing of benefits, burdens and costs for fire protection services and facilities based upon the relative value of improvements for each Tax Parcel in the City as compared to the value of improvements for all Tax Parcels in the City; and, Tier 2 – a sharing of benefits, burdens and costs for fire protection services and facilities on a per Tax Parcel allocation premised upon maintaining a continual state of preparedness and readiness to serve whether or not a request for actual assistance is ever received. Although either of these two tiers might be used singularly to address a significant portion of the budget for special assessment apportionment purposes, together they provide a simplified and powerful equity tool for the City to fairly and reasonably share assessable benefits, burdens and costs among all assessable Tax Parcels in the City.

(N) Allocating a portion of the fixed costs attributable to the City's continual readiness to provide fire protection services and facilities on a Tax Parcel basis reasonably avoids cost inefficiencies and unnecessary administration, and is a fair, efficient and reasonable mechanism to allocate such costs among all Tax Parcels.

(O) The use of data derived from the Tax Roll (both in form and content), which is a publicly and uniformly maintained database of all Tax Parcels employed by the Property Appraiser and Tax Collector, is an accurate, fair and efficient means to allocate or distribute Fire Service Assessed Costs associated with standing ready to provide fire protection and associated services and facilities.

(P) It is fair, reasonable, effective, and efficient for all Tax Parcels, including statutorily defined parcels such as individual condominium or cooperative units with extraordinary alienability, to share equally in the core fixed costs represented by the special assessments to be imposed hereby, particularly since such costs are not necessarily dependent upon or determined by physical characteristics or demand in the event of deployment.

(Q) It is also fair and reasonable that some portion of fixed costs and variable costs be shared and distributed among Tax Parcels, including statutorily defined parcels such as individual condominium or cooperative units with extraordinary alienability, using the apportionment methods which are weighted more heavily on the Fire Assessment Roll (using data from the Tax Roll) toward physical characteristics, such as those represented by the relative value of improvements.

(R) Real Estate Research Consultants has reviewed current and prior year budget information related to the provision of fire protection services and facilities and conducted a reasoned analysis of advanced life support services ("ALS"), and culled just over 16% of the exemplary budget to avoid any question that the Fire Service Assessed Cost improperly includes emergency medical services other than first response medical services routinely delivered by fire fighters. This is a well-considered means to isolate such advanced life support medical services from fire service related responses and avoid debate as to case law validity of the resulting Fire Service Assessment.

(S) Real Estate Research Consultants has reviewed current and prior year budget information related to the provision of fire protection services and facilities and conducted a reasoned analysis of fixed and variable cost budget components, resulting in the determination that all Tax Parcels benefit in a substantially uniform manner from services, facilities and programs characterized as fixed and otherwise necessary to provide a continual readiness to provide fire protection. Real Estate Research Consultants has determined that almost sixty percent (60%) of the fire department budget could be reasonably allocated per Tax Parcel to core fixed cost expenditures incurred in maintaining readiness to provide fire protection and associated services and facilities (Tier 2); and, at least twenty-four percent (24%) of the fire department budget could be reasonably allocated to both fixed and variable cost expenditures based upon the relative value of improvements associated with each Tax Parcel (Tier 1).

(T) It is fair and reasonable to fund all or a portion of the Fire Service Assessed Cost on the basis of the relative value of improvements associated with each Tax Parcel compared to the total value of all improvements in the City in order to recognize the proportional benefit accruing to properties which face greater financial loss in the event of fire incident.

(U) It is fair and reasonable to multiply the estimated budget for fire protection services, facilities and programs by an identified proportion of the core fixed costs associated with the continual readiness to provide fire protection, in order to determine a

proportional amount of the estimated budget allocable to such core fixed costs; and, then divide such amount by a reasonable estimate of the total number of Tax Parcels within the City in order to determine the proposed annual rate of assessment per Tax Parcel in an attempt to uniformly and proportionally fund such core fixed costs.

(V) The City is not required to fully fund any given essential service or improvement cost through a special assessment. So long as the application of funds is for a public purpose and funds are legally available, the City may alternatively determine to fund all or some discrete portion of an essential service or improvement, such as fire protection services, facilities and programs, with general fund or other legally available revenues. The determination as to whether to contribute other legally available revenues, and how much to contribute, lies solely in the discretion of the City Council.

(W) There is no requirement that the City impose an assessment for the maximum amount of the budget which can be funded by special assessments. Stated in the alternative, the City Council may annually determine as a tax equality tool to impose special assessments at a rate less than necessary to fund all or any specific portion of the costs which might otherwise be funded by special assessments associated with fire protection services and facilities. Costs incurred in providing fire protection services, facilities and programs not otherwise funded through Fire Service Assessments may be paid with general fund or other legally available revenues. Such legally available revenues as a matter of policy may be applied exclusively to any tier or class of budget allocation or

expense otherwise funded by a special assessment, in part to one tier or class of any budget allocation or expense, or in any combination thereof, and maintain the validity of each apportionment approach used for the remaining portion of the budget attributed to the Fire Service Assessed Cost. The flexibility is implemented through a policy and legislative determination employed through careful adherence to case law, statutory law, and the State Constitution, as well as the exercise of annual budget responsibility, discretion and equity vested in the City Council. However, in no event shall any annual rate of special assessment exceed that previously noticed to the affected land owners without further notice and public hearing pursuant to the Assessment Ordinance.

(X) The City Council is cognizant that any system, metric or analytical view of appraising benefits or assessing costs will be open to some criticism or suggestion of alternative methods or approaches, and has labored to educate itself as to the facts, analysis, law and policy latitudes available to it in determining the Fire Service Assessed Cost and the rate of the Fire Service Assessment and approving the Fire Service Assessment Roll.

(Y) The apportionment among Tax Parcels of a portion of the City's annual budget for fire protection services, facilities and programs represented by the assessment rates and Fire Service Assessments hereby adopted, are reasonably characterized as necessary for providing the continual readiness to provide fire protection, notwithstanding

whether fire incidents or fire calls materialize or not; and, is hereby determined to be a fair and reasonable means to annually allocate and share such benefits, burdens and costs.

(Z) The benefits derived or burdens relieved from the continual readiness to provide fire protection services, facilities and programs as to each Tax Parcel subjected to the Fire Service Assessments equal or exceed the amount of the special assessments levied and imposed hereunder. The Assessment for any Tax Parcel within the City in employing such an approach also does not exceed the proportional benefits that such Tax Parcel will receive compared to any other Tax Parcel so assessed within the City.

(AA) The Council hereby finds and determines that the Fire Service Assessments to be imposed in accordance with this Resolution provide a proper and equitable method of funding associated fire protection services and facilities by fairly and reasonably allocating a portion of the cost thereof among specially benefited property.

[Remainder of page intentionally left blank.]

**ARTICLE II
NOTICE AND PUBLIC HEARING**

SECTION 2.01. ESTIMATED FIRE SERVICE ASSESSED COST; RATE OF ASSESSMENT.

(A) The estimated Fire Service Assessed Cost to be recovered through Fire Service Assessments for the Fiscal Year commencing October 1, 2012 is \$256,550 (for Tier 1 – relative value of improvement for each Tax Parcel) and \$431,950 (for Tier 2 – per Tax Parcel for readiness to serve).

(B) The Fire Service Assessments established in this Annual Assessment Resolution are determined by the assessment rates prepared for consideration by the public and City Council in the preparation of the Fire Service Assessment Roll for the Fiscal Year commencing October 1, 2012.

(C) The rate of Fire Service Assessment is (1) \$0.78 per thousand dollars of improvements, or fraction thereof, for each Tax Parcel as reflected in the Tax Roll (Tier 1), plus (2) \$106 per Tax Parcel (Tier 2).

SECTION 2.02. FIRE SERVICE ASSESSMENT ROLL

(A) The Assessment Coordinator has prepared a preliminary Fire Service Assessment Roll that contains the following information:

(1) a summary description of each Tax Parcel (conforming to the description contained on the Tax Roll maintained by the Property Appraiser for the

purpose of levying and collecting ad valorem taxes) which is intended to be subject to the Fire Service Assessment;

(2) the name of the owner of record of each Tax Parcel, as shown on the Tax Roll; and

(3) the proposed amount of the total Fire Service Assessment for each affected Tax Parcel for the fiscal year commencing October 1, 2012, exclusive of anticipated costs of collection and administration.

(B) In the event the City also imposes or collects an impact fee upon new growth or development for capital improvements related to fire protection, the special assessments provided for hereunder shall not include costs attributable to capital improvements necessitated by new growth or development which were included in the computation of such impact fee or which are otherwise funded by such impact fee.

(C) Copies of the Assessment Ordinance, this Resolution and the preliminary Fire Service Assessment Roll have been made available in the City Clerk's office at 201 Howell Avenue, Suite 300, Brooksville, Florida or have been open to public inspection in a manner consistent with the Assessment Ordinance. The amount of the proposed Assessment for each Tax Parcel has been noticed since May 27, 2012 at or through the City's website and accessible through the internet at www.cityofbrooksville.us.

(D) In the event the Assessment Coordinator makes any corrections, exemptions, administrative hardship deferrals or other modifications to the Assessment Roll authorized

by the Assessment Ordinance, this Resolution or otherwise, all funding for such changes to the Assessment Roll shall be funded by legally available funds other than direct proceeds of the Assessments. Such changes shall not require any recalculation or change in the rate or rates of assessment otherwise considered or adopted pursuant to the Assessment Ordinance or any Annual Assessment Resolution.

SECTION 2.03. NOTICE BY PUBLICATION. The Assessment Coordinator directed the publication of notice of a public hearing in the manner and time provided in the Assessment Ordinance. Proof of publication of the notice is attached hereto as Appendix A.

SECTION 2.04. PUBLIC HEARING. A public hearing was held on June 18, 2012 at 7:00 p.m. and July 2, 2012 at 7:00 p.m. in Council Chambers at City Hall, 201 Howell Avenue, Brooksville, Florida, at which time the Council received and considered information and comments on the Fire Service Assessments from City officials, staff and advisors, as well as the public and affected property owners, and considered imposing Fire Service Assessments and the method of collection thereof as required by the Assessment Ordinance.

[Remainder of page intentionally left blank.]

**ARTICLE III
ASSESSMENTS**

SECTION 3.01. IMPOSITION THROUGHOUT CITY. Upon adoption hereof, Fire Service Assessments are to be imposed throughout the entire area within the boundaries of the City and this Resolution shall be deemed to be adopted and confirmed for all purposes.

SECTION 3.02. IMPOSITION OF ASSESSMENTS. Fire Service Assessments shall be imposed against Tax Parcels located within the City, the annual amount of which shall be computed for each Tax Parcel in accordance with this Resolution. When imposed, the Fire Service Assessment for each Fiscal Year shall constitute a lien upon Assessed Property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments as provided in the Assessment Ordinance.

SECTION 3.03. APPORTIONMENT APPROACH.

(A) As provided for herein, the Fire Service Assessed Cost shall be apportioned among all Tax Parcels within the City, not otherwise exempted hereunder, and including statutorily defined parcels such as individual condominium or cooperative units with extraordinary alienability. The estimated Fire Service Assessed Cost and rate of Fire Service Assessment shall be that described in Section 2.01 hereof.

(B) It is hereby ascertained, determined, and declared that the method of determining the Fire Service Assessments as set forth in this Annual Assessment Resolution is a fair and reasonable method of apportioning the Fire Service Assessed Cost among Tax Parcels of Assessed Property located within the City.

(C) The Fire Service Assessment Roll is hereby approved.

SECTION 3.04. APPLICATION OF ASSESSMENT PROCEEDS. Proceeds derived by the City from the Fire Service Assessments, after payment of costs and expenses associated with collection and administration of the Assessments, shall be utilized for the provision of fire protection related services, facilities, and programs associated with maintaining continual readiness to serve. In the event there is any fund balance remaining at the end of the Fiscal Year, such balance shall be carried forward and used only to fund costs associated with fire protection related services, facilities, and programs.

SECTION 3.05. COLLECTION OF ASSESSMENTS; VALIDATION.

(A) Unless otherwise determined by the Council, collection of the Fire Service Assessments shall take place pursuant to the traditional direct billing method of collection described in Article III of the Assessment Ordinance.

(B) The amount of the Assessment billed to each owner of Assessed Property may include a pro rata share of the costs and expenses associated with collection and administration of the Assessments.

(C) Capital equipment and facilities are fundamental components to the preparedness necessary to continually stand ready to provide fire protection services, facilities and programs. Following adoption of this Annual Assessment Resolution, but prior to the date on which the Fire Service Assessment Roll is certified for collection, the Assessment Coordinator and counsel for the City are directed and authorized to promptly institute proceedings pursuant to Chapter 75, Florida Statutes, for validation of any Obligations to be secured by the Assessments. Unless directed otherwise by resolution of the City Council, the imposition and collection of Assessments as provided herein shall be contingent upon the validation of any such Obligations and the appeal period having expired without an appeal having been taken and/or any appeal having been resolved in favor of the City. Any Obligations issued by the City shall contain a covenant by the City to adopt an Annual Assessment Resolution imposing Assessments for each Fiscal Year until the Obligations have been paid in full.

SECTION 3.06. EXEMPTION.

(A) Tax Parcels which are statutorily exempted from the payment of ad valorem taxes are not subject to the Fire Service Assessments contemplated hereunder. Such Tax Parcels include those classified or described by the Property Appraiser as institutionally tax exempt, including the following classifications: (1) vacant institutional, (2) churches & temples, (3) private schools & colleges, (4) privately-owned hospitals, (5) homes for the

aged, (6) mortuary, cemetery & crematorium, (7) clubs, lodges & union halls, (8) sanitarium, convalescent & rest home, and (9) cultural organization facilities.

(B) Tax parcels comprising Government Property are not subject to the Fire Service Assessments contemplated hereunder. Such Tax Parcels include those classified or described by the Property Appraiser as government-owned, including the following: (1) military, (2) forest, parks, recreational, (3) public county schools, (4) public colleges, (5) public hospitals, (6) other county-owned property, (7) other state-owned property, (8) other federal-owned property, and (9) other municipal-owned property.

(C) The following Tax Parcel classifications are special designations used by the Property Appraiser for recordkeeping purposes and do not represent actual or assessable Tax Parcels and are not subject to the Fire Service Assessments contemplated hereunder: (1) common element, (2) header record, and (3) notes parcel.

(D) Certain Tax Parcels associated with the following classifications used by the Property Appraiser typically do not receive a special benefit from the provision of fire protection services and facilities or are infeasible or impractical to assess, and therefore are not subject to the Fire Service Assessments contemplated hereunder: (1) utility, (2) mining, petroleum and gas lands, (3) subsurface rights, (4) right-of-way, (5) rivers, lakes & submerged land, (6) sewage disposal & waste lands, and (7) outdoor recreation or parkland.

(E) The foregoing classifications of properties are reasonably determined to be inappropriate, infeasible or impracticable to assess, and either benefit marginally or create a lesser or nominal demand or burden on the City's costs associated with readiness to serve, do not merit the expenditure of public funds to impose or collect the Fire Service Assessments, are tax exempt and/or otherwise generally serve in some respect to promote the public health, safety, morals, general welfare, security, prosperity and contentment of the inhabitants or residents of the City. The Assessment Coordinator, or her designee, is authorized and directed to use sound judgment in extending such determinations and guidance as the Fire Service Assessment Roll is collected. The foregoing classifications of properties not to be assessed do not include Government Property that is leased for private use.

(F) Based upon the foregoing, there are relatively few exempt properties within the City. Using legally available funds other than the proceeds of the Fire Service Assessments, the City shall otherwise fund or contribute an amount equal to the Fire Service Assessments that would have been otherwise derived from such exempt properties.

(G) Provided, however, the City Council reserves the right and ability in the future to impose Fire Service Assessments against Tax Parcels determined to be exempt hereunder to the extent permitted by law or otherwise in the event required or directed to do so by a court of competent jurisdiction.

SECTION 3.07. EFFECT OF ANNUAL ASSESSMENT RESOLUTION. The adoption of this Annual Assessment Resolution shall be the final adjudication of the issues presented herein (including, but not limited to, the method of apportionment and assessment, the rate or rates of assessment, the Assessment Roll, and the levy and lien of the Assessments), unless proper steps are initiated in a court of competent jurisdiction to secure relief within twenty (20) days from the date of City Council's adoption of this Annual Assessment Resolution.

[Remainder of page intentionally left blank.]

**ARTICLE IV
GENERAL PROVISIONS**

SECTION 4.01. AUTHORIZATIONS. The Mayor and any member of the City Council, the City Manager, the City Attorney, the Clerk, the Fire Chief and such other officials, employees or agents of the City as may be designated by the City Manager are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents, and contracts on behalf of the City that are necessary or desirable in connection with the imposition and collection of the Fire Service Assessments contemplated hereunder, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

SECTION 4.02. CONFLICTS. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4.03. SEVERABILITY. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are declared to be severable.

[Remainder of page intentionally left blank.]

SECTION 4.04. EFFECTIVE DATE. This Annual Assessment Resolution

shall take effect immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED as of the 2nd day of July, 2012.

**CITY COUNCIL OF BROOKSVILLE,
FLORIDA**

By: _____
Joseph E. Johnston, III, Mayor



Attest: _____
By: _____
Janice L. Peters, City Clerk

Approved as to form for the Reliance
of The City of Brooksville Only:

Thomas S. Hogan, Jr., City Attorney

VOTE OF CITY COUNCIL

Bernardini	<u> NAY </u>
Bradburn	<u> AYE </u>
Burnett	<u> AYE </u>
Hohn	<u> AYE </u>
Johnston	<u> AYE </u>

APPENDIX A

PROOF OF PUBLICATION

Tampa Bay Times

Published Daily

St. Petersburg, Pinellas County, Florida

STATE OF FLORIDA }
COUNTY OF Pinellas } s.s.

Before the undersigned authority personally appeared **D. Almeida** who on oath says that he/she is Legal Clerk of the *Tampa Bay Times* a daily newspaper published at St. Petersburg, in Pinellas County, Florida; that the attached copy of advertisement, being a Legal Notice in the matter RE: Notice of Public Hearing 2012-11 was published in said newspaper in the issues of Classified *Hernando & Citrus*, 5/26/2012.

Affiant further says the said *Tampa Bay Times* is a newspaper published at St. Petersburg, in said Pinellas County, Florida and that the said newspaper has heretofore been continuously published in said Pinellas County, Florida, each day and has been entered as second class mail matter at the post office in St. Petersburg, in said Pinellas County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement, and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Signature of Affiant

Sworn to and subscribed before me
this 28th day of May A.D. 2012

Signature of Notary Public

Notary Public State of Florida
Debra Pedone
My Commission DD065709
Expires 06/21/2014

Personally known or produced identification

Type of identification produced _____

**CITY OF BROOKSVILLE, FLORIDA
NOTICE OF PUBLIC HEARING
TO IMPOSE AND PROVIDE FOR COLLECTION OF
SPECIAL ASSESSMENTS TO FUND, IN PART, THE BENEFITS,
BURDENS AND COSTS ASSOCIATED WITH
THE CONTINUAL READINESS TO PROVIDE FIRE PROTECTION**

The City of Brooksville (the "City") is in the process of establishing a dedicated funding source for the provision of fire protection services and facilities through the imposition of non-ad valorem assessments, sometimes referred to as special assessments, against certain real property located within the City limits. The special assessments, if approved by the City Council, will be allocated among assessable tax parcels according to a two tiered methodology pursuant to which a portion of the costs attributable to the City's continual readiness to provide fire protection services will be shared equally among all tax parcels on a per parcel basis (Tier 2), and a portion of the remaining costs will be shared in accordance with the relative value of improvements for each parcel in the City as compared to the value of improvements for all parcels in the City (Tier 1).

A public hearing will be held at 7:00 p.m. on June 18, 2012, in Council Chambers at City Hall, 201 Howell Avenue, Brooksville, Florida 34601, to receive public comment on the proposed special assessments. All affected property owners have a right to appear at the hearing and to file written objections with the City within twenty days of this notice. If a person decides to appeal any decision made by the City Council with respect to any matter considered at the hearing, such person will need a record of the proceedings and may need to ensure that a verbatim record is made, including the testimony and evidence upon which the appeal is to be made.

The contemplated special assessment offers a reasoned approach for cost sharing premised upon two distinct tiers or classes of assessment allocations: Tier 1 - a sharing of benefits, burdens and costs for fire protection services and facilities based upon the relative value of improvements for each tax parcel in the City as compared to the value of improvements for all tax parcels in the City; and, Tier 2 - a sharing of benefits, burdens and costs for fire protection services and facilities on a per tax parcel basis which will reduce dependence on property taxes alone as the sole source of funding for fire protection services, reduce the demand on the City's other legally available funds, and is intended to achieve a more equitable, balanced, sustainable and dedicated means of funding the City Fire Department's service mission over time.

The special assessment is an annual assessment which will continue from year to year. For the upcoming fiscal year, any assessment will be billed directly by the City to the property owner at the address shown on the records maintained by the county tax collector. In future fiscal years, the assessment may be collected pursuant to the tax bill collection method authorized by Section 187.3632, Florida Statutes, in which case the annual assessment will include fees imposed by the county property appraiser and tax collector and will be adjusted as necessary to account for any statutory discounts which are necessitated when employing the efficiencies of collecting the assessments annually on the same bill as property taxes.

If approved by City Council at the conclusion of the public hearing, the special assessment for each tax parcel will equal the sum of (1) \$0.78 per \$1,000 of the value of improvements attributed to the tax parcel by the county property appraiser (Tier 1) plus (2) \$105.00 per tax parcel (Tier 2), together with a share of administration and collections costs associated with annual assessment. The dollar amount of the proposed special assessment attributable to each tax parcel is available online at www.cityofbrooksville.us or at the offices of the City Clerk, located at City Hall, 201 Howell Avenue, Brooksville, Florida 34601.

This Notice is intended to inform all constituents about the City's efforts to effectively budget and use a blend of legally available revenues to meet its fire service obligations, reduce costs, be efficient and continue to provide a reasonable level of service. The mission of the City's Fire Department is to always stand ready to protect the lives and property of the community through exemplary fire education, prevention, suppression and associated emergency rescue services. This special assessment provides a supplemental and dedicated means to accomplish these responsibilities.

PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE CITY CLERK AT LEAST 48 HOURS IN ADVANCE OF THE MEETING AT (352) 540-3810.

s/Janice L. Peters
By: Janice L. Peters
City Clerk

FILE: 2012-11

PUBLISH: Saturday, May 26, 2012 (003753378)



City Council
AGENDA ITEM: C4
November 14, 2016

AGENDA ITEM MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

VIA: T. JENNENE NORMAN-VACHA, CITY MANAGER

A handwritten signature in black ink, appearing to read "T. Jennene Norman-Vacha", written over the printed name.

SUBJECT: PERSONNEL GRIEVANCE COMMITTEE

DATE: NOVEMBER 4, 2016

To facilitate policy discussions regarding Personnel Grievance Committee, we are providing items that Council Members asked that the City Manager provide. They are as follows:

1. City Charter
2. Hernando County Board of County Commissioners,
Personnel Advisory Board Policy

When we receive additional information/materials for this item, we will provide the same to Council.

ATTACHMENTS:

1. Brooksville City Charter
2. Hernando County Board of County Commissioners Policy

Attachment 1

PART I - CHARTER

FOOTNOTE(S):

--- (1) ---

Editor's note— Printed in this part is the city Charter, being Ord. No. 287 as adopted by October 1, 1979, and approved at referendum on December 1979. Amendments are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Additions made for clarity are indicated by brackets.

ARTICLE I. - CREATION AND POWERS

Sec. 1.01. - Purpose.

We, the people of the City of Brooksville, Florida, desiring to avail ourselves of the right to establish a home rule charter form of government, do ordain and establish, in accordance with the constitution and laws of the State of Florida, this organic structure of government for the City of Brooksville, Florida.

Sec. 1.02. - Corporate limits.

The following area shall constitute the corporate limits:

[The boundary description for the City of Brooksville is not printed herein but is on file in the city clerk's office.]

The corporate limits may be increased or contracted as provided by law.

Sec. 1.03. - Powers.

The city shall have all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, and it may exercise any power for municipal purposes except when expressly prohibited by law. All extraterritorial powers and jurisdiction, powers of taxation and powers to impose and enforce liens which the city now has are preserved.

The powers of the city shall be construed liberally in favor of the city, limited only by the Constitution of the State of Florida, general law and specific limitations contained herein. Special acts pertaining to the jurisdiction and exercise of powers by this city shall be considered amendments to this

charter and, pursuant to the provisions adopted for incorporation of other charter amendments, shall be incorporated as official amendments to the charter.

ARTICLE II. - LEGISLATIVE

Sec. 2.01. - City council; powers and composition.

There shall be a city council with all legislative powers of the city vested therein, consisting of five (5) members, who shall be electors of the city, elected by the electors of the city.

Sec. 2.02. - Qualifications of city council members; term of office.

- (a) Any elector who has continuously resided in the City of Brooksville for at least one (1) year, immediately prior to qualifying, shall be eligible to hold the office of city council member.
- (b) Members shall be elected for a four-year term. Consecutive terms shall be limited to two (2), full, four (4) year terms with a minimum of a one-year period of time out of office before being allowed to run for council subsequently.

(Res. No. 90-13, § 1, 10-15-1990; Ord. No. 287-B, 9-11-1995; Ord. No. 287-F, § 1, 8-21-2006)

Editor's note—

The requirement for a candidate to be a real property owner was editorially deleted as it is of doubtful constitutionality.

Sec. 2.03. - Mayor; vice-mayor.

The council shall elect from among its members a mayor and a vice-mayor. Election of the mayor and vice-mayor shall be done annually at the first regular council meeting in December of each year. The mayor shall preside at meetings of the council, shall be recognized as head of city government for all ceremonial purposes, by the governor for purposes of military law, for service of process, execution of contracts, deeds and other documents, and as the city official designated to represent the city in all agreements with other governmental entities or certifications to other governmental entities, but shall have no administrative duties except as required to carry out the responsibilities herein. The vice-mayor shall act as mayor during the absence or disability of the mayor.

(Ord. No. 287-C, § 1, 8-17-1998)

Sec. 2.04. - Disqualification and forfeiture of office.

The council shall be the judge of the disqualification of its members and of the grounds for forfeiture of their office. Forfeiture of office by a council member shall be limited to the following:

- (1) Permanent inability to perform official duties.
- (2) Conviction of a felony.
- (3) Neglect of duty for failure to attend a majority of council meetings within the immediate prior six (6) months' term of office without just cause.
- (4) Council member no longer meets residency requirements of having primary residence within the city limits.

A member charged with conduct constituting grounds for forfeiture of his or her office shall be entitled to a public hearing on demand and notice of such hearing shall be published in one (1) or more newspapers of general circulation in the city at least one (1) week in advance of the hearing. Forfeiture of office shall require not less than a four-fifths (4/5) vote of the entire council.

(Res. No. 90-13, § 1, 10-15-1990; Ord. No. 287-A, 10-15-1990; Ord. No. 287-B, 9-11-1995; Ord. No. 828 § 1, 6-4-2012/11-6-2012)

Sec. 2.05. - Compensation and expenses.

The council may determine the annual salary of council members and mayor or vice-mayor by ordinance, but no ordinance increasing such salary shall become effective until the commencement of the fiscal year. Council members shall receive their actual and necessary expenses incurred in the performance of their duties of office as provided by law.

(Res. No. 90-13, § 1, 10-15-1990)

Sec. 2.06. - Election.

All municipal elections shall be conducted and vacancies filled in accordance with the provisions of F.S. chs. 97—106, inclusive, known as the Florida Election Code, and as may be amended, except as provided or modified by the city charter, its amendments or ordinances.

Sec. 2.07. - Electors.

Any person who is a resident of the city, and who is qualified as an elector of this state and who registered in the procedural manner prescribed by general law and ordinance of the city, shall be an elector of the city.

State law reference— Qualifications for municipal elector, F.S. § 166.032.

Sec. 2.08. - Nominations.

Candidates for the offices of city council shall be nominated for such office by the filing of a written notice of candidacy with the designated city official at such time and in such manner as may be prescribed by general law and ordinance.

Sec. 2.09. - Form of ballots.

The council, by resolution, shall prescribe the form of ballot, including the method of listing candidates for city council and any other city election, in accordance with the provisions of Florida Statutes. A charter amendment or referendum question to be voted on by the city electors shall be presented to the voters by ballot title. The ballot title of the measure may differ from its legal title and shall be a clear, concise statement describing the substance of the measure without argument or prejudice.

(Ord. No. 287-D, 7-3-2000)

Sec. 2.10. - Candidates.

- (a) *One (1) single candidate:* In the event that no more than one (1) person qualifies as a candidate, either for ballot listing or write-in, for a designated seat on the city council, that seat or office shall not be listed on the regular city election ballot. The city council by resolution shall designate the qualified candidate as the council member for the designated seat.
- (b) *One (1) candidate for each open seat:* In the event that all the seats scheduled for election have only one (1) candidate qualify, the city council, by a resolution, shall declare that no election shall be held and the qualified candidate shall fill the designated seat.

(Ord. No. 287-B, 9-11-1995; Ord. No. 287-F, § 1, 8-21-2006)

Sec. 2.11. - Nonpartisan elections.

All nominations and elections for the offices of city council shall be conducted on a nonpartisan basis without regard for, or designation of, political party affiliation of any nominee on any nomination petition or ballot.

(Ord. No. 287-F, § 1, 8-21-2006)

Sec. 2.12. - Procedure.

- (a) *Meeting:* The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the mayor or of a majority of the members and, whenever practicable, upon no less than twenty-four (24) hours' notice to each member and the public. All meetings shall be public.
- (b) *Rules in general:* The council shall determine its own rules and the mayor shall set the order of business for each meeting.
- (c) *Voting:* Voting on ordinances and resolutions shall be by roll call and shall be recorded in the journal. A majority of the council shall constitute a quorum; but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to

the penalties prescribed by the rules of the council. No action of the council shall be valid or binding unless adopted by the affirmative vote of the majority of a quorum present, except as may be more specifically described in this charter.

(Ord. No. 287-A, 10-15-1990; Ord. No. 287-F, § 1, 8-21-2006)

Sec. 2.13. - Ordinances in general.

- (a) [*Definitions:*] "Ordinance" means an official, legislative action of the council, which action is a regulation of a general and permanent nature and enforceable as a local law.
- (b) [*Form, procedure generally:*] Ordinances, including the form, procedure, effective date, action required in ordinance, emergency ordinances, emergency appropriations, budget adoption, reduction of appropriation and limitations shall be as prescribed by general law.
- (c) *Emergency ordinances:* To meet a public emergency affecting life, health, property, welfare or the public peace, the council may adopt one (1) or more emergency ordinances, but such ordinance may not levy taxes, grant, renew or extend, a franchise, [or] set service or user charges for any municipal services.
 - (1) *Form:* An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated in the preamble as an emergency ordinance and shall contain, after the enactment clause, a declaration stating that an emergency exists and describing it in clear and specific terms.
 - (2) *Procedure:* An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least three-fifths (3/5) of all the council shall be required for adoption. After its adoption, the ordinance shall be printed and published as prescribed for other adopted ordinances.
 - (3) *Effective date:* Emergency ordinances shall become effective upon adoption or at such other date as may be specified in the ordinance.
 - (4) *Repeal:* Every emergency ordinance except emergency appropriations shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance under regular procedures, or if the emergency still exists, in the manner specified in this section. An emergency ordinance may also be repealed by the adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.
 - (5) *Emergency appropriations:* The council may make emergency appropriations in the manner provided in this section. To meet such appropriations, the council may, by such emergency ordinance, authorize the issuance of emergency notes which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.

(Ord. No. 287-F, § 1, 8-21-2006)

State law reference— Ordinance adoption procedure, F.S. § 166.041.

Sec. 2.14. - Budget adoption.

The council shall, by ordinance, adopt the budget on or before the 30th day of September of each year. If it fails to adopt a budget by this date, the council, by resolution, may direct that the amounts appropriated for current operation for the current fiscal year shall be deemed adopted for the ensuing fiscal year for a period of fifteen (15) days and renewed by resolution each fifteen (15) days with all items in it prorated accordingly, until such time as the council adopts a budget for the ensuing fiscal year. An ordinance adopting an annual budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated.

State law reference— Method of fixing millage and budget adoption procedure, F.S. § 200.065; preparation and adoption of budget, F.S. § 129.03.

Sec. 2.15. - Appropriations amendments during the fiscal year.

- (a) *Budget Transfers:* Any sum appropriated during a fiscal year within the various departments and funds of the city for a particular use(s), which are not required for such use(s), may be applied to other expenses of the department to which said sums are appropriated, or the fund from which it was appropriated.
- (b) *Budget over-expenditures:* Departmental appropriations may not be exceeded without the consent and approval of council and transfer of the additional funds from reserve for contingencies or other sources.
- (c) *Additional revenue-supplemental appropriations:* If during the fiscal year, revenues in excess of those estimated in the budget, are available for appropriation, the council, by ordinance, may make supplemental appropriations for the year up to the amount of such excess.
- (d) *Insufficient revenues-reduction of appropriations:* If, at any time, during the fiscal year, it appears probable to the city manager that the revenues available will be insufficient to meet the amount appropriated, he or she shall report to the council without delay, indicating the estimated amount of the deficit, any remedial action taken by him/her and his or her recommendations as to any other steps to be taken. The council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose it may, by ordinance, reduce one (1) or more appropriations.
- (e) *Limitations; effective date:* No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

(Res. No. 90-13, § 1, 10-15-1990; Ord. No. 287-D, 7-3-2000; Ord. No. 287-F, § 1, 8-21-2006)

Sec. 2.16. - Authentication, recording and disposition of charter amendments, ordinances and resolutions.

- (a) *Authentication:* The presiding officer of the council and the city clerk shall authenticate by their signatures all ordinances and resolutions adopted by the council. In addition, when charter amendments have been approved by the electors, the presiding officer of the council and the city clerk shall authenticate by their signature the charter amendment, such authentication to reflect the approval of the charter amendment by the electorate.
- (b) *Recording:* The city clerk shall keep properly indexed books in which all ordinances and resolutions passed by the council shall be recorded in full. Ordinances shall, at the direction of the council, be periodically codified. The city clerk shall also maintain the city charter in current form and shall enter all charter amendments and send a copy of the revised charter incorporating amendments to the secretary of state's office.
- (c) *Printing:* The council shall, by ordinance, establish procedures for making all resolutions, ordinances, technical codes adopted by reference, and this charter available to the people of the city for public inspection and available for purchase at a reasonable price, but not to be less than the cost to the city.

(Ord. No. 287-F, § 1, 8-21-2006)

Editor's note—

The words city clerk was editorially inserted in place of person charged with keeping the journal at the direction of the city.

State law reference— Charter amendment procedure, F.S. § 166.031.

ARTICLE III. - ADMINISTRATION

Sec. 3.01. - City manager.

There shall be a city manager who shall be the chief administrative officer of the city. He or she shall be responsible to the council for the administration of all city affairs placed in his or her charge by, or under this charter.

(Res. No. 90-13, § 1, 10-15-1990)

Sec. 3.02. - Appointment; removal; compensation.

- (a) *Appointment:* The council shall appoint a city manager by a majority vote of all of the council members.
- (b) *Removal:* The council may remove the manager by a majority vote of all the council members.

(c) *Compensation:* The compensation of the manager shall be fixed by the council.

(Res. No. 90-13, § 1, 10-15-1990; Ord. No. 287-B, 9-11-1995; Ord. No. 287-F, § 1, 8-21-2006)

Sec. 3.03. - Acting city manager.

By letter filed with the council, the manager shall designate, subject to approval of the council, a qualified city administrative officer to exercise the powers and perform the duties of the manager during his or her temporary absence or disability. During such absence or disability, the council may revoke such designation at any time and appoint another officer of the city to serve until the manager shall return or his or her disability shall cease.

(Res. No. 90-13, § 1, 10-15-1990)

Sec. 3.04. - Powers and duties of the city manager.

The city manager shall:

- (1) Appoint, suspend or remove all city employees and appoint administrative officers provided for by and under this charter, except as otherwise provided by law.
- (2) Administer and enforce all laws, ordinances, contracts and franchises.
- (3) Negotiate all contracts, franchises, acquisition and disposition of property either in proper person or through agents designated by him or her and, upon approval thereof by the council, implement on behalf of the city all agreements, leases, deeds and other instruments in connection therewith.
- (4) Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law.
- (5) Attend all council meetings and have the right to take part in discussion but not vote.
- (6) See that all laws, provisions of this charter and acts of the council, subject to enforcement by him or her or by officers subject to his or her direction and supervision, are faithfully executed.
- (7) Prepare and submit the annual budget, budget message and capital program to the council in a form provided by ordinance.
- (8) Submit to the council and make available to the public a complete report of the finances and administrative activities of the city as of the end of each quarter and fiscal year.
- (9) Make such other reports as the council may require concerning the operation of the city departments, offices and agencies subject to his or her direction and supervision.
- (10) Keep the council fully advised as to the financial condition and future needs of the city and make recommendations to the council concerning the affairs of the city.
- (11) Sign contracts on behalf of the city pursuant to the provisions of appropriations ordinances.
- (12) Perform such other duties as are specified in this charter or as may be required by the council.
- (13)

Make such recommendations as the manager deems necessary or expedient in the interest of the city to the council relating to the adoption of ordinances and resolutions; provided, however, that nothing herein contained shall prevent the city council in the exercise of its legislative functions and powers from calling into consultation the boards or departments and other officers and employees of the city wherever in the judgment of the council it may be necessary, but neither the council nor any member shall interfere with the conduct of any department officer or an employee in the discharge of his or her duty.

(Res. No. 90-13, § 1, 10-15-1990; Ord. No. 287-A, 10-15-1990; Ord. No. 287-B, 9-11-1995; Ord. No. 287-F, § 1, 8-21-2006)

Sec. 3.05. - Supervision of departments.

Except as otherwise provided in this charter or by general law, the city manager shall be responsible for the supervision and direction of all departments, agencies and offices of the city. All departments, offices and agencies under the direction and supervision of the manager shall be administered by an officer appointed by and subject to the direction and supervision of the manager. With the consent of council the manager may serve as the temporary head (six-month maximum without further approval of council) of one (1) or more departments, offices or agencies or may appoint one (1) person as the temporary head (six-month maximum without further approval of council) of two (2) or more of them.

(Ord. No. 287-B, 9-11-1995; Ord. No. 287-F, § 1, 8-21-2006)

Sec. 3.06. - Personnel system.

All appointments and promotions of city officers and employees, except those specifically exempted by policy, shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence and, to this end, the council shall, by policy, establish personnel procedures and rules.

(Res. No. 95-12, § 1, 9-11-1995; Ord. No. 287-B, 9-11-1995; Ord. No. 287-F, § 1, 8-21-2006)

Sec. 3.07. - Administrative code.

The manager shall develop and keep current an administrative code for the purpose of implementing ordinances passed by the council.

ARTICLE IV. - DEPARTMENTS

Sec. 4.01. - Departments.

The affairs of the city shall be administered by departments. The jurisdiction, duty and functions of various departments shall be created by ordinance by the city council, as the council determines the need for various departments for the orderly and efficient operation of the city. The council may add to or delete from any department currently existing, including the number of departments and personnel required to keep any department properly functioning.

Sec. 4.02. - Professionals, consultants.

- (a) *City attorney:* There shall be a city attorney, and as many assistants as the council may, from time to time, deem necessary. The city attorney and assistants may be part-time or full-time, and shall serve under and at the pleasure of, the city council.
- (b) *Consultants:* The city council may retain consultants, without limitations, as the council deems necessary, and as may be required by general law or governmental rule and regulation. Said consultants may include, but not be limited to, engineers, architects, accountants, auditors and surveyors. Said consultants shall serve under, and at the pleasure, of the city council.

(Ord. No. 287-F, § 1, 8-21-2006)

ARTICLE V. - CONTRACTS AND BIDDING

Sec. 5.01. - Contracts; form and execution.

Every contract made by the city shall be in writing, approved by the city council, or its designee, signed by the mayor, or designee, attested to and the official city seal affixed thereto by the city official so designated, or their successors, otherwise such instruments shall be void.

Sec. 5.02. - Verbal contract.

No promise or representation of any kind or character whatsoever by any officer or employee of the city shall be binding upon, or enforceable against, nor create an estoppel, an implied contract, or any liability against or upon the city unless ratified by (1) a contract made, approved and executed as above provided, or (2) in a permit, license, approval, consent or other instrument issued pursuant to and in accordance with an ordinance of a general and permanent nature.

(Ord. No. 287-F, § 1, 8-21-2006)

Sec. 5.03. - Void contracts.

Any contract in violation of or in conflict with the Charter or any ordinance of the city shall be void.

(Ord. No. 287-F, § 1, 8-21-2006)

Sec. 5.04. - Competitive bidding.

Except where an essential public service seriously affecting the public health and safety is involved due to emergency conditions set forth by ordinance, the procurement of personal property or services shall be awarded within the statutory categories and limits established pursuant to F.S. ch. 287. Upon the recommendation of the manager, the council, may, by ordinance, decrease the amount of expenditure for which the city may obligate itself without competitive bids, bond, or approval of council.

(Res. No. 90-13, § 2, 10-15-1990; Ord. No. 287-B, 9-11-1995; Ord. No. 287-D, 7-3-2000; Ord. No. 287-F, § 1, 8-21-2006)

Sec. 5.05. - Supplemental provisions.

Where, after advertisement for bids, no bids are received for any of the items as required in section 5.04, "Competitive bidding," of the quality and within the quantities and time limits as originally advertised, the items may be purchased on the open market at the best price obtainable; and, where one (1) or more bids are the same and are the lowest received, the contract may be awarded to one (1) of the bidders or apportioned among them where the goods are susceptible to apportionment; and, where the bids are for machinery, equipment, tools and appliances, any responsible bid may be accepted.

(Ord. No. 287-B, 9-11-1995; Ord. No. 287-F, § 1, 8-21-2006)

Sec. 5.06. - Splitting.

No contract or purchase or the quantities thereof shall be split for the purpose of avoiding competitive bidding.

Sec. 5.07. - Conflicts.

No officer or employee, either individually or through any firm of which he or she is a member, or through any corporation of which he or she is a stockholder, shall receive any benefit or profit out of any contract or obligation entered into with the city, or have any financial interest in effecting any such contract or obligation; and in the event of violation of this section by an elective officer, same shall be grounds for his or her recall, and in the event of violation by any other officer or employee of the city, the person offending shall be immediately removed or discharged; provided, however, that the provision of this section shall not be more liberally or restrictively construed as provided in F.S. § 112.311 et seq., and as may be amended.

(Res. No. 90-13, § 1, 10-15-1990)

State law reference— Code of ethics, F.S. § 112.311 et seq.

Sec. 5.08. - Contracts of indemnification.

No contract entered into on behalf of the city shall contain any provision by which the city agrees to indemnify, or to obtain insurance for the benefit of, any other party to the contract.

(Ord. No. 287-E, § 1, 8-21-2006; Res. No. 2006-31, 1 b), 11-20-2006)

ARTICLE VI. - GENERAL PROVISIONS

Sec. 6.01. - Charter amendment.

This Charter may be amended in two (2) ways:

- (1) *Initiation by ordinance:* The council may, by ordinance, propose amendments to all or any part of this charter, except Article I, Section 1.02, prescribing boundaries and upon passage of the initiating ordinance, shall place the proposed amendment to a vote of the electors at the next general election held within the city or at a special election for that purpose. Amendment of Article I, Section 1.02, resulting from annexation done in accordance with general law shall be by ordinance of the council and shall not be subject to the vote of the electors except as provided by general law.
- (2) *Initiation by petition:* The electors of the city may propose amendments to this charter by petition signed by at least ten (10) percent of the total number of qualified voters registered to vote in the last regular city election.
 - (a) *Form and content of petition:* All papers of an initiation petition shall be uniform in size and style and shall be assembled as one (1) instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. The petitions shall contain, or have attached thereto, throughout their circulation, a full text of the Charter amendment.
 - (b) *Affidavit of circulators:* Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his or her presence, that he or she believes them to be the genuine signatures of the persons whose names they purport to be, and that each signor had an opportunity before signing to read the full text of the proposed charter amendment.
 - (c) *Certification of petition:* Upon certification of the sufficiency of the petition by the designated official, such certification is to include the validity of the names on the petition as qualified voters registered to vote in the last regular city election, the council shall place the proposed amendment to the vote of the electors at the next general election held not less than sixty (60) days after certification or at a special election called for such purpose.

(Res. No. 90-13, § 1, 10-15-1990; Ord. No. 287-F, § 1, 8-21-2006)

State law reference— Charter amendment procedure, F.S. § 166.031.

Sec. 6.02. - Standards of ethics.

All elected officials and employees of the city shall be subject to the standards of conduct of public officers and employees set by general law. In addition, the council may, by ordinance, establish a code of ethics for officials and employees of the city which may be supplemental to general law but in no case may an ordinance diminish the provisions of general law.

(Ord. No. 287-F, § 1, 8-21-2006)

State law reference— Code of ethics for public officers and employees, F.S. § 112.311 et seq.

Sec. 6.03. - Discrimination prohibited.

Neither the city, nor any of its officers or employees, shall engage in any practice or enter into a contract which shall result in discrimination against any person or group of persons because of race, gender, religion or national origin, age or disability.

(Res. No. 95-12, § 2, 9-11-1995; Ord. No. 287-F, § 1, 8-21-2006)

Sec. 6.04. - Facsimile signature.

Except with regard to the passage of ordinances, the manager by executive order, or the city council, by rule, may authorize the use of facsimile signatures by such persons and under such conditions as may be therein prescribed.

(Ord. No. 287-F, § 1, 8-21-2006)

Sec. 6.05. - Reemployment.

No former elected official of the city shall hold any compensated city office or employment until one (1) year after his or her termination from his or her elected position.

(Res. No. 90-13, § 1, 10-15-1990)

Sec. 6.06. - Initiative and referendum.

Qualified voters of the city shall have power to propose ordinances to the council or to require reconsideration of any adopted ordinance by petition signed by the electors of the city equal in number to not less than ten (10) percent of the electors qualified to vote in the last general municipal election; the form and content of such petition shall be as provided for under the provisions related to the recall of officers as hereinafter provided. If the council fails to adopt an ordinance so proposed or to repeal an ordinance so reconsidered, the qualified voters shall approve or reject such ordinance at a city election,

provided that such power shall not extend to the budget or capital improvement program or emergency ordinances, or ordinances relating to apportionment of money, levy of taxes or salaries of city officers or employees.

(Ord. No. 287-F, § 1, 8-21-2006)

Sec. 6.07. - Recall.

The recall of elected officials shall be governed by F.S. § 100.361, and as may be amended from time to time.

Sec. 6.08. - Charter review.

- (a) Effective following the Charter Review Process in 2000, and every six (6) years thereafter, at the first regularly scheduled council meeting in January, the council shall appoint a committee of not less than seven (7) members, all of whom shall be City residents, who shall review the charter. The charter review committee shall report to the council no later than the first regularly scheduled council meeting in May of its review year. The charter review committee shall prepare a report which shall include, but not be limited to, the following:
- (1) Whether or not the charter needs revision.
 - (2) If the report states that the charter needs revision, the report shall state specifically what revisions need to be made.
- (b) If a charter revision is recommended by the charter review committee, the council, no later than the first regularly scheduled meeting in June of the review year, shall by a majority vote of the entire council determine whether or not to submit a revised charter for a referendum vote at the next scheduled election, or a special election called for that purpose.

(Ord. No. 287-D, 7-3-2000; Ord. No. 287-E, § 1, 8-21-2006; Res. No. 2006-31, 1 d), 11-20-2006)

Sec. 6.09. - Severability and retention clause.

If any item, classification, sentence, clause, phrase or word of this charter is for any reason held or declared to be unconstitutional, invalid, inoperative, ineffective, inapplicable or void, such holding or declaration shall not be construed to affect the portion of this charter not so held or declared or affect the application of this charter to other circumstances not so held or declared; and, to the extent that such item, part, classification, sentence, clause, phrase or word was contained in the former charter then that portion of the former charter shall be revived instantly and may become a part hereof as if fully set out herein, being hereby declared to be the express intent of the people of the City of Brooksville that any such unconstitutional, inoperative, invalid, ineffective, inapplicable or void portion or portions of this Charter did not induce its ratification in that without the inclusion of any such unconstitutional, inoperative, invalid, ineffective, [in]applicable or void portion or portions of this charter, the people of the City of Brooksville would have ratified the valid and constitutional portion thereof, and would have

brought forth and ratified the former charter to the extent that the former charter created the same subject as was treated by the item, part, classification, sentence, clause, phrase, word held or declared to be unconstitutional, invalid, inoperative, ineffective, inapplicable or void.

(Ord. No. 287-F, § 1, 8-21-2006)

ARTICLE VII. - TRANSITION SCHEDULE

Sec. 7.01. - Continuation of former charter provisions.

All provisions of special laws of Florida of which the former Charter, hereby supplanted, is comprised, and which are not embodied herein specifically or by reference, and which are not inconsistent with this Charter, shall become ordinances of the city subject to amendment or repeal in the same manner as other ordinances of the city.

Sec. 7.02. - Ordinances preserved.

All ordinances in effect upon the adoption of this charter, to the extent not inconsistent with it, shall remain in full force and effect until amended or repealed.

Sec. 7.03. - Pending matters.

All rights, claims, actions, orders, contracts, and legal or administrative proceedings involving the city shall continue and remain in full force and effect except as modified pursuant to the provisions of this charter. All right, title, and interest in property, real or personal, uncollected taxes due, claims, judgments, decrees, liens, suits, actions, and choses in action, held or owned by the existing municipality shall pass to, and the same are hereby vested in, the municipality continued under this revised charter.

(Ord. No. 287-F, § 1, 8-21-2006)

Sec. 7.04. - Obligation of contracts preserved.

No debt or obligation of contract of the city shall be impaired as a result of the adoption of this charter, but all such debts and obligations shall pass to and be binding upon the municipality which is hereby organized and continued.

Sec. 7.05. - Existing rights, obligations, duties and relationships.

All rights, obligations, duties and relationships now existing by law or agreement between the city and other governmental units shall be unaffected and shall remain in full force and effect.

Secs. 7.06, 7.07. - Reserved.

Editor's note—

Ord. No. 287-F, § 1, adopted Aug. 21, 2006, deleted §§ 7.06, 7.07 which pertained to deletion of obsolete schedule items and referendum vote, respectively, and derived from Res. No. 90-13, § 3, adopted Oct. 15, 1990.

Attachment 2



HERNANDO COUNTY
Board of County Commissioners

Policy Title: Personnel Advisory Board	Effective Date:	July 1, 2000
	Revision Date(s):	July 1, 2000
	Latest Review:	February 1, 2007

Policy Statement:

It is the policy of the county to establish guidelines to define the role of and function of the Personnel Advisory Board which provides advisory support to the County Administrator on matters relating to authorized grievances.

Procedure

- A. The Personnel Advisory Board's purpose is to act as an unbiased review and advisory committee to make recommendations to the County Administrator in the grievance procedure.
- B. The Personnel Advisory Board shall be composed of three (3) county employees, one (1) alternate county employee, two (2) citizens of Hernando County and one (1) alternate citizen of Hernando County. Members will be appointed by the Board of County Commissioners.
- C. The Human Resources Director or designee shall be the advisor to the Personnel Advisory Board. A legal advisor shall also be available.
- D. The Personnel Advisory Board shall convene when a grievance has reached the appropriate step of the grievance process. The Director of Human Resources shall be responsible for ensuring that all PAB members are notified of the meeting time and given an agenda with the appropriate back-up documentation.
- E. The Personnel Advisory Board is governed by the Florida Sunshine Law and meetings will be open to the public and notified appropriately.
- F. The Personnel Advisory Board may adopt its own set of procedures to be used during grievance hearing.
- G. Please see the Hernando County Grievance Policy for further information relating to the Personnel Advisory Board.

Section E

(Step Five - To be filled out by employee)

GRIEVANT/EMPLOYEE MUST SUBMIT THE ORIGINAL FORM TO THE HUMAN RESOURCES DIRECTOR FOR FURTHER SCHEDULING WITH THE PERSONNEL ADVISORY BOARD

TO: Human Resources Director

I wish to appeal my grievance to the Personnel Advisory Board..

Reason For Appeal:

SIGNATURE: _____ Date: _____
(Grievant/Employee)

Please attach decision of the Personnel Advisory Board Hearing.

FINDINGS/RECOMMENDATION OF THE HEARING OFFICER TO BE FORWARDED TO COUNTY ADMINISTRATOR FOR THE FINAL DECISION.

FILING INSTRUCTIONS

Whenever a satisfactory or final solution (at whatever step) is determined, this original must be returned to the Human Resources Department for the permanent files. Copies will be furnished when requested as soon as possible.



HERNANDO COUNTY
Board of County Commissioners

Policy Title: Employee Grievance Policy	Effective Date:	July 1, 2000
	Revision Date(s):	October 1, 2002
	Latest Review:	February 1, 2007

Policy Statement:

It is the policy of the Hernando County Board of County Commissioners to encourage employees to bring to the attention of management any of their complaints about work related situations. Employees shall be provided with an opportunity to present their complaints and have the decision of management reviewed through a formal complaint and grievance procedure. All complaints and grievances shall be resolved fairly and promptly.

In order to do this, guidelines will be established in order to provide all staff members with the opportunity to secure consideration of a grievance dealing with any of the following employment areas:

- a. Any presumed violation of Personnel Policies and Procedures as adopted by the Board of County Commissioners.
- b. Any presumed violation of established departmental policy or procedure or a departmental rule.

The following are not grievable under this policy:

- a. Sexual Harassment (Please refer to the sexual harassment policy)
- b. Layoffs and reductions-in-force
- c. Budget Appropriations
- d. Changes in the workforce due to restructuring and/or re-organization
- e. Changes in County Policies

The submission of a grievance by an employee shall in no way adversely affect the employee or

his employment with the County and the following procedure shall be followed by an aggrieved employee.

Procedure

A. Overview

1. An adjustment period employee may not appeal a dismissal or demotion.
2. The following procedure shall be followed by an aggrieved employee.
3. If needed, a member of the Human Resources Department staff may assist the aggrieved employee in the formulation of the grievance statement and in advising the affected employee of all rights and responsibilities in the grievance procedure.
4. The Human Resources staff member shall not act as a representative or advocate for the aggrieved employee.
5. The aggrieved employee shall have reasonable time to consult with the Human Resources Department and participate in the grievance process, and such time shall not be charged against the employee when it falls during the employee's normal duty hours. If such time falls outside of the employee's normal duty hours, it shall not be considered as time worked.
6. An aggrieved employee may, if desired, be represented by another person. The employee must submit, in writing, the name of their representative to the Human Resources Department and fill out any required authorizations. Any financial or other compensation for such representation shall be the sole responsibility of the aggrieved employee.
7. At any point in the grievance process after a grievance has been filed, an employee may request, in writing, a cancellation or a continuance of up to ten (10) working days. The request must be approved by the County Administrator.

B. Procedure

1. **Step One: Immediate Supervisor.**
 - a. The supervisor is defined as the employee's Rating Authority in the Employee Performance Review Program.
 - b. The aggrieved employee has the right to first personally bring his/her grievance, in writing (by completing Section A of the Grievance form), to his/her immediate supervisor within 14 calendar days of the employee learning of the situation or issue.

- c. After receiving the grievance in writing from the employee, the supervisor shall consult with management and within 14 calendar days from the date the grievance was received, will answer the grievance, in writing (Section B of the Employee Grievance Form), and attempt to resolve the matter in a manner which is satisfactory to the employee and which is consistent with the Personnel Policies and Guidelines or other County policies that may be involved.
 - d. The employee shall refer to the next step of the procedure only if he/she disagrees with the solution or explanation provided by the immediate supervisor or if a response is not received within the policy time frames.
2. Step Two: Department Director
- a. If the grievance is not adjusted to the satisfaction of the employee, the employee shall have 14 calendar days to fill out Section C of the grievance form and present it to his/her Department Director. Section C of this form will be completed by the aggrieved employee and submitted to his/her Department Director. A copy may be forwarded to Human Resources, if desired.
 - b. The Department Director will notify the employee of his/her decision within 14 calendar days from the receipt of the grievance form. This notification shall be made in writing by completing Section C of Employee Grievance Form.
 - c. The employee shall refer to the next step of the procedure only if he/she disagrees with the solution or explanation provided by the Department Director or if a response is not received within the policy time frames
3. Step Three: Personnel Advisory Board
- a. If the employee is not satisfied with the results received in Step Two, within seven (7) calendar days, from the date the answer is received, the employee will have the right to appeal before the Personnel Advisory Board. Such appeal shall be made in writing by completing Section D of the Employee Grievance form.
 - b. The Human Resources Department shall place the hearing on the Personnel Advisory Board Agenda. The meeting will be scheduled within 45 calendar days.
 - c. The Personnel Advisory Board shall hear all testimony and in the presence

of the grievant at the conclusion of the hearing, shall render a decision, which will be forwarded in writing by the Chair of the Personnel Advisory Board to the County Administrator for final approval.

- d.
 - 1. The County Administrator shall make the final decision and shall notify the employee of the results of his/her decision, in writing, within 14 calendar days from the date the recommendation is received.
 - 2. In the case where a Department Director or other direct report of the County Administrator is the grievant, the recommendation of the Personnel Advisory Board shall be forwarded to the Board of County Commissioners where it shall be placed on the Board agenda within 3 weeks. Each Board member will be provided copies of the Personnel Advisory Board meeting tapes in order to listen to the entire hearing. The Board shall then make a determination either to uphold or overturn the decision of the Personnel Advisory Board. No arguments will be presented to the Board of County Commissioners as the Board is only determining whether or not to uphold the decision of the Personnel Advisory Board. At the conclusion of the Board meeting, the County Administrator or designee shall notify the employee of the results of the Board's decision within 14 calendar days.
- e.
 - 1. The decision of the County Administrator is final and no reconsideration is available.
 - 2. In the case of Department Directors or other direct reports of the County Administrator, the decision of the Board of County Commissioners is final and no reconsideration is available.

C. DISPOSITION

- 1. Termination/Suspension Reinstatement - The employee may be compensated retroactively if he/she is reinstated as a result of the decision of management arising from the grievance procedure.
- 2. Records - Upon conclusion of the formal proceeding, all notes, documents, minutes of the procedure and materials shall be forwarded to Human Resources to be included in the grievant's personnel file.

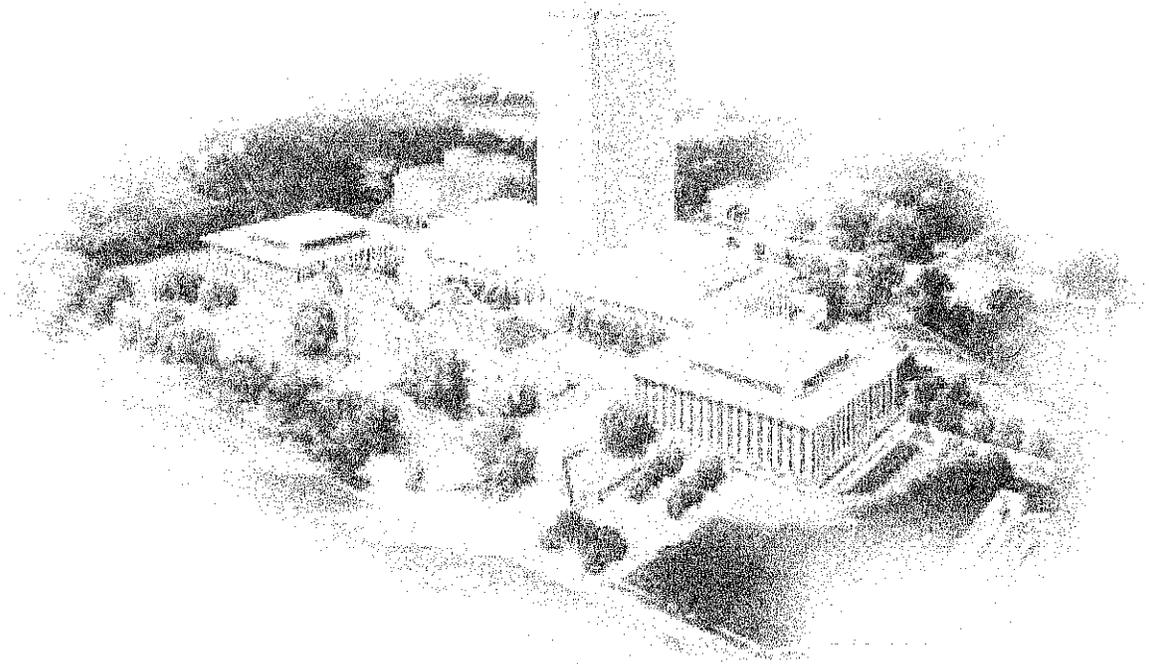
ADDITIONAL INFORMATION

AS RECEIVED FROM CITY COUNCIL MEMBERS

1. Article regarding State of Florida Civil Service System entitled: *Modernizing Florida's Civil Service System: Moving from Protection to Performance*
2. Grievance Procedure from City of Oakland Park, Florida and a portion of their City Charter/Code of Ordinances
3. Civil Service Rules and Regulations from City of Miramar, Florida and their City Charter

ATTACHMENT 1

Modernizing Florida's Civil Service System:



MOVING FROM PROTECTION TO PERFORMANCE

November 2000

A Report from The Florida Council of 100

MODERNIZING FLORIDA'S CIVIL SERVICE SYSTEM

A Report from The Florida Council of 100

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About The Florida Council of 100

Formed in 1961 at the request of Governor Farris Bryant, The Florida Council of 100 exists to promote the economic growth of Florida and improve the economic well-being and quality of life of its citizens. It is a private, non-profit, non-partisan association whose members represent a cross-section of key business leaders in Florida. The Council was the first of its kind in the United States and works in close harmony with the Governor, The Chief Justice, and the Legislature, as well as with other private organizations to achieve its goals for all the people of Florida. The Council has other task forces at work on issues relating to K-12 education, higher education, and economic development of inner cities. The Civil Service Reform Task Force was established in the fall of 1999 to review the human resources management system of the State of Florida, and to contribute to improved governmental efficiency by proposing improvements to that system.

TASK FORCE MEMBERS

Jim Apthorp, Member, Collins Center, Tallahassee
Duby Ausley, Chairman, Ausley and McMullen LLP, Tallahassee
Andy Barnes, Chairman & CEO, St. Petersburg Times, St. Petersburg
Mark Bostick, President, Comcar Industries, Auburndale
Jim Broadhead, Chairman & CEO, FPL Group, West Palm Beach
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Fred Bullard, President, The Bullard Group, Clearwater
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David Clarke, President & CEO, CSR America, West Palm Beach
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Delores Kesler, Chairman, Adium, Inc., Jacksonville
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Harry Moon, CEO, Cleveland Clinic Florida, Fort Lauderdale
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Bob Soran, President & COO, Uniroyal Technology, Sarasota
Chris Sullivan, Chairman & CEO, Outback Steakhouse, Tampa

Acknowledgements

The Council Task Force would like to acknowledge the pro-bono support of a number of organizations and individuals involved in this effort. Florida TaxWatch Research Institute, Inc., a long-time collaborative partner with the Council, provided most of the research for this report – we are especially grateful for the assistance of TaxWatch President and CEO, Dominic M. Calabro, COO Dr. Keith G. Baker, and Senior Research Analyst Mike Walsh. Dave Wenner, Managing Partner of the Miami office of the McKinsey Company provided great visioning for the effort, and Thom Shaw of the McKinsey Atlanta office pulled everything together in report format for us. Dana Russell and Joe Tanner, state agency chiefs and leaders of the Georgia reform activities in the early 1990s, devoted hours of insight into their modernization of the Georgia Merit System. Attorneys Fred Karl with Annis, Mitchell, Cockey, Edwards and Roehn, PA, and John-Edward Alley with Ford & Harrison, LLP, were most helpful in understanding the legal ramifications of Career Service System change. And finally, much of our understanding of the current Career Service System was provided by conversations with several state human resource managers. We also engaged Dr. Pat Ingraham of the Maxwell Center at Syracuse University, a leading consultant on civil service in the United States, who was very helpful in providing the background of civil service and the many attempts over the years to modernize it.

Dear Governor Bush, President of the Senate McKay, and Speaker of the House Feeney:

From The Chairman of The Florida Council of 100:

Since its inception in 1961, The Florida Council of 100 has worked with governors and legislatures to improve the quality of life and the economic well-being of the people of Florida. Public policy changes have been made over the years to improve Florida, and the economy today continues as the best in history.

We have found, however, that people's trust in their government continues to be far less than desired for this function which is so important in the day-to-day life of Florida's people. We've researched the situation and drawn the conclusion that one of the primary reasons for the public's mistrust lies in the antiquated and cumbersome personnel system for most of Florida state employees called Career Service.

This report, then, explains the current situation and proposes some sweeping changes to Career Service, which the Council believes will improve Career Service for both the employees within it and the taxpayers and people of Florida.

Charles E. Cobb, Jr.

Chairman, The Florida Council of 100

(Managing Partner and CEO, Cobb Partners, Ltd.)

From the Chairman of the Council Task Force to Modernize Florida's Civil Service System:

Our task force has spent almost a year studying the Civil Service System in Florida and various civil service systems in other locations. We've reviewed the Florida Constitution, applicable statutes, administrative code, and the collective bargaining process. We've interviewed state and local officials in Florida, as well as from California, Texas, and Georgia. We've talked with human resource directors in private companies, and knowledgeable civil service consultants.

From this research, the task force has concluded, as have several previous bi-partisan commissions and non-partisan groups, Florida needs to thoroughly modernize its employment practices, selectively adopting and fully implementing private sector management techniques. In short, the model for government employment needs to change from protecting state employees to enabling their performance. An organizational transformation is required.

We urge you to read this report closely, and are sure you will agree with our conclusions. Bold action will be required to make the necessary changes. The result will be greater productivity, new levels of individual and team performance, and greater trust in government by the people of Florida. The time for modernizing the Civil Service System is now.

Alfred Hoffman, Jr.

Vice-Chairman, The Florida Council of 100, and Chairman, Task Force to Modernize Florida's Civil Service System

(CEO, WCI Communities)

**MODERNIZING FLORIDA'S
CIVIL SERVICE SYSTEM**

A Report from the Florida Council of 100

INTRODUCTION: The Necessity for Reform

Serving Florida's diverse population well is a major challenge. To continue growing, remain prosperous, and improve the quality of life for Florida's people, the state must manage its affairs efficiently and address a variety of difficult issues. Success in these efforts will require Florida's state government – the state's largest employer – to have a well-motivated, productive, and highly responsive workforce.

Managerial practices in state government, however, have not kept pace with advances in the private sector, leading to generally lower public-sector performance. The problem has many facets: slower implementation of technology, lack of long-term planning, inefficient use of capital, insufficient flexibility for managers, improper budget incentives, and even at times “over-management” by past legislatures. Ultimately, a comprehensive transformation will be needed to raise the performance of our state government to a level its citizens need and expect.

Chief among the constraints to effective and efficient government performance, however, is the state's human resources model for Career Service employees, the largest employee segment in the Executive branch of government (the “State Personnel System”) (Exhibit 1). As will be described in later pages, this issue does not exist in the other branches of government. The core of the State Personnel System problem is Chapter 110, Florida Statutes (FS) and Chapter 60K, Florida Administrative Code (FAC). Together with collective bargaining agreements (Exhibit 2), they create a web of restrictions which make managing human resources in state government extraordinarily cumbersome. For example, the terms of employment make hiring and firing employees extremely difficult, limiting managers' ability to do their jobs; seniority as the principal criterion for retaining employees during workforce reductions sacrifices performance and undermines productivity; the compensation system does not adequately differentiate employees by performance, demotivating the most capable workers; and tight control of daily activities inhibits development of a customer-service mind-set.

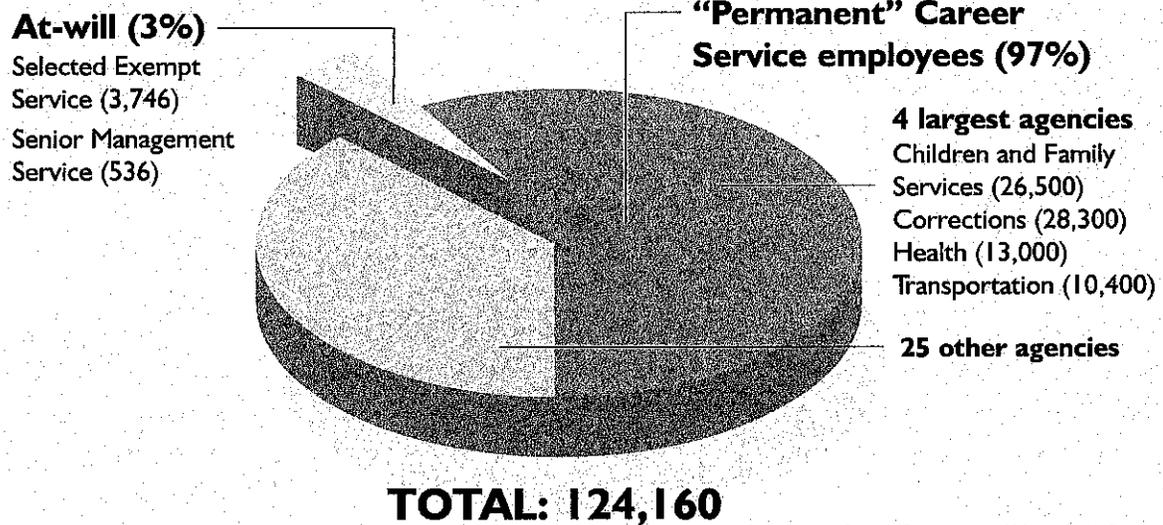
Improving government performance through better management of employees is not a new issue. The past 15 years have seen several attempts at reform, under both

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EXHIBIT I

EMPLOYEES IN FLORIDA'S STATE PERSONNEL SYSTEM



Source: Department of Management Services

Republican and Democratic administrations. Despite the bipartisan nature of this issue, none of the attempted reforms has been fully implemented or substantially delivered the desired change. The result, according to Florida State University's annual public policy survey, is that more than 60 percent of the public does not trust state government to do what is right most of the time.

The Florida Council of 100, an organization of chief executives from leading Florida companies, created a task force to study management practices in state government. The task force has examined Florida's constitution, statutes, administrative code, and collective bargaining process as they relate to civil service employment. We have analyzed the history of civil service in Florida and the United States. And we have talked with private-sector human resource directors and interviewed state and local officials in Florida, as well as from other states (California, Texas, and Georgia).

From this research, the task force has concluded that Florida needs to thoroughly modernize its employment practices, selectively adopting and fully implementing private-sector management techniques. In short, the model for government employment needs to change from unduly protecting Career Service employees to enabling their performance. While Article III, Section 14 of Florida's Constitution requires a civil

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EXHIBIT 2

LEGAL FRAMEWORK FOR FLORIDA'S CAREER SERVICE SYSTEM

**1. FLORIDA STATE
CONSTITUTION**

Article I, Section 6: Right to work. Florida Supreme Court has held it grants public employees a protected right to form and join unions and collectively bargain, but prohibits strikes by public employees

Article III, Section 14: Civil service system. Provides for a civil service system for state employees; authorizes boards to prescribe qualifications, selection methods, and tenure

**2. FLORIDA
STATUTES**

Chapter 110, FS: state employment. Outlines general policies and creates:

- Career Service system with "permanent" employees
- Senior management service system for executive branch employees
- Selected exempt service system for positions requiring specialized skills

Chapter 110.201, FS: charges Department of Management Services with providing uniform rules for human resources administration

Chapter 110.217, FS: grants government agencies the right to establish own guidelines for making appointments and promotions

Chapter 110.227, FS: allows Career Services employees with "permanent" status to be suspended or dismissed only for "cause"

**3. FLORIDA STATE
ADMINISTRATIVE
CODE**

Department of Management Services' guidelines (Chapter 60K) stipulate processes for hiring, promoting, suspending, and dismissing employees

**4. COLLECTIVE
BARGAINING**

Agreement between State of Florida and American Federation of State, County, and Municipal employees helps define how many issues are handled, e.g., grievances, reassignments, work-force reductions, and layoffs

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service system with means for prescribing the qualifications, methods of selection and tenure for state employees, nothing in the Constitution requires that civil service employees be granted "permanent" status, in effect a property right in his or her employment. In fact, our research shows that while only 3% of employees in the executive branch of government are "at will" (Exhibit 1) 100% of the employees of

the judicial branch, 100% of the employees of the legislative branch, and 100% of the employees of the Florida Lottery are "at will" (Exhibit 3).

EXHIBIT 3

**COMPARISON OF AT WILL
EMPLOYMENT IN BRANCHES
OF GOVERNMENT**

Executive **3%**
(State Personnel System)
5,382 "At Will" of 124,160

Judicial **100%**
9,991 "At Will"

Legislative **100%**
1,312 "At Will"

Florida Lottery **100%**
715 "At Will"

We therefore recommend that the state begin reforming its civil service system by repealing Chapter 110, FS and replacing it and its administrative code.* Repealing Chapter 110, FS and the related administrative code will provide Florida with the statutory framework needed to accomplish a long overdue organizational transformation within state government.

To be clear, we are not suggesting that seeking state employment as a career objective is in any way undesirable. In fact, there are many good reasons to encourage it, including providing state government with continuity and institu-

tional memory and a reliable workforce. However, providing "permanent" employment through a protected status for Career Service employees is detrimental to all – to state government, the public being served, and ultimately the individual employee.

This document outlines the reasoning behind our recommendation, and proposes an avenue for implementation. It is organized around three findings:

- 1. It is time to change the model for government employment**
- 2. Past attempts at incremental reform of the Career Service System have failed**
- 3. Modernizing Florida's Career Service System will require a fresh start.**

* As the attached opinion signed by Frederick Karl, former Florida legislator and Florida Supreme Court justice, and a currently practicing attorney indicates, (See Appendix, Exhibit 1) no provision of the Florida Constitution provides for "permanent status" for civil service employees. Any such "permanent status" that may exist does so because of previous legislative action and/or collective bargaining agreements, both of which may be revised with due process. There is no prohibition in the Constitution against the legislature making all who work for the state "at will" employees.

CHAPTER I:

It's Time to Change the Model for Government Employment

In the Career Service System, as set out in Section 110.227, FS, employees with “permanent” status can be suspended or dismissed only for “cause.” This provision grants Florida’s approximately 120,000 Career Service employees – 97 percent of the State Personnel System employees – a property right, which can be removed only through a complicated web of restrictions called “due process.” It gives employees in Career Service a protected status not vested in private-sector workers. The citizens of Florida should not, and we believe would not want, to provide a protected status for state employees that is above and beyond the rights all other citizens enjoy in their own jobs. Furthermore, this protection makes managing human resources cumbersome, is demotivating for managers, and damages the reputation of all state employees.

While employees with ongoing careers in public service provide important benefits to the public, the Career Service employment model with protected status is obsolete; state government should return to the “at will” employment model of the private sector. Very simply, “at-will” employment allows employees and employers to sever their employment relationship at any time and for any reason. This might sound like an opportunity for employers to take advantage of employees; however, in practice numerous federal and state legal protections help ensure that employees are treated fairly and have ways of seeking redress if they have not been. It is worth noting that at-will employment is the norm not only in the private sector, but also in the legislative and judicial branches of Florida’s state government.

Three lines of evidence support our finding that the protected-status model for government employment should be replaced with “at will” employment:

- Current restrictions and protections in Career Service hurt the government’s ability to perform.
- Protected-status employment will increasingly constrain state government in its efforts to recruit, motivate, and retain top talent.
- Protected-status employment is no longer necessary. It was designed to solve the problems of a different era, problems that we can now address more effectively with other means.

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Current restrictions and protections in Career Service hurt government's ability to perform

The principle of protecting government employees and giving them "permanent" employment, the core of Career Service, has outlived its usefulness. Improved human resources management techniques in the private sector have helped fuel America's enormous gains in productivity in recent years. The public has grown accustomed to dramatically improved service and now demands the same from government. Although modern personnel practices have enabled private-sector companies to take the actions needed to better serve their customers and to remain competitive in national and world markets, these practices do not yet exist in state government.

Current Career Service employment practices damage productivity in four ways:

(1) **Terms of employment constrain hiring and firing.** The issue is whether government employees should be a specially protected employment class or employed at will. In the private sector, employees can be hired and dismissed "at will" – within the bounds of numerous statutory guidelines designed to ensure fairness and the absence of discrimination. At-will employment allows managers to respond to emerging labor needs in their work area in a timely way. This might involve adding a new worker. It might also mean dismissing a worker in order to limit the waste of institutional resources and damage to employee morale which results from continued under-performance from fellow workers. With Chapter 110, FS and its attendant rules and regulations, hiring employees (60K-3, FAC)– especially for new positions – and firing under-performing workers (60K-4, FAC) takes an inordinate amount of time and paperwork (Exhibits 4 and 5).

Here is a noteworthy example of how difficult managing resources can be. In this case, a chief of staff for an agency needed to hire an administrative assistant, but the position had to remain unfilled for weeks. The department received 184 applications, every one of which had to be rated individually against the qualifications (60K-3.0072, FAC) and documented (60K-3.0092, FAC), so as to prevent possible accusations of bias. At least three of the highest scoring applicants had to be interviewed and each interview's questions and answers had to be documented. A justification memo had to be written to explain why a certain candidate was chosen and a personnel action form requiring the approval of six people had to be completed. It typically takes at least 45 to 60 days to hire an applicant, even for routine positions.

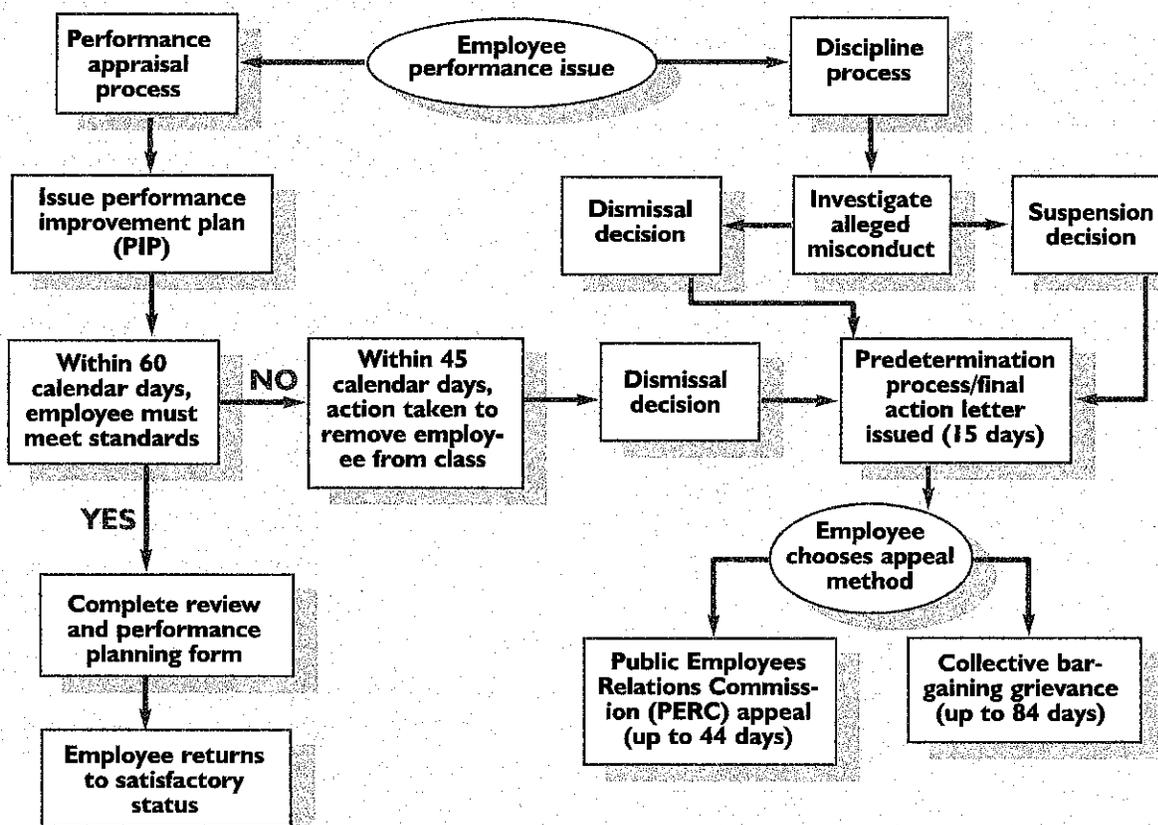
Dismissing an under-performing employee can be even more difficult, often taking

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EXHIBIT 4

PROCESS FOR HANDLING EMPLOYEE PERFORMANCE ISSUES



Source: Department of Management Services

months or even years and hundreds of pages of documentation (110.227, FS; 60K-9, FAC). Here is an extreme example: for seven years the Department of Labor has been struggling to dismiss a chronic under-performer who is frequently absent, except on the day before a state holiday – by working the day before the holiday, the employee qualifies for pay for the holiday itself (60K-5.026, FAC). The first dismissal attempt occurred in 1993, shortly after the federal Family and Medical Leave Act was passed. The employee sought protection under the act; the department deemed the under-performance unrelated, but found its decision overturned by the Public Employees Relations Commission. In the years since then, the department has provided the individual with several chances to reform – to no avail. Because the individual was not coming to work, the department had to send a dismissal notice by mail. The employee appealed the dismissal on the grounds that there had not been a prior

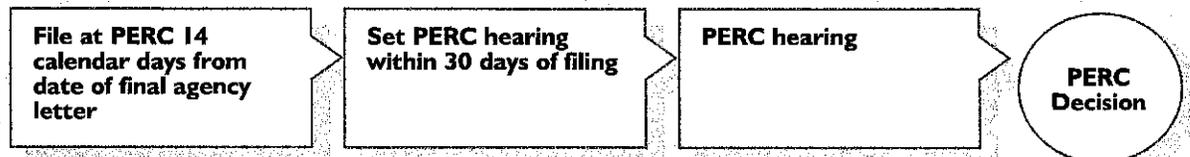
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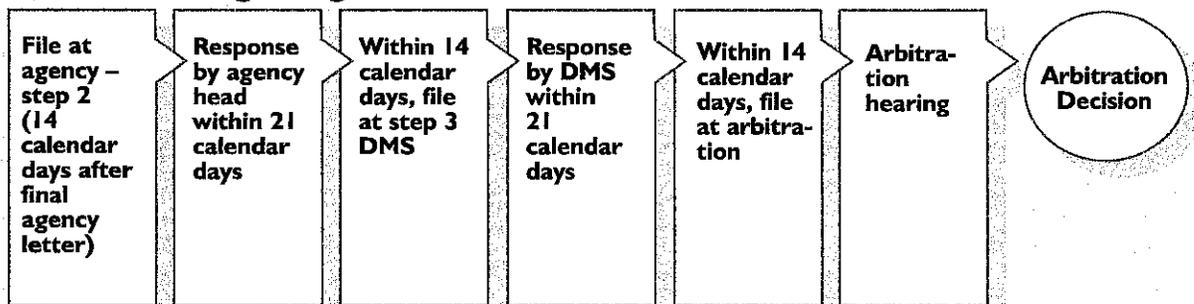
EXHIBIT 5

APPEALS PROCESSES FOR CAREER SERVICE EMPLOYEES

PERC Appeal



Collective Bargaining Grievance



verbal warning.

(2) Seniority as the principal retention criterion sacrifices performance.

Protected-status employment does not adequately reward excellent performance, because it provides inappropriate rights to employees based on seniority. This use of seniority creates the grounds for the practice of "bumping," in which a longer-tenured employee whose position has been eliminated can take the job of a more recently hired employee occupying an equivalent or lower title in the same job classification (60K-17.004, FAC). This would include any job classification the employee had held for 6 months or more at some point in his or her career. This practice disrupts work in many ways, and to no one's benefit. The bumping employee may have to take on work for which s/he is not well qualified. The public receives poor service and low productivity, while often times having to pay the bumping employee a salary substantially higher than is appropriate to the position into which s/he is bumping. The manager loses the ability to match employees with assignments. And the bumped employee is uprooted from his or her position. The bumped employee may be out of work, regardless of performance - unless s/he has "permanent" status, in which case s/he can bump someone else in turn, propagating the disruption and lowering productivity further.

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Here is an example: when the legislature abolished the Division of Safety, it gave 15 months' notice, setting the effective date a year and a quarter from the day the law was enacted. Among the staff facing possible unemployment was a safety engineer based in Tampa with the widely held job title of Operational Management Consultant, Level 2 (OMC2). Finding another OMC2 position should have been relatively easy. Rather than look for a job elsewhere in government or the private sector, the OMC2 stayed in the department with less and less to do, collecting his \$46,000-a-year salary, until formal notice arrived stating that the position was being eliminated in 1 month. With notice in hand, the engineer could now legally bump someone else. After collecting what was essentially luxurious unemployment compensation for 14 months, he chose to bump a capable administrative assistant making \$32,000, because the position was in Tampa. During college, years before, the OMC2 had worked as an administrative assistant and could therefore do this. Meanwhile, the bumped employee, a single mother, could not find a suitable open position or even anyone in Tampa to bump in turn, and so took the job of someone across the state in Palm Beach County.

The manager of the office in Tampa had no control over who got the administrative assistant's job. The employee with seniority – not necessarily merit, performance, or qualifications – was “entitled” to it. And taxpayers had to pay \$14,000 a year extra for the new occupant of the Tampa-based position. Under current rules, the bumping employee's salary could remain at the higher rate for up to 5 years (60K-2.004(4)(a), FAC), though some agencies' rules would allow for a decrease of up to 10 percent.

(3) Compensation system does not adequately differentiate employees by performance. In the private sector, where employee mobility is assumed, companies must provide competitive compensation and reward good performance in meaningful ways, typically through merit-based bonuses and raises. Although, these can vary widely from year to year, based on the individual's, the team's, and/or the company's performance, they are a tangible and expected part of compensation, one that clearly and consistently links rewards with individual or group performance. If a company decides to increase its compensation budget by, for example, 3 percent, it typically will differentiate among its business units, rewarding better performing ones more than its weaker performing ones. And it will allow the managers within those areas the discretion to reward valuable employees with bonuses and raises; a high performer might receive a 10 percent increase, while a low performer might receive no merit increase at all.

In Florida's state government, legislative allocations dictate how employees will receive compensation. In most years – though not all – Career Service employees

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receive an across-the-board salary adjustment, which in 2000 amounted to 2.5 percent (House Bill 2145, Section 8). The across-the-board adjustment as a management tool has the effect of rewarding under-performing workers and neglecting the high-performing ones. It can be very demotivating to a high-performing employee to realize that despite a year of hard work, there will be no significant recognition of it and the laggard in the next cubicle will receive the same raise.

Less frequently, agency heads receive an allocation for discretionary non-recurring salary incentives ("bonuses") in order to "recruit, retain, and reward quality personnel." All bonuses, unlike customary forms of salary adjustments and pay additives, must be allocated by the legislature (216.181(10)(b), FS). In 2000, House Bill 2145 granted agencies the right to use 0.25 percent of their budget allocation for personnel costs for this purpose in fiscal year 2000-01 (HB 2145, Section 51). This move allows agency heads to reward a very few employees in a meaningful way or a slightly larger group in a less meaningful way. Regardless of the method they chose, agency heads do not know whether they will be able to repeat the awards next year.

The rarity and unpredictability of funds for bonuses and salary increases greatly complicates managers' attempts to differentially reward and motivate their subordinates. It also drives them to various cumbersome, though legal maneuvers called "rate games." For instance, an agency might keep funded but unfilled positions unfilled, so that it can distribute the unused salary allocation to existing employees who deserve superior proficiency adjustments or some other pay additive. In this way the agency can create a degree of managerial flexibility. In summary, linking compensation to performance is extremely difficult in Career Service, and without a clear, consistent linkage, the system offers little reason for employees perform at a level commensurate with the private sector.

(4) Tight control of daily activities inhibits responsiveness and problem solving. Unduly tight controls over daily work create an environment in which solving problems and accomplishing the work becomes of secondary importance; going through the motions matters more. Such micro-control often ends up making simple tasks unnecessarily complicated. Furthermore, having to abide by cumbersome, work-increasing rules deadens personal initiative and cooperation and fosters an attitude of indifference among employees. It makes innovation, the lifeblood of high-performing organizations, almost unimaginable. By contrast, private sector companies have been restructuring so as to push decision-making authority to the lowest possible levels, so that employees who are closest to particular issues and best positioned to understand the ramifications, can make appropriate decisions. The objective has been to enable these employees to be more productive, responsive, and customer oriented.

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Career Service employment is increasingly constraining government's ability to compete for talented employees

EXHIBIT 6

SUMMARY OF "WAR FOR TALENT" IMPERATIVES

- 1. Instill a talent mind-set in all levels of the organization** – beginning with senior management
- 2. Create "extreme" employee value propositions:** make the case for why a talented person would want to work in the organization
- 3. Build a high-performance culture:** combine a strong performance ethic with an open, trusting environment
- 4. Recruit great talent continuously:** the most aggressive organizations are always looking for talent and are willing to bring it on board when they find it
- 5. Develop people to their full potential:** effectively conceived stretch jobs, coupled with informal feedback, coaching, and mentoring, are enormous developmental levers
- 6. Make room for talent to grow:** organizations suffer an enormous cost by not acting on the negative influence of underperformers
- 7. Retaining high performers:** organizations must demonstrate that they value and appreciate their people

State government may be the single largest employer in Florida, but it is losing a war for talent that has developed among employers throughout the United States. Many factors are making labor markets increasingly competitive, including well-documented demographic shifts, such as Baby Boomers aging and fewer younger workers entering the workforce. In addition, younger workers now expect to have a portfolio of careers, changing jobs many times over their working life rather than staying with a single employer for decades. According to a recent study of the private sector by McKinsey & Company, this "war for talent" is having a large and growing impact on the business community. Organizations are taking a variety of steps to build strong workforces (Exhibit 6), because even in large organizations, individuals make a significant difference, with high-performing employees often 40 to 70 percent more productive than the average worker. The bottom line is that those that succeed in attracting and retaining talent significantly out perform their competitors.

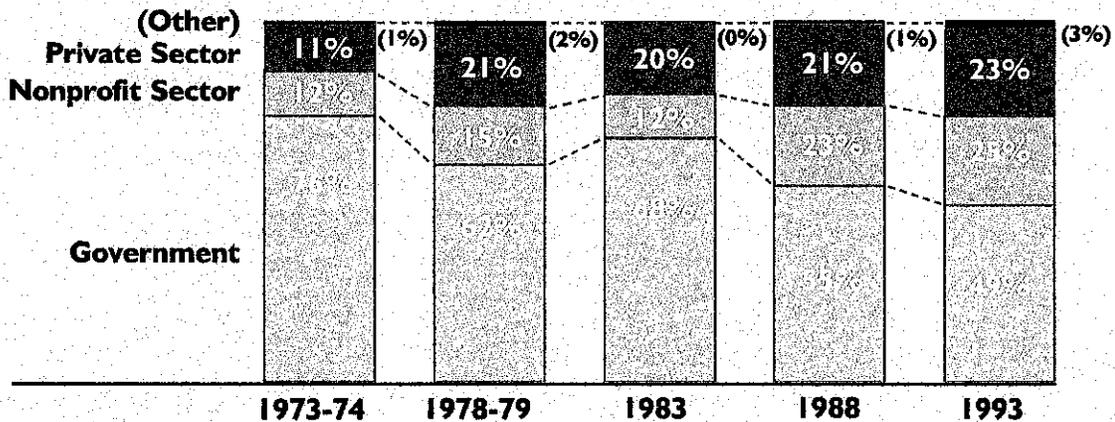
Protected-status employment limits the state's ability to attract and retain the talented workforce it needs. As one official in state government said, "most state employees enter public service with positive motives about serving the public, but they are beaten down by poor incentives

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EXHIBIT 7

**EMPLOYMENT DECISIONS OF GRADUATES FROM
TOP U.S. PUBLIC POLICY SCHOOLS**



SOURCE: The Brookings Institute

and poor performance by colleagues.” Unless Florida updates its human resources practices, in which protected status plays a central part, the state’s competitive position will only worsen in the future. To attract sufficient numbers of highly capable employees, Florida will need to ensure that it is offering meaningful work and appropriate compensation to those who can take on responsibility.

Attracting high-quality candidates for work in the civil service is growing more difficult. More and more graduates of the country’s top public policy schools – people with a clear interest in public service – are choosing non-government careers, opting instead for nonprofit or private sector positions (Exhibit 7). According to a Brookings Institute report, “Today’s public servants expect to change jobs and sectors frequently and are more focused on challenging work than on security. They want jobs with tangible impact.” Tangible impact is vastly harder to achieve in a workplace with protected status employment, for all the reasons we have discussed.

In addition to a work environment where they can get things done, employees expect to be compensated with a reasonably competitive salary and suitable benefits. In Florida’s Career Service, many in critical middle management positions are not compensated competitively. For example, the starting compensation (salary plus benefits) for a Career Service Business Manager, Level 3, is only 72 percent of the average for a comparable position elsewhere in Florida’s public sector, and it is only 50 percent of the private sector average (Exhibit 8). Protected-status employment pushes salaries and productivity downward for everyone: because protected status represents

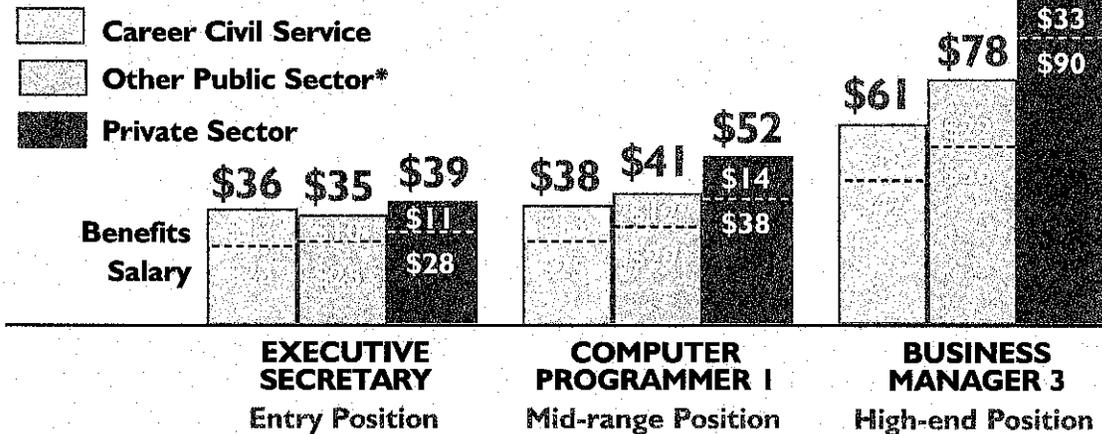
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EXHIBIT 8

COMPARISON OF TOTAL COMPENSATION FOR SELECTED CAREER SERVICE POSITIONS

Florida averages, in \$ thousands annually



* Public sector average derived mainly from local government and other noncareer service state positions, with 2 to 8% of respondents in private sector
SOURCE: 1999 State of Florida Workforce Report; MGT of America Career Service Salary Survey 1999; McKinsey R&I

an enormous intangible cost/benefit, it decreases other forms of tangible compensation. Lower tangible compensation leads to lower performance expectations – among the supervisors and the supervised alike. In addition, the protected-status-lower-pay-lower-performance dynamic encourages an adverse selection process, in which talented employees will tend to go elsewhere for higher pay and more interesting jobs and less talented individuals will tend to stay on. To a large extent, we get what we pay for.

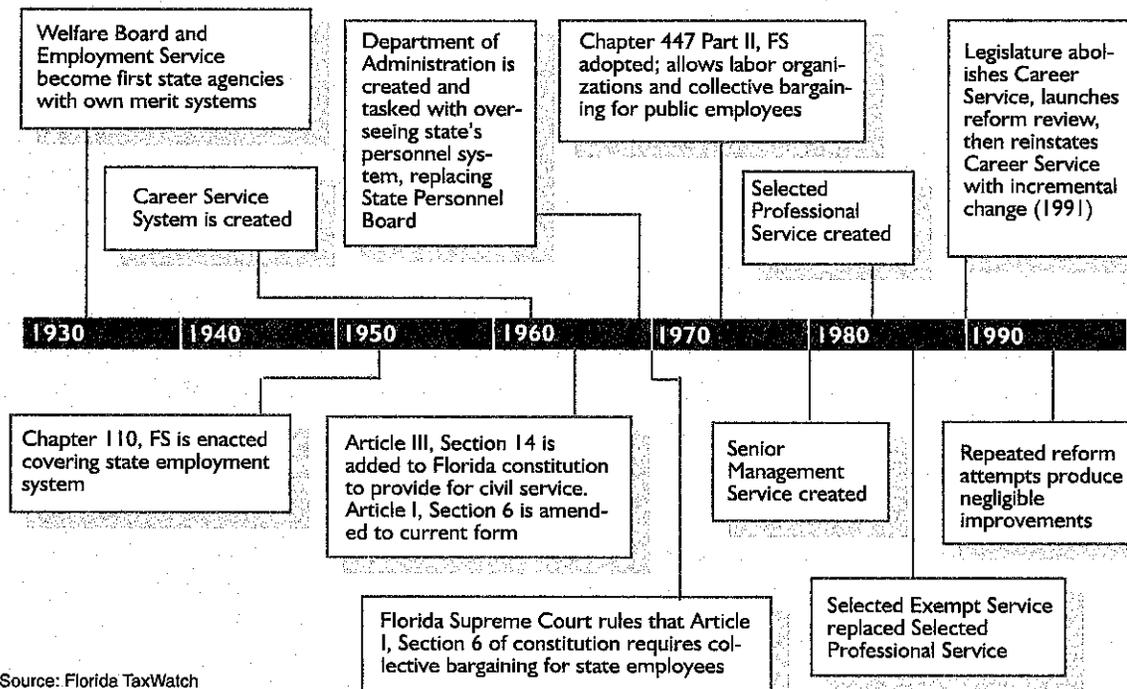
It is also worth noting that some benefits traditionally provided by government employment are less attractive to today's more mobile and generally more risk-tolerant employees than to previous generations. For many younger workers, defined benefit retirement plans, which pay retired employees a specified percentage of their final salary (or average of several years' salaries) on a regular basis, require too many years to vest and are not portable. In response to this trend, Florida has lowered the vesting time on its defined benefit retirement plan to 6 years, from 10, and created a defined contribution plan, which allows employees to self direct a percent of their salary, contributed by the employer, into a variety of investment products. This plan offers portability and one-year vesting. Both of these adjustments should help with recruitment over time.

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EXHIBIT 9

EVOLUTION OF FLORIDA'S CIVIL SERVICE SYSTEM



Source: Florida TaxWatch

To compete for workers over the long term, state government will have to develop and communicate a clear, compelling value proposition to potential employees wanting to make a difference. And it will need to deliver on that promise, enabling them to perform up to their abilities.

Protected-status employment is no longer necessary

Protected-status employment in Florida Career Service dates from 1967, though the current core statutes providing for Florida's civil service system were enacted in 1955 (Exhibit 9), an era very different from today, when patronage and discrimination were significant issues nationwide that required redress. These statutes were enacted with good reason and honorable intentions – to foster good government – but they were designed to address issues for which we have other solutions today.

• Patronage and abuses of power were a major problem in the past. Patronage has long been a feature of the American political system, and has served a construc-

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tive purpose, providing elected officials with trusted deputies. Its extensive use in the 19th century, however, led to frequent abuses of power, including favoritism toward family, friends, and political and financial supporters, and discrimination against minorities, women, and political opponents. The absence of systems for recruiting and hiring accentuated patronage's worst features, making it too easy to hire on a first-come or highest-bidder basis. By the end of the century, civil service reform had begun at the federal level, with the Pendleton Act (1883) establishing a federal civil service system. The objective was to protect competent, professional administrators whose continued presence in their jobs would ensure that the government could function effectively during and after changes in administration. Despite the federal-level reforms, it took as much as 50 years and well into the 20th century for some states to join the movement.

• **Other protections available today.** Some might fear that dismantling protected-status employment would re-ignite old abuses. This fear is not justified. A whole body of federal and state statutes and associated case law – such as federal and state civil rights laws, whistle-blower protection acts, state conflict of interest statutes, and the Americans with Disabilities Act – exists today where little was in place in 1955, when Chapter 110, FS was enacted (Appendix, Exhibit 2). In addition, the sheer size of government today and the specialized nature of many of the services it provides make it extremely unlikely that a change of administration could lead to significant replacement of employees. Furthermore, today we have a much higher level of public interest and expectation of greater performance and propriety, which have led to greatly elevated levels of media scrutiny (Chapter 119, FS (Public Records Act) and Section 286.011, FS (Sunshine Law)). Prior abuses could not recur today because these legal protections and the current atmosphere of openness make it virtually impossible for an employer – public or private – to mistreat its employees with impunity.

CHAPTER 2:

Why Past Attempts to Reform Career Service Have Failed

Over the past fifteen years, many bi-partisan government commissions and non-partisan government research institutes have called for reforms to Florida's Career Service, and Florida has made several earnest attempts (Appendix, Exhibit 4). While some of the initiatives have been very broad and sweeping in their intent, none has been fully implemented, and none has been fully successful. Despite delays and inconsistent support, they have resulted in some changes in law and rule, but these changes have been minor and have not substantially affected the culture, consequences, or accountability of how Florida's government employees serve the taxpaying public. With the exception of House Bill 707 in 1998, the reform attempts have not attacked the problem in the right way: they have left the root of the problem – Chapter 110, FS and the attendant rules and regulations – in place. While it is not unusual in public management reform that an initial attempt does not succeed, the frequency of these attempts and their lack of success have created an unfavorable setting for a new effort.

Several factors have contributed to this decade and a half of unsuccessful reform: too little sustained attention from the governor's office, too much attention from and variable decision making by the legislature, opposition by public sector unions, and no real proponent or advocacy group to lobby in support of the change. Any new initiative will have to overcome the perception that Career Service is resistant to or even unable to change. And it will need consistent attention from the governor's office, with on-going support from the legislature.

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SUMMARY OF FINDINGS

The protected-status model for government employment embodied in Florida's Career Service undermines the government's ability to function effectively. Despite having many good, conscientious individuals in its ranks, Florida's Career Service is a manager's nightmare. Recruiting, hiring and dismissing employees is so difficult that managers have difficulty doing their job – managing. Add in unpredictably funded and widely distributed pay allocations and motivating employees to perform well becomes almost impossible. Without good managers and well-motivated employees, state government cannot hope to achieve the mandates of its citizens and address the challenges of the future.

It is important to note that today 30 percent of Florida's state employees are outside the Career Service and are employed at-will – without adverse consequences. In addition, a number of governmental entities within the state are already at will, including Lee County, the cities of Clewiston, Belle Glade, and Haines City, and the Southwest Florida Water Management District to name a few. Furthermore, the states of Texas and Georgia and the U.S. Postal Service have at-will employment. It is time for Florida's state government to adopt the practice for all of its employees. After all, productive state employees don't need protected status, and under-performers don't deserve it.

CHAPTER 3:

Modernizing Florida's Career Service: Recommendations for a Fresh Start

Raising the level of performance in Florida's state government will require a comprehensive change effort sustained over a number of years. Changing the employment model from protection to performance will be an immense undertaking, requiring many people to alter deeply entrenched attitudes and familiar habits. But this reform has the potential to yield significant benefits – to the employees themselves, other members of the government, and to all the citizens of Florida.

The protected-status approach to employment and Chapter 110, FS are key stumbling blocks in the path toward improved performance in state government. Past reform attempts have achieved little impact largely because they did not address the root of the problem. Florida needs to take a clean-sheet approach to reform. Repealing Chapter 110, FS and its associated rules and regulations offers two advantages: the legislative process is an appropriate and legal way to remove the property right created by Career Service (Exhibit 10), and it will serve as a signal event for a broad organizational transformation of state government aimed at lifting performance and productivity levels toward those in the private sector. The goal for this comprehensive effort will be to enable the development of a new, energetic, creative, more entrepreneurial organizational culture within all levels of Florida's state government.

Doing this will require three broad sets of coordinated actions:

EXHIBIT 10

1. State legislature can terminate property rights*

Legislation that creates a property interest by a personnel act restricting discharge to "just cause" can be changed by the Legislature. Legislative process constitutes all the process employees are "due"

2. Property right can be changed back to at-will status**

Movement from at-will to for-cause employment and back again is permissible, so long as return to at-will is with due process (i.e., a hearing)

3. Employer can change at-will status***

Employer can change employment status of existing employees to at-will employment, if

- Employees are given reasonable notice and chance to be heard
- The change is in the public interest and not taken to single out and discharge particular employees

* *Gattis Vs. Graveti*, 806F.2d (8th Cir. 1986); *State vs. Swank*, 12 So. 2d 605 (Fla. 1943) ** *Betts vs. Cith If Edgewater*, 646 F. Supp. 1427 (M.D. Fla 1986) *** *Peterson vs. Atlanta Housing Authority*, 998 F. 2d 904 (11th Cir. 1993)

**MODERNIZING FLORIDA'S
CIVIL SERVICE SYSTEM**

A Report from the Florida Council of 100

I. Developing a new legal framework that enables at-will employment for all of Florida's state employees.

• Write new legislation to repeal Chapter 110, FS and create its replacement. The replacement legislation will need to:

– Make the employment status of all state employees at-will

– Authorize credible, ongoing group and individual performance-based bonus systems that move away from across-the-board pay rewards and allow managers the flexibility they need to attract and differentially reward valuable, talented employees.

• Draft the necessary administrative code to make the new laws practical and implementable. Failure to provide employees, especially the managers and supervisors, with clear guidelines and training in how to manage the state's human resources differently in the future will inevitably result in a perpetuation of the existing inefficient, unproductive system. For example, the FAC will need to

• Eliminate the practice of "bumping," and begin retaining workers primarily on the basis of performance rather than seniority. If the planned 25-percent reduction in the state workforce is to go ahead, while providing the same or better service, the practice of bumping will have to be abolished. Only then will state government be able to consistently retain the right people for the right jobs.

• Allow for performance assessments and job descriptions that reward desirable behaviors as well as accomplishment of particular tasks, enabling employees to be assessed and rewarded for their ability to exceed their job descriptions, as work situations warrant.

• Review collective bargaining agreements, particularly the master contract between the State of Florida and the Florida Public Employees Council 79 of the American Federation of State, County, and Municipal Employees, which is set to expire on June 30, 2001. During contract negotiations, it will be critical to ensure that the provisions of the collective bargaining agreement are consistent with the new performance model and do not become a replacement for the out-dated provisions of the administrative code.

2. Reviewing how Florida compensates state employees in hard-to-fill and key management and positions, to ensure that these positions are appropriately and competitively paid and that government can attract and retain the talent it needs.

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3. Launching the organizational transformation within key agencies, to foster a new results- and service-oriented organizational culture that accepts risk taking and focuses on getting the job done efficiently and effectively. This effort will require:

- Developing a new set of management systems, e.g., performance assessment and discipline, in line with the new law and administrative code. Increasing manager discretion can work only if it is accompanied by increased manager accountability.
- Communicating new employment expectations to employees, emphasizing what is changing, why it is changing, what it means for the employees, and why it is positive for them and for the taxpayers they serve. Employees will need to know what they are expected to do differently, as well as how they will benefit from broader pay bands, higher performance incentives, and greater autonomy.

At the same time, we would urge the Governor to include on his agenda the actions needed to launch and sustain this initiative:

- Initiate discussion of the changes with the relevant stakeholders, including civil service employees and their collective bargaining representatives and labor organizations.
- Rally bipartisan support in the legislature.
- Develop appropriate replacement legislation for introduction in the Spring 2001 legislative session.

* * *

With sustained effort and visible commitment to change, Florida can transform its state government and lift its level of performance toward the standard set by the private sector. In a performance-based government workplace, everybody wins. Truly merit-based pay will encourage and recognize innovation and higher performance, while workers will continue to have all the basic protections against unfairness, discrimination, and patronage that they have today. Fairness will be restored, because personnel decisions will be evaluated based on performance, not on arbitrary factors such as length of service. Flexibility in pay and mobility will enable government to recruit the best and brightest from the private sector. State employees who excel in their work will receive greater recognition and compensation than they do today. Their productive innovations will improve worker morale and productivity, because there will be tangible benefits to good performance. Managers will have the flexibility to reward outstanding performance, and more flexibility to dismiss low

MODERNIZING FLORIDA'S CIVIL SERVICE SYSTEM

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performers. They will be able to make hiring and firing decisions within a reasonable period of time and at a reasonable cost. This flexibility will encourage them to act, rather than to avoid acting. In all, the streamlining of processes and practices will enable government to respond to taxpayers more quickly and efficiently. It is a goal worth fighting for.



The Council stands ready to work with the governor's office, the legislature, Career Service employees and their collective bargaining representatives, and other interested parties outside of government to find solutions that will enable state employees to be more productive and be compensated competitively and appropriately. The Council of 100 firmly believes that reforming Florida's Career Service will be a critical enabler for transforming how the state government of Florida operates, and will enable state employees to achieve new levels of collective and individual performance. Although implementation will require sustained attention, especially from the governor's office, we are convinced that the benefits will far outweigh the costs. The time for this reform has come.

APPENDIX

APPENDIX EXHIBIT I

FREDERICK B. KARL OPINION

October 31, 2000

The Florida Council of 100, Civil Service Reform Task Force
C/o Charles T. Ohlinger, III
6200 Courtney Campbell Causeway, Suite 560
Tampa, FL 33607

Dear Sirs:

We have been informed that a task force has been organized to make recommendations for legislative action with respect to the constitutional status of the state's civil service system. Specifically, you are concerned about the constitutional issue of changing the law so as to convert some or all public employees from a protected status to employment at will.

Fundamentally, there are two provisions in the Constitution that must be considered. Article III, Section 14 of the Constitution of the State of Florida provides:

By law there shall be created a civil service system for state employees, except those expressly exempted, and there may be created civil service systems and boards for county, district or municipal employees and for such offices thereof as are not elected or appointed by the governor, and there may be authorized such boards as are necessary to prescribe the qualifications, method of selection and tenure of such employees and officers. (Emphasis added.)

Proceeding under the authority of Article III, Section 14, the Florida Legislature has created a whole panoply of statutory protections and procedures for public employees. The employees are guaranteed additional rights by Article I, Section 6 which provides:

The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike. (Emphasis added.)

Once a person becomes an employee of the State of Florida he/she may acquire a property right in a position or receive a contractual right as a result of collective bargaining, and those rights are protected by the first article of the Constitution, includ-

ing the right to due process guaranteed by Article I, Section 9 of the Constitution, and the Constitution of the United States.

It should be noted that there is no provision of the Constitution that prescribes the terms of the mandated Civil Service System for employees, nor the permissible terms of the collective bargaining agreements. The constitution does not prohibit "at will employment." We find no judicial opinion that requires "a civil service system" to provide property interests or property rights in any position in state government. Accordingly, we are of the opinion that the Florida legislature may satisfy the constitution by crafting a civil service system that may include such provisions as a merit system under which employees are selected on the basis of qualifications or fitness, job classifications, pay plans, equal employment opportunity and the like, and may provide that all positions within the state government shall be "at will employees".

As to incumbent employees, the legislature, acting under the authority to exempt certain employees from the civil service system, has exempted many of those who hold management supervisory positions and made them at will employees. The question of whether that category could be broadened was settled by the Supreme Court of Florida in 1987 in the case of Department of Corrections v. Florida Nurses Association, 508 So.2d 317. That opinion addresses certain 1985 legislative acts that purported to exempt from the career service system those physicians employed by the DOC and HRS, as well as attorneys. One of the acts created a new category of state service called the selected professional service (SPS) into which the exempted attorneys and physicians were included. In holding that the legislative acts may be implemented, the court said:

The reclassification of professionals into a selected professional service reflects a policy decision of the legislature.

And

A tenured employee's right to continue employment during good behavior is contingent upon the continued existence of the employment. Any expectation that career service or any particular position therein will exist for infinity is at most a mere hope. Implicit in the employment arrangement is the possibility that one day the legislature may consider such employment no longer consistent with the public welfare.

An important caveat is that there should never be a bad faith subterfuge to discharge or deny rights to an employee or group of employees in violation of civil service rules.

Any attempt to make all incumbent employees, who now enjoy contractual employment rights, implied contractual rights, or who have acquired a property interest in their employment situation to at will employees will have to provide the

employees with due process. There are several significant cases speaking to the termination of employees who have acquired property rights in their jobs. The Supreme Court of the United States in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487 considered the right of the employees to due process of law and said:

Property interests are not created by the constitution, "they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law . . ." *Board of Regents v. Roth*, 408 U.S. 577, 92 S.Ct. 2709. See also, *Paul v. Davis*, 424 U.S. 693, 709; 96 S.Ct. 1155, 1164; 47 L.Ed.2d 405 (1976). The Ohio statute plainly creates such an interest. Respondents were "classified civil service employees," Ohio Rev.Code Ann. §124.111 (1984) entitled to retain their positions "during good behavior and efficient service," who could not be dismissed "except . . .for . . . misfeasance, malfeasance or nonfeasance in office," §124.34. The statute plainly supports the conclusion reached by both lower courts that respondents possess property rights in continued employment.

That case was cited by Florida's First District Court of Appeal in *Simmons v. Department of Natural Resources, State of Florida*, 513 So.2d 723.

The due process requirements may be satisfied by the legislative process, see *Gattis v. Gravett*, 806 F.2d 778, (8th Cir. 1986); wherein the court, citing the U.S. Supreme Court in *Atkins v. Parker*, 472 U.S. 115 (1985), held:

While the legislative alteration or elimination of a previously conferred property interest may be a "deprivation," the legislative process itself provides citizens with all of the "process" they are "due". . . . Thus the legislature which creates a property interest may rescind it, whether the legislative body is federal or state and whether the interest is an entitlement to economic benefits, a statutory cause of action or civil service job protections.

Contracts developed through collective bargaining as authorized by Article I, Section 6, cannot be unilaterally terminated by legislative action, but may be allowed to expire at the end of the contract term.

Summary

In view of the foregoing we are of the opinion that:

I. In the absence of contractual provisions or provisions of a collective bargaining agreement, the legislature may abolish positions covered under the career service program and re-establish them in a new status that is not subject to the career service requirement of termination only for cause.

II. The legislature may broaden the group of employees who hold management

and supervisory positions which are exempt from the provisions requiring termination only for cause.

III. We find no absolute prohibition against the legislature making all who work for the state "at will employees." However, opinions of the federal courts recognize employees' entitlement to constitutional due process where they have acquired property interests in their employment situations, and that due process must be accorded through the legislative process or otherwise.

Sincerely,

Frederick B. Karl
Annis, Mitchell, Cockey,
Edwards & Roehn
One Tampa City Center
22nd Floor
Tampa, FL 33602

FEDERAL WORKPLACE PROTECTIONS

1935	National Labor Relations Act (29 USC 158) makes it unlawful to discriminate, to discourage, or encourage membership in or support of a labor organization, provides for collective bargaining
1936	Hatch Act bars public employees from political activity on the job, but bars dismissal for political activity outside work
1938	Fair Labor Standards Act (29 USC 201 et seq.) stipulates minimum wage and overtime rules
1963	Equal Pay Act (29 USC 206(d)) bars unequal pay based on gender for equal work
1964	Title VII of Civil Rights Act (42 USC 2000(e) et seq.) prohibits discrimination in compensation, terms, conditions, or privileges of employment on basis of race, color, religion, sex, or national origin; also prohibits retaliation for making a claim
1967	Age Discrimination in Employment Act (29 USC 621 et seq.) prohibits arbitrary age discrimination, promotes employment of older persons based on ability rather than age
1968	Garnishment (15 USC 1674) – individuals with one or more garnishment for one debt are protected against discharge
1970	Occupational Safety and Health Act (29 USC 651 et seq.) authorizes standards for safe and healthful working conditions and provides for penalties for violating set standards
1972	Equal Employment Opportunity Act extends civil rights protection to employees of state and local governments
1974	Employee Retirement Income Security Act (29 USC 1001 et seq.) requires employers to properly administer employee benefits plans
1978	Civil Service Reform Act protects whistle-blowers in government
1982	Veterans Job Training Act (29 USC 1721) provides employment and job training programs for veterans in public and private employment
1988	Worker Adjustment and Retraining Notification Act (29 USC 2101 et seq.) stipulates that employers with 100 or more employees must provide 60-day advance notice of plant closings or mass layoffs or pay in lieu of notice
1988	Employee Polygraph Protection Act (29 USC 2001 et seq.) bars private employers from requiring employees to take, using the results of, or discriminating against an employee on the basis of a polygraph test with limited exceptions
1989	Whistle-blower Protection Act (5 USC 1211 et seq.) provides for Office of Special Counsel to receive and review disclosures of illegalities, gross mismanagement or waste of funds, abuse of authority, or substantial and specific danger to public health and safety, and forward disclosures as appropriate to Attorney General or agency heads
1990	Americans with Disabilities Act (42 USC 12101 et seq.) prohibits arbitrary discrimination based on physical or mental disability, which includes AIDS or being HIV-positive, and requires reasonable accommodation
1991	Civil Rights Act (42 USC 1981a) creates a right of jury trial in discrimination cases and provides for punitive and compensatory damages with caps from \$50,000 to \$300,000, depending on the size of the employer
1993	Family and Medical Leave Act (29 USC 2611 et seq.) requires employers with 50 or more employees to allow leaves of up to 12 weeks for family and health matters, with the right to return to same or equivalent position

FLORIDA STATE WORKPLACE PROTECTIONS

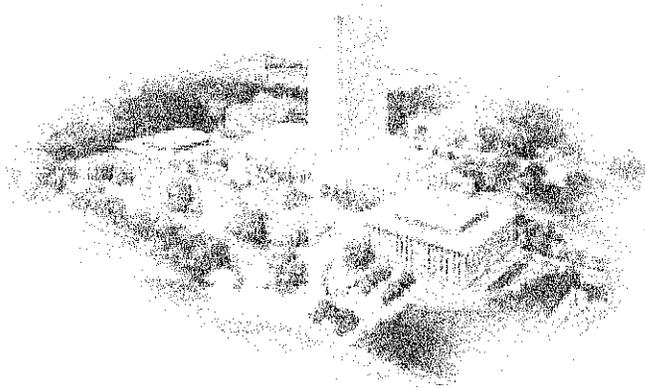
- 1935** Workers' Compensation Law (Chapter 440, FS) requires Florida employers to provide for benefits in the event of a workplace injury and assist in reemployment of injured workers; prohibits discrimination of retaliation against an employee who files or threatens to file a workers' compensation claim (Section 440.205)
-
- 1937** Unemployment Compensation Law (Chapter 443, FS) requires employers to contribute to unemployment reserves for workers unemployed through no fault of their own
-
- 1937** Section 115.07, FS bars employers from retaliating against an employee on the basis of service in the military reserves
-
- 1947** Section 295.07, FS provides veterans with preference in public employment and retention
-
- 1951** Section 104.081, FS prohibits employers from retaliating against an employee who votes
-
- 1969** Section 448.07, FS prohibits wage rate discrimination on the basis of sex for both public and private sector employees
-
- 1970** Florida Occupational Safety and Health Act (Section 442.001, FS et seq.) sets standards for safe and healthful working conditions and imposes penalties for violations
-
- 1971** Section 112.011 – individuals with convictions protected from employment denials (public sector only) unless the conviction was a felony or first degree misdemeanor and directly related to the position sought.
-
- 1974** Tucker Act (Chapter 447, Part II, FS) gives public employees the right to organize and requires that the state bargain collectively with their employees' authorized agents
-
- 1974** Section 40.271, FS prohibits retaliation or threats of dismissal by an employer against an employee for jury duty. Also Federal Law 28 USC 1875 (1978)
-
- 1978** Discrimination on account of sickle cell trait prohibited (Section 448.075, FS)
-
- 1979** Section 110.221 – Career Service employees have right to take up to 6 months unpaid parental leave
-
- 1986** Whistle-blower Act (Section 112.3187, FS) prohibits retaliation by public employer against an employee "who blows the whistle"
-
- 1990** Section 92.57, FS bars an employer from retaliating against an employee who testifies pursuant to a subpoena
-
- 1991** Whistle-blower Act (Section 448.101-448.105, FS) prohibits retaliation by private employer against whistle-blower employee
-
- 1992** Florida Civil Rights Act (Section 760.01, FS et seq.) extends federal protections similar to those provided under Title VII of the federal Civil Rights Act of 1964, but adds age (from the cradle to the grave), disability, and marital status; retaliation for making a claim is also prohibited
-
- Various** An employer may be held responsible for damages to employees caused by intentional torts, such as negligent hiring; fraud and misrepresentation; defamation; invasion of privacy; intentional infliction of emotional distress; malicious prosecution; abuse of power; false imprisonment; tortious interference with an advantageous business relationship; assault; battery; and other "employment torts"

A HISTORY OF ATTEMPTED REFORMS

- 1986 Florida TaxWatch** report Building a Better Florida recommends
- Systems improvements to redesign the architecture of state government
 - Legislation to create a performance-based compensation and personnel system coupled with increased public management authority and accountability
- 1987 Partners in Productivity**, a public/private partnership created by the governor's executive order and sponsored by Florida TaxWatch and the Florida Council of 100, calls for reform of the Career Service system. Its report concludes that, while the system succeeds in insulating government employees from major political changes and arbitrary management decisions, it creates enormous difficulties for state managers. Especially affected are those who must deal with a small number of protected-status employees whose unacceptable performance adversely affects day-to-day government work, as well as fellow employees. These troublesome individuals make improving productivity especially difficult. Demoting, terminating, and, in some cases, transferring them requires an extraordinary, time-consuming effort that typically accomplishes little
- 1991 The Florida Taxation and Budget Reform Commission** recommends that
- The Administration Commission (governor and cabinet) be granted increased authority to consolidate divisions of state agencies
 - Vacant funded positions be deleted if employees and managers voluntarily agree to participate in a productivity enhancement program
 - Employee rewards and sanctions be based on measures of productivity and quality
 - State agencies that exceed their performance measures and engage in best management practices be granted increased discretion
- The recommendations meet legislative resistance and bureaucratic inertia and are not implemented
- 1991 Career Service Reform Act**, a joint executive and legislative branch initiative, seeks to
- Improve motivation and productivity with a flexible reward and recognition system
 - Improve workforce training and development
 - Simplify rules and procedures
 - Decentralize decision making
 - Streamline organizational processes
- The program as a whole is overshadowed by efforts to cut budgets and downsize the government; as a result, initial implementation is delayed 3 years and then never completed. Decision making is decentralized hurriedly in line with the bill, but without adequate support, creating enormous management and control problems. A Total Quality Management program to enhance productivity is created but never funded
- 1991 Commission for Government by the People** (Frederick Commission) is initiated by executive order from Governor Lawton Chiles and Lt. Governor Buddy MacKay when they assume office. Chaired by Orlando Mayor Bill Frederick, it reports "Florida's Career Service system, like most civil service systems, has become a straight jacket on managers. Designed for an Industrial Era government of clerks and manual laborers, it long

ago became obsolete. Its job classification system is too rigid; its pay system does not reward high performers; and its 'bumping' system during layoffs makes it difficult to slim down state government without virtually destroying it... We urge the Legislature to ... create an entirely new personnel system to replace Career Service"

- 1992 Partners in Productivity** sponsors a second task force on government performance, this one chaired by Florida Power & Light Chairman Jim Broadhead and consisting of 46 members of Florida TaxWatch and The Florida Council of 100. The task force report, *Improving Florida Government's Performance*, states: "Florida's Career Service laws and regulations should be further reformed to give state agencies the flexibility to adopt more efficient structures, choose and reward the best performers, discontinue unnecessary agency functions and positions, and terminate in a humane way those who do not perform well"
- 1994 Government Performance and Accountability Act** redirects the intent of the 1991 reforms, causing further turmoil in state agencies. Three conflicting messages about this bill go out to state employees:
- The bill is to make government smaller and cheaper
 - It is to increase government performance
 - It will let officials keep talking about reinventing government
- Several provisions are partially implemented, notably:
- Performance-based budgeting, with agency, department, and individual targets, using productivity benchmarks and budget guidelines from the GAP Commission, which is then abolished in 1999. The system was piloted in two agencies and can be said to have had modest impact
 - Performance-based financial incentives, which receive only nominal funding initially; it is not clear whether they still exist. However, without legislative allocations – without money to back them up – the awards prove meaningless
- 1994 Personnel Reform measure**, adopted by the governor and cabinet, initiates minor Career Service System rule changes, which have not affected the culture, accountability, and consequences of how Florida's government employees and managers serve the tax paying public
- 1996 The Career Service Pay-banding Act** seeks to create a statewide pay banding system. The system is to improve managerial discretion in granting performance awards and enhance the state's recruiting ability. By collapsing job classifications, pay ranges are broadened. Implementation is delayed initially. The program is then piloted in the Department of Transportation. In January 1997, the DOT reports to the Legislature and recommends an implementation plan for rolling out the program in other agencies, starting in July 1998. The program is later suspended while a Competency-based System, in use in the federal government and other states, is reviewed
- 1999 House Bill 707**, submitted by Representative Ogles, attempts to abolish the Career Service system, making all positions filled after July 1, 1998, unclassified (at-will) positions. It would allow "permanent" employees to retain their "permanent" service status, so long as they stay in their current "permanent" position. The bill is carried over to 1999, but is subsequently withdrawn.



Modernizing Florida's Civil Service System:
**MOVING FROM PROTECTION
TO PERFORMANCE**

A Report from the Florida Council of 100

The Florida Council of 100

Suite 560 • Bayport Plaza • Courtney Campbell Causeway • Tampa, Florida 33607 • (813) 289-9200 • Fax (813) 289-6560

ATTACHMENT 2

RULE XI. - GRIEVANCE AND APPEAL PROCEDURES

Sec. 2-159. - Presentation of employee grievances.

- (a) *Policy.* It shall be the policy of the City of Oakland Park to provide a procedure for the presentation and mutual adjustment of points of disagreement which arise between employees and their supervisors and to assure employees that their problems and complaints will be considered fairly, rapidly, and without reprisal.

Scope:

- (1) The following provisions do not apply to employees covered by collective bargaining agreements unless specifically provided in their respective agreement, to employees in the nonclassified service, to employees in temporary or part time positions, or to employees who have not completed their probationary period.
 - (2) In cases involving alleged unlawful discrimination or sexual harassment, including allegations of alleged retaliation for having engaged in activities protected by employment discrimination laws, any employee may seek relief through procedures established by city policy, or through outside agencies whose purpose it is to investigate such allegations, but shall not be entitled to use the grievance procedures herein set forth.
 - (3) Separations due to reduction in force, lack of funds, or lack of work are not considered disciplinary in nature and shall not be subject to the grievance procedures herein set forth. However, allegations regarding a violation of these rules as they apply to a reduction in force shall meet the definition of a grievance.
 - (4) Complaints involving interview, examination or assessment ratings are not subject to review through these grievance procedures unless the complaint alleges a violation of these rules in regard to those matters.
 - (5) Classification and compensation decisions are not subject to these grievance procedures, unless the complaint alleges a violation of these Rules in regard to those matters.
 - (6) A performance evaluation is not subject to these grievance procedures, unless the complaint alleges a violation of these Rules in regard to established procedures governing performance evaluations.
- (b) *Purpose.* The primary purpose of this grievance procedure is to determine what is right rather than who is right. Free discussion between employees and supervisors will lead to a better understanding by both of practices, policies and procedures that affect employees.
- (c) *Definition of a grievance.* A grievance is a complaint, a view or an opinion pertaining to employment conditions, to relationships between an employee and the employee's supervisor, or to relationships with other employees, which violate the provisions of these rules. Employees should first discuss any problem or complaint that is in the nature of a grievance either with their immediate supervisor or with the director of human resources. In many cases, the director of human resources, with the employee's consent will be able to work out a satisfactory solution or to advise the employee regarding further presentation of the grievance. Whether or not the employee takes the problem first to the director of human resources, the following procedure will be adopted for the presentation of all grievances not resolved by the immediate supervisor or director of human resources.
- (d) *Procedure for presentation of grievances.*
- (1) *Step one—Informal discussion with the supervisor.* The employee shall first take their grievance to their immediate supervisor or director of human resources within five (5) working days after he or she becomes aware of the issue that is the subject of the grievance. At this point, it is not necessary that the grievance be presented in writing.

Supervisors are encouraged to consult with their division heads, department heads, the director of human resources, or any other individual who may be qualified to offer assistance or information which will aid the supervisor to reach a mutually equitable decision.

- (2) *Step two—Formal Grievance.* Filed with the human resources department. If the grievance is not resolved in step one, the nature of the grievance and the desired solution must be submitted in writing by the employee to the human resources department within ten (10) working days from the date the employee became aware of the issue.

The human resources director, shall review the grievance and within five (5) working days notify the employee and the department head whether the grievance is subject to established ordinances, administrative regulations or these rules. In the event that the director of human resources determines that the matter being grieved is subject to established ordinances, administrative regulations or provisions of the civil service rules, he or she shall advise the employee and department head in writing of that fact and explain how that ordinance, rule or regulation applies to the case in point. The communication from the director of human resources shall direct any action necessary to conform to established ordinances, rules or regulations.

Upon receipt of notice from the director of human resources that the grievance is not subject to established ordinances, regulations or rules, the department head shall then have the responsibility for rendering his or her decision on the grievance and shall inform the employee in writing of that decision within five (5) working days.

- (3) *Step three—Appeal to the city manager.* If the disposition of the grievance is not satisfactory to the employee, or if a decision is not rendered by the department head within five (5) working days of the director of human resources' communication, the employee may request in writing through the human resources department that the grievance be referred to the city manager or designee. All such requests will be forwarded to the City Manager or designee by the director of human resources without delay. This request must be filed by the employee within five (5) working days after receipt of the department head's decision. and, in any case, not later than fifteen (15) working days after they sent the original request.

The city manager or designee may decide the case or refer the appeal to the director of human resources for submission to a grievance committee. The city manager or designee will act upon such appeals within ten (10) working days, from receipt of request.

Appointment of a grievance committee. When the director of human resources is so notified by the city manager, they shall assemble a grievance committee within ten (10) days following receipt of such notice. A grievance committee shall be composed of three (3) members that are regular employees of the City Of Oakland Park. One (1) member shall be selected by the employee or their representative, one (1) member shall be selected by the department head or their representative, and the third member, who shall serve as chairperson, shall be selected and mutually agreed upon by the first two (2). If an agreement cannot be reached, the director of human resources shall appoint the third member. The human resources department shall schedule a hearing to be held within fifteen (15) working days after selection of committee.

Recommendations of grievance committee. Within ten (10) working days following the conclusion of the hearing, the grievance committee chair person shall supply the city manager, or designee a written report and recommendation as approved by a majority of the committee. Upon receipt of the committee's report and recommendations, the city manager shall put in writing the course of action he or she intends to follow and shall forward one (1) copy of his or her decision and one (1) copy of the committee's report and recommendations to the department head; one (1) copy of each to the employee; and one (1) copy of each to the director of human resources. The fourth copy shall be retained by the city manager.

The decision of the city manager following consideration of the report and recommendations of the grievance committee, shall be final and the employee shall have no further right of city administrative appeal, and may appeal to the civil service board.

(Ord. No. O-2006-006, § 2, 5-3-06)

Sec. 2-160. - Appeal to the civil service board.

Step four—Civil service board. The Charter and these rules grant to full time regular employees in the classified service whose terms of employment are not governed by a collective bargaining agreement the right to have the civil service board review any action leading to the removal, suspension, or reduction in rank of the employee, or any action which the employee believes has resulted in the civil service rules being improperly applied or misinterpreted to the detriment of the employee. The civil service board shall have the final authority.

Such employees may appeal to the civil service board within thirty (30) days after receipt of final administrative decision. Upon such appeal, the department head, the appealing employee with counsel, if desired, and the city manager shall have the right to be heard and to present evidence. At the hearing of such appeal, technical rules of evidence shall not apply. The civil service board, and/or the appointed secretary of the board, shall have the power to administer oaths, subpoena witnesses and compel the production of documents, records and all papers pertinent to the appeal.

Said hearings shall be public hearings held, in an appropriate public place. On any appeal, which may come before the board, three (3) board members constitute a quorum. If only a quorum is present during a hearing, all members must concur in the motion on the board's decision in order for the decision to stand. However, if more than a quorum is present, the majority shall concur in a decision. A tie vote of all members present at the hearing shall constitute a denial of the appeal and such action shall be deemed the final determination of the board.

The board shall be free to make its determination of appellant's innocence or guilt in keeping with the public interest, based solely on the board's reasonable interpretation of all the pertinent information available. The board shall not be bound by a presumption of the appellant's innocence or guilt; such presumption does not prevail in administrative law. The findings of the board shall be based on competent substantial evidence before it.

In considering the appellant's fitness to hold employment in the classified service of the city, the board shall not be bound by the strict letter of the charges as drawn. The board may allow the charges to be amended at any time, as long as the amendment is material to the charges. In general, the board in its findings shall be guided, not by technicalities, but by the substance of the information developed in its hearings.

Upon a finding that just cause has existed for the suspension, demotion or dismissal, the board shall affirm the suspension, demotion or dismissal.

Upon a finding that just cause for disciplinary action existed, but did not justify the severity of the action taken, the board may, in its discretion: (1) reduce a dismissal to a suspension for such time as the board may fix; or (2) reduce the period of suspension; or (3) reinstate a demoted employee.

Upon a finding that the action complained of was taken for any prohibited reason, or as the result of misinterpretation of these civil service rules, or other insufficient reason, or just cause did not exist for the suspension, demotion or dismissal, the employee shall be reinstated to the position.

The employee involved may, upon recommendation by the board and approval by the city commission, receive any lost compensation and benefits and in addition, the cost and expenses reasonably incurred in presenting a defense.

Appeal procedure:

- (a) Any regular employee wishing to take an appeal to the civil service board under the provisions of this section shall submit such appeal in writing to the director of human resources within thirty (30) days after receipt of final administrative decision. Such appeal will state what action is being appealed and the general reasons therefore. A copy of said appeal shall be promptly supplied to the city manager.

- (b) The director of human resources shall arrange a date and place for the civil service board appeal hearing. At least one (1) week before the civil service board hearing, the employee or employee's counsel, and the city manager or designee, or city attorney, shall each file with the director of human resources a prehearing statement that summarizes the issue on appeal, the witnesses to be called and the documents to be presented. Copies of pertinent documents should be attached.
- (c) At the discretion of the board, documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.
- (d) A party shall be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record.
- (e) Any person subject to a subpoena or order directing discovery may, before compliance and on a timely petition, request the Board to invalidate the subpoena or order on the ground that it was not lawfully issued, is unreasonably broad in scope, requires the production of irrelevant material or testimony, is being used for annoyance, embarrassment or oppression, or causes undue burden or expense.
- (f) The order of proof shall be as follows: The city manager or designee, or the city attorney, as the case may be, shall present evidence in support of the charges; the appellant shall then produce evidence in their defense; the parties in interest may then offer rebuttal evidence; the board shall thereafter hear arguments; and the board shall, after due consideration, render its judgment affirming, disaffirming or modifying the action of the city manager.
- (g) Any willful false swearing on the part of any witness or person giving evidence before the board as to any material fact in the proceedings shall be deemed to be perjury and shall be punished in the manner prescribed by law for such offense.
- (h) If the employee whose appeal is to be heard shall fail to appear at the time fixed for the hearing, and such absence shall not be excused by the board, the board shall proceed to hear the evidence and render judgment thereon in absentia.
- (i) If the city manager or city attorney shall fail to appear at the time for the hearing, and such absence is not excused by the board, and if no evidence be offered in support of the charge or charges, the board may render judgment as by default or may hear evidence as offered by the removed employee and render judgment thereon; and the board shall notify the city manager, the department head and the removed employee of its judgment.
- (j) Admissible as evidence shall be written statements made by the appellants and others, transcripts of oral statements made by the appellants and others, and hearsay evidence, for whatever these may be worth. This shall not be considered a limitation on the admission of other types of evidence, or as to the consideration by the board, of any and all pertinent information.
- (k) Appellants and all other classified employees of the city may be required to testify. Refusal to testify shall be grounds for dismissal. Admissions against interest may be admitted as evidence. A plea of self-incrimination by a witness shall constitute grounds for dismissal.
- (l) The civil service board attorney shall rule on all points of law and admissibility of evidence, and the ruling shall be binding on the board.
- (m) Time factors. The civil service board shall grant any regular employee that submits an appeal under provisions outlined in section 2-160 a hearing at the earliest practicable date, and in all events, within thirty (30) days after the filing of the appeal, unless otherwise agreed by the appellant. The hearing before the board, if possible, shall be limited to one (1) day. The board shall submit its findings and decision in a writing, signed by the board chair, to the city manager within five (5) days of the completion of the hearing.

(Ord. No. O-2006-006, § 2, 5-3-06; Ord. No. O-2012-018, § 2, 9-19-12)

Sec. 2-161. - Employee performance evaluation.

Employee performance evaluation reports relative to the conduct, capacity and performance of all regular employees shall be made after the first and second six-month periods of employment and each year thereafter. The first six-month evaluation will not result in a salary increase.

Evaluations shall be made prior to any consideration increases within range, on the form and in the manner prescribed by the director of human resources.

Each employee's performance shall be evaluated by his or her immediate supervisor. The performance evaluation shall be approved by the division head, department head prior to the employee review, and the City Manager or designee before it is considered final.

A less than satisfactory overall rating on the performance evaluation constitutes a written reminder, and serves as an instruction for correcting a performance problem. The evaluation report shall include facts identifying the performance problem, an action plan to correct the problem, and an established follow-up date. In addition, a less than satisfactory rating in any category serves as a verbal warning.

Right to inspect files. Employees shall have the right to inspect their personnel files at reasonable times throughout the year. Any comments on contents of said files by the employee shall be entered into the official personnel record.

(Ord. No. O-2006-006, § 2, 5-3-06; Ord. No. O-2012-018, § 2, 9-19-12)

CITY OF OAKLAND PARK, FLORIDA --- CITY CHARTER

Sec. 4.03. - City manager; powers and duties.

The city manager shall be the chief administrative officer of the city. He shall be responsible to the city commission for the administration of all city affairs placed in his charge by or under this Charter. He shall have the following powers and duties:

- (a) He shall appoint and, when he deems it necessary for the good of the city, suspend or remove any or all city employees and appointive administrative officers provided for by and under this Charter, except as otherwise provided by law, this Charter and the civil service system. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.
- (b) Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this Charter or by law.
- (c) Attend all commission meetings and shall have the right to take part in discussion, but shall not vote.
- (d) See that all laws, provisions of this Charter and acts of the commission, subject to enforcement by the manager or by these officers subject to his direction and supervision, are faithfully executed.
- (e) Prepare and submit the annual budget and capital program to the commission as provided under Article XIII.
- (f) Submit to the commission and make available to the public within a reasonable time a report on the finances and administrative activities of the city as of the end of each fiscal year.
- (g) Make such other reports as the commission may require concerning the operations of city departments, offices, and agencies subject to the manager's direction and supervision.
- (h) Keep the commission advised as to the financial condition and future needs of the city and make recommendations to the commission concerning the affairs of the city.
- (i) To purchase supplies and noncapital equipment and contract for repairs and improvements for the various departments of the city in an amount which shall be determined by ordinance of the city commission.
- (j) Contracts for the construction of public improvements shall be let in accordance with the City's procurement code, as amended from time to time; provided, however, that in an emergency situation where the health or welfare of the city is involved and does not permit the time required for advertising for public bids, then the city manager may take such action as may be required without limit by dollar amount, when joined in said action by the mayor, but the city manager shall make a full report, both of the expenditure and of the emergency reasons which made the action necessary, in writing, to the city commission at the next regular meeting.
- (k) Sign contracts on behalf of the city pursuant to the provisions of appropriations ordinances.
- (l) Perform such other duties as are specified in this Charter, by law or as required by the commission.

(Ord. No. O-87-5, § 3, 3-10-87; Ord. No. O-2012-023, § 2, 10-17-12 (approved 3-12-13))

CITY OF OAKLAND PARK, FLORIDA

RULE III. - ORGANIZATION FOR HUMAN RESOURCES ADMINISTRATION

Sec. 2-88. - The city commission.

The city commission shall:

- (a) Approve the civil service rules and amendments thereto by ordinance.
- (b) Approve the compensation plan and all amendments thereto by resolution.
- (c) Make and confirm authorized appointments to and remove individuals from the positions of city manager and city attorney.

(Ord. No. O-2006-006, § 2, 5-3-06; Ord. No. O-2015-004, § 2, 2-18-15)

Sec. 2-89. - The city manager.

The city manager shall:

- (a) Be responsible to the city commission for the administration of the human resources subject to these rules.
- (b) Appoint, promote, transfer or remove, demote, suspend, or discipline all employees subject to the provisions of these rules as well as those in the non-classified service.
- (c) Be responsible for the preparation of proposed amendments to the civil service rules and regulations, the classification plan and the compensation plan, in cooperation with the director of human resources.
- (d) Assume the duties of director of human resources should one not be appointed.
- (e) Perform such other duties and have and exercise such other powers in human resources administration as may be prescribed by the law and these rules.
- (f) In the event that the board fails to meet for whatever reason at a regular meeting and a subsequent special meeting, the city manager shall have the option to bring all matters subject to the civil service rules and regulations directly to the city commission for its consideration and final approval.

(Ord. No. O-2006-006, § 2, 5-3-06; Ord. No. O-2015-004, § 2, 2-18-15)

Sec. 2-90. - The director of human resources.

The city manager may appoint, in accordance with the provisions of the city charter, a director of human resources or designee who shall serve as a liaison to the civil service board and shall be responsible to the city manager for the administrative and technical direction of human resources. The director of human resources shall also:

- (a) Administer and interpret these rules.
- (b) Develop and administer such recruitment and examination programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the city service.
- (c) Prepare and recommend a classification plan and amendments to the classification plan so that it will reflect on a current basis the duties being performed by each employee in the city service and class to which each position is allocated.

- (d) Administer the compensation plan including a periodic review of salary and benefit levels in the appropriate labor market, periodic investigation of factors affecting salaries and benefits, periodic review to determine compliance with current and proposed federal, state and local legislation, and to make recommendations for amendments to the compensation plan.
- (e) In cooperation with the director of finance, provide a system of checking payrolls, so as to determine that all persons in the city service have been properly appointed and are being paid in accordance with these rules.
- (f) Establish and maintain comprehensive human resource records, consistent with public records and confidentiality laws for each employee of the city. This shall include for each employee the classification title of the position held, salary or pay rate, date of employment, and any other relevant data as may be deemed desirable or useful to human resources administration.
- (g) Administer and promote the city's benefit program.
- (h) Develop and establish in cooperation with the city manager and various department heads such training and educational programs for employees to improve effectiveness, safety, productivity, health and other appropriate areas.
- (i) Assure fair and equitable treatment of applicants and employees in all aspects of human resources administration in accordance with the city's non-discrimination policy.
- (j) Attend all meetings of the civil service board.
- (k) Perform such other activities with reference to human resources administration not inconsistent with the city charter or these rules as the city manager may direct, or as may be required by ordinance.
- (l) Prepare and recommend such rules or amendments to the rules as may be necessary or advisable to carry out and support merit, fairness and efficiency principles in human resource administration.

(Ord. No. O-2006-006, § 2, 5-3-06; Ord. No. O-2011-014, § 2, 7-6-11)

Sec. 2-91. - The civil service board—Composition, qualifications, appointment, term.

- (a) *Composition.* The civil service board shall consist of five (5) members, appointed or elected as follows:
 - (1) Two (2) members shall be elected as provided hereinafter in section 2-91.1, by secret ballot of all regular full time classified service employees of the city, who are not covered by a collective bargaining agreement. In the event that one or both of these two (2) members remains vacant for a period of time of not less than ninety (90) days, the city commission shall have the authority to fill the vacancy or vacancies for the two (2) members to be elected under 2-91.1 for a term not to exceed two (2) years.
 - (2) Two (2) members shall be appointed by resolution of the city commission.
 - (3) The fifth member shall be recommended by the city manager and appointed following the approval of the civil service board.
 - (4) Effort should be made to reflect the diversity of the city's workforce in appointments to the civil service board.
- (b) *Term of office.* Each civil service board member shall serve a term of two (2) years commencing from the date of expiration of his or her predecessor's term. In the event the member's office becomes vacant, per city commission rules, it will be handled accordingly, 1) if it was appointed by the city commission, the city commission shall promptly fill such vacancy. 2) In the event the member was recommended by the city manager, the city manager shall promptly recommend a new member and the civil service board shall promptly act on that recommendation. 3) In the event the member

was elected by the employees of the city, the director of human resources shall proceed within ten (10) working days with the nominating procedures prescribed in these rules to fill such vacancy.

- (c) *Qualifications for civil service board members.* Members of the civil service board shall:
- (1) Be residents of the City of Oakland Park, Florida;
 - (2) Be registered voters of Broward County, Florida;
 - (3) Advocate the application of merit principles for public employment; and
 - (4) Not be a city employee or city elected official, or be a relative, as defined by Section 116.111, Florida Statutes, of any city employee or city elected official.

(Ord. No. O-2006-006, § 2, 5-3-06; Ord. No. O-2011-014, § 2, 7-6-11; Ord. No. O-2015-004, § 2, 2-18-15)

Sec. 2-91.1. - Same—Employee election of board members.

- (a) The election of the two (2) members of the civil service board to be elected by the regular employees of the classified service who are not covered by a collective bargaining contract shall be conducted as follows:
- (1) At least forty (40) days before expiration of the term of the member to be filled, the director of human resources shall notify the employee membership that for a period of seven (7) days, nomination of persons meeting the qualifications for board membership will be accepted.
 - (2) Nominations shall be by written petition, signed by at least five (5) regular employees in the classified service and tendered to the director of human resources within seven (7) days after notification is posted inviting such nominations.
 - (3) Subsequent to the receipt of all timely filed nominations, the director of human resources shall prepare a ballot containing the names of all qualified nominees. The ballot shall contain instructions to vote for one (1) of the nominees.
 - (4) The date, time and place of the election shall be posted in all departments not less than one (1) week prior to the date of the election.
 - (5) The election shall be conducted between the hours of 8:30 a.m. and 4:00 p.m. on any workday.
 - (6) The director of human resources shall provide for the security of the election, election ballots and the ballot box. At all times during the election there shall be appointed by the director of human resources two (2) poll watchers who shall be duly sworn to uphold these rules and regulations concerning the election and shall supervise the election, and guard the ballot box and ballots at all times during the election.
 - (7) The director of human resources or his or her designee shall make provisions for the casting of absentee ballots by employees. Such absentee ballots shall be provided by the human resources department to employees qualified to vote in the election that state under oath that they will not be on duty at the time the election is conducted. Such absentee ballots shall be tabulated at such time as the regular ballots are tabulated. The absentee ballots shall remain in the custody and control of the director of human resources until such time as the election results are tabulated.
 - (8) After the close of the election, the two (2) poll workers shall transport the ballot box containing the ballots and the remaining unused ballots and the voter signature sheet to the director of human resources in the city commission chambers.
 - (9) The director of human resources shall, with the aid of the poll workers, tabulate the election results in the presence of any candidate or person desiring to be present.

(10) The director of human resources shall then certify the election results to the city clerk who shall announce the results. The candidate receiving the most votes shall become the employee-elected representative upon the announcement of the city clerk.

(11) All board members shall hold over in the office until their successor is duly elected and appointed.

(Ord. No. O-2006-006, § 2, 5-3-06; Ord. No. O-2011-014, § 2, 7-6-11; Ord. No. O-2015-004, § 2, 2-18-15)

Sec. 2-91.2. - Same—Duties and functions of board.

The civil service board shall have the following duties, functions and powers:

- (a) Serve in an advisory and appellate capacity in the administration of the human resources program;
- (b) Hear appeals of any regular employee in the classified service in the method provided by these rules;
- (c) Represent the public interest in the improvement of human resources administration in the city service.
- (d) Advise the city commission, city manager and the director of human resources on problems concerning human resources administration.
- (e) Advise and assist the director of human resources in fostering the improvement of human resources standards in the city service.
- (f) Make any inquiry which it may consider desirable concerning the administration of the personnel in the city service and review any personnel action which may appear to be arbitrary, capricious or illegal, and make recommendations to the director of human resources and city manager with respect thereto.
- (g) Make annual reports, and such special reports as it considers desirable, to the city commission and to the city manager concerning human resources administration in the city service and recommendations for improvements therein.
- (h) Adopt the classification plan of positions in the classified service and propose amendments or revisions thereto.
- (i) Propose and recommend to the city commission adoption of any amendment or revision to the civil service rules and regulations.
- (j) Select a chair and vice chair to serve for a term of one (1) year. No chair or vice chair shall succeed himself/herself in the same chair/position.
- (k) Each member of the civil service board shall have one (1) vote.

(Ord. No. O-2006-006, § 2, 5-3-06)

Sec. 2-91.3. - Same—Conduct of board members.

- (a) All members of the civil service board shall file with the city clerk an oath to support and defend the constitution of the United States and the State of Florida, and to faithfully perform the duties of their office.
- (b) Attendance policy for members of this board is governed by section 2-72 of this Code of Ordinances.
- (c) No member of the civil service board shall make any statement or take any action that jeopardizes the impartiality of the appellate function of the board.

- (d) The prohibitions of section 2-158, herein, are expressly applicable to the conduct of civil service board members.

(Ord. No. O-2011-14, § 2, 7-6-11)

Sec. 2-91.4. - Same—Removal and recall of civil service board members.

- (a) All members of the civil service board may be removed from office by the same process by which they were initially elected or appointed.
- (b) Members elected by the city employees in the classified service may be removed by recall in accordance with the following procedure:
- (1) A petition for the recall of the civil service board member shall be signed by at least twenty-five (25) percent of the employees within the classified service. Such petition shall also contain a written statement of no more than two hundred (200) words of the grounds of the recall. The petition shall, forthwith, be filed with the director of human resources.
 - (2) Upon receipt of petition, the director of human resources shall, forthwith, notify the board member sought to be recalled and such member may file a written response to the petition within five (5) days after receipt of the notice of the recall proceedings. Response shall not exceed two hundred (200) words.
 - (3) Subsequent to the five-day period within which the member may respond, the director of human resources shall cause a sufficient number of typewritten copies of the petition, without signatures, and the response thereto, to be printed and posted in all departments of the city. A certified copy of the petition and response thereto shall be maintained by the director of human resources and the employees within the classified service may for a period of fourteen (14) days sign, in ink, the signatures to the petition. Each signer shall also place his or her address, job title and department on the petition.
 - (4) After the expiration of such fourteen-day period within which the employees may sign their names to the petition, the director of human resources shall examine the petition and signatures thereto to certify whether the signatures amount to twenty-five (25) percent of the employees within the classified service. The director of human resources or his or her designee shall serve notice of the petition results to the member designated in the petition.
 - (5) If the member subject to recall has not tendered his or her irrevocable resignation within five (5) days after he receives notice that twenty-five (25) percent of employees within the classified service signed the petition, the director of human resources shall proceed to schedule a recall election to be held within thirty (30) days in accordance with this section.
 - (6) The member subject to the recall election shall be immediately removed upon the announcement of the canvass of the election results indicating that a majority of the votes cast favored such recall.
 - (7) Any vacancy created by the member so removed shall be temporarily filled by a person appointed by the city commission until an election is held for the employees to elect a member to fill the position of the individual recalled for the unexpired term of such recalled member.
 - (8) The subsequent election made necessary by the recall of a member of the civil service board shall be in accordance with this section.
 - (9) No petition to recall any elected member shall be filed during the first six (6) months after a member initially takes office or within twelve (12) months after a previous recall election involving the same member.

(Ord. No. O-2006-006, § 2, 5-3-06)

Sec. 2-91.5. - Same—Meetings.

The board shall meet monthly on a regularly scheduled basis unless the director of human resources determines that there is no business to conduct and notifies the board members that the regular meeting is cancelled.

The city manager or the director of human resources may call additional board meetings as necessary to carry out the duties and functions of the board. If a board member wishes to call for a meeting between regularly scheduled board meetings, that member shall advise the director of human resources of that request and provide a description of the subject matter to be discussed at the proposed meeting. The director of human resources shall then contact the remaining members of the board to determine whether a quorum of the board is willing to meet on that topic and establish a date for the meeting.

For all meetings of the board, a call notice shall be sent to board members that states the general purpose of the meeting. Notice shall be given to board members at least seventy-two (72) hours in advance of the board meeting. Notice of the meeting shall also be posted at city hall.

(Ord. No. O-2006-006, § 2, 5-3-06)

ATTACHMENT 3

Chapter 16 - CIVIL SERVICE RULES AND REGULATIONS¹¹

Footnotes:

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Editor's note— Ordinance No. 91-47, September 19, 1991 repealed Sections 16-1, 16-4, 16-26, 16-27, 16-71, 16-110, 16-124, 16-125, 16-126, 16-127, 16-132, 16-136, 16-199; and enacted Articles 1 and 2, Sections 16-1.1.0. through 16.2.9.0.

Ordinance No. 92-14, November 29, 1991 repealed Sections 16-137, 16-138, 16-139, 16-141, 16-142, 16-143, 16-145, 16-146, 16-147, 16-148, 16-149, 16-150, 16-151, 16-152, 16-153, 16-154, 16-155, 16-156, 16-157, 16-158, 16-159, 16-160, 16-161, 16-162, 16-163, 16-164, 16-165, 16-166, 16-167, 16-168, 16-169, 16-170, 16-171, 16-172, 16-173, 16-174, 16-175, 16-176, 16-177, 16-178, 16-179, 16-180, 16-181, 16-182, 16-183, 16-184, 16-185, 16-186, 16-187, 16-188, 16-189, 16-190, 16-191, 16-192, 16-193, 16-194, 16-195, 16-196, 16-197, 16-198, 16-199, 16-200, 16-201, 16-202, 16-203, 16-204, 16-205; and enacted Article 3 through 20, Sections 16-3.1.0.

Ordinance No. 93-3, October 14, 1992 amended Sections 16-2.6.2. Holidays (Floating Holiday changed to Martin Luther King's Birthday); and repealed Sections 16-51; 16-52; 16-53; 16-54; 16-55; 16-72; 16-73; 16-74; 16-75; 16-88; 16-89; 16-90; 16-106; 16-107; 16-108; 16-109; 16-111; 16-112; 16-113; 16-114; 16-115; 16-117; 16-119; 16-120.77.

Ordinance No. 96-25, May 15, 1996 amended Sec. 16-2.1.0; 16-2.2.1; 16-2.3.0; 16-2.4.1; 16-2.4.2; 16-2.6.1; 16-2.7.2; 16-2.7.3; 16-2.7.6; 16-2.7.8; 16-2.7.11; 16-2.8.4; 16-3.1.1; 16-3.2.0; 16-3.4.1; 16-3.5.0; 16-10.1.2; 16-10.1.3; 16-14.1.0; 16-21.1.5; 16-21.1.6; 16-21.1.7; and repealed Secs. 16-21.1.1; 16-21.2; 16-21.1.3; 16-21.1.4; 16-21.1.8; 16-21.1.11; 16-21.1.12; and 16-22.1.13; and Secs. 16-21.1.5; 16-21.6; 16-21.1.7 16-21.1.9; and 16-21.1.10 were renumbered to 16-21.1.1; 16-21.1.2; 16-21.2.3; 16-21.1.4; and 16-21.1.5, respectively.

Subsequently, Ord. No. 05-04, § 2, adopted Nov. 17, 2004, repealed Ch. 16, in its entirety. Section 3 of said ordinance enacted provisions designated as a new Ch. 16 to read as herein set out. See the Code Comparative Table for a detailed analysis of inclusion.

ARTICLE I. - PURPOSE, SCOPE AND DEFINITIONS

Sec. 16-1. - Authority.

Pursuant to the authority granted by the City Commission of the City of Miramar, through the City Charter and City Code, the city commission has duly read and adopted these rules and regulations and caused them to be included in the City Code.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-2. - Purpose.

These rules and regulations are adopted to provide for the recruitment, retention and staff development of the best-qualified available employees for each position in the service of the City of Miramar. The rules and regulations establish orderly procedures for the administration of the human resources system of the city in such a way as to be consistent with the following principles of merit, efficiency, and accountability:

- (1) Recruiting and selecting new employees, and advancing the careers of current employees on the basis of their relative knowledge, skills, and abilities, and the effectiveness of their performance, behavior, and accountability on the job.
- (2) Assuring fair treatment of applicants and employees in all aspects of human resources administration without regard to race, religion, color, creed, age, gender, national origin, ancestry, political affiliation, disability, and sexual orientation with proper regard for their rights and privacy.
- (3) Establishing job classifications which, in substance, fairly describe the essential functions of the work performed by city employees and establish minimum qualifications for each position in city service.
- (4) Establish and maintain fair and reasonable pay rates for each classification in city service consistent with the principal of providing comparable pay for comparable work, attracting and retaining a skilled and effective work force, honoring obligations in collective bargaining agreements, and the ability of the city to pay.
- (5) Providing training and development opportunities to ensure high quality performance and accountable behavior on the part of the city employees and to aid in the progressive development of employees in advancing their careers with the city.
- (6) Retaining employees on the basis of the effectiveness of their performance, behavior, and accountability on the job correcting and improving inadequate performance and behavior and separating employees whose actions or failures to act are inappropriate as representatives of the City of Miramar.
- (7) Establishing a procedure for the presentation, review and adjustment of employee grievances including appeals from disciplinary action, where appropriate.
- (8) Assuring that employees are protected against coercion or retaliation based upon the exercise of their rights provided in the rules and regulations.
- (9) Assuring that employees are protected against coercion or retaliation for political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or nomination of an office, or the appointment of a city employee in a manner inconsistent with these rules and regulations.
- (10) Providing for the necessary flexibility and authority for supervisors, managers, and city executives to conduct the city's business in an efficient and cost-effective manner.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-3. - Equal employment opportunity and non-discrimination.

The human resources policy of the City of Miramar is based upon the fundamental concept that candidates are to be judged on the basis of their individual merit and fitness for city employment in relation to the requirements of a particular position and the needs of the city service. The city is an equal opportunity employer which will not condone or practice unlawful discrimination based upon any of the protected group criteria set forth in Title VII of the Civil Rights Act of 1964, as amended, and by other relevant Civil Rights laws of the United States, the State of Florida, and city policies. Employment decisions in City of Miramar will not be based upon race, religion, color, creed, age, gender, national origin, political affiliation, sexual orientation or disability of candidates, unless one (1) or more of those criteria represents a bona fide occupational qualification necessary for the safe or efficient performance of the duties of the city's position. The city recognizes the diversity of its labor market population and strives to have that diversity reflected and respected in the composition of the city's workforce.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-4. - Positions covered and excluded.

These rules and regulations apply to all positions covered in the city's civil service system. The civil service system represents the permanent full time work force of the City of Miramar and represents the positions in city service, which must be filled following the competitive, structured practices described in these rules and regulations. Likewise, employees in the civil service of the city have rights to retain their position, rank, and pay subject to reduction in force or disciplinary actions, as set forth in these rules and regulations. The classified civil service of the city shall consist of all employees serving in positions in the City of Miramar except the following, which shall be excluded from the classified civil service. Excluded positions serve in an "at-will" capacity, serve at the pleasure of the appointing authority, and are not subject to disciplinary appeal nor shall they possess a property right to continued employment with the city. Their employment with the city may be ended for any reason or no reason, other than an illegal reason:

The following non-exclusive list of positions shall be considered excluded:

- (1) The members of the city commission and persons appointed to fill vacancies on the city commission.
- (2) One (1) city commission secretary and other direct support personnel appointed as may be authorized by the city commission to provide direct staff support to them.
- (3) The city manager, assistant city managers, and members of the city manager's executive staff as outlined in classification descriptions.
- (4) Members of appointed boards, city attorneys and other attorneys who may serve to advise and assist in the administration of the legal affairs of the city.
- (5) Department and division directors and assistant or deputy directors of departments and divisions.
- (6) Persons employed on a temporary, part-time, limited term, seasonal, or special project basis whose service is of limited duration.
- (7) Volunteers who receive no regular compensation from the City of Miramar.
- (8) Independent contractors performing work under contract, letters of engagement or letters of understanding who are not considered employees for the purposes of payroll and tax withholding.
- (9) Employees who may be hired into positions funded by federal or state grants which do not include ongoing funding, unless specifically approved for continuing service by the city commission, or unless mandated by the requirements of the grants.
- (10) Positions specified in former Section 16.2.1.0.C will retain civil service rights until the current incumbent vacates the position, at which time the position will thereafter be excluded from civil service.

The positions are as follows:

- a. Accounting supervisor;
- b. Building official/chief structural inspector;
- c. Chief plant operator;
- d. City manager secretary;
- e. Computer programmer/operator;
- f. Early childhood coordinator;
- g. Executive secretary;
- h. Fire captain;
- i. Fire division chief;

- j. Human resources aide;
- k. Human resources technician;
- l. Human resources specialist;
- m. Membrane plant manager;
- n. Newly appointed confidential/managerial positions created or recognized by PERC;
- o. Planner II;
- p. Recreation activity/special events coordinator;
- q. Risk manager;
- r. Special projects coordinator;
- s. Utility coordinator;
- t. Victim advocate.

(11) Any position exempt from the general civil service at the time of adoption of these rules and regulations shall remain exempt from civil service.

(12) Any classification or position not specified in the above exclusions as may be designated as exempt by resolution of the city commission.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-5. - Interpretation.

- (a) These rules and regulations are intended to cover most human resource issues and actions, which will arise. Those situations not specifically covered shall be interpreted by the director of human resources to affect resolutions and decision making consistent with the overall purposes of these rules and regulations. Such interpretations will be in the best interest of the city's objectives and consistent with federal, state, county or other applicable laws or regulations.
- (b) Fringe benefits and benefit administration policies shall apply to all employees who are eligible for benefits pursuant to these rules and regulations, applicable collective bargaining agreements or otherwise by authority of the city manager. Eligibility for benefits shall not be construed so as to grant civil service exempt employees any property rights or rights to continued employment, or in any manner grievance or appeal rights regarding any term or condition of their employment. Such employees shall remain in an "at-will" service capacity.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-6. - Enforcement and administration.

Responsibility and authority for the enforcement and administration of these rules and regulations is vested in the city manager and the director of human resources.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-7. - Authority to delegate.

- (a) Notwithstanding the provisions of these rules and regulations which provide for centralized human resources administration, the city manager and the director of human resources are authorized to exercise their discretion to delegate the responsibility for administration of specifically enumerated

human resource management functions within their areas of jurisdiction. Such functions may include but are not limited to, the conduct of recruitment, testing, classification management, an eligibility list maintenance for specifically approved classifications. In such cases of delegation, the appointing authority will be responsible for the management of the delegated human resources functions, and adherence to procedures established by these rules and regulations and the department of human resources and the appointing authority shall be subject to monitoring and oversight by the department of human resources to ensure compliance with the city's policy of equal employment opportunity and these rules and regulations.

- (b) The director of human resources is specifically authorized to enter into contracts, letters of understanding, or other agreements with public agencies and professional human resource organizations such as the Florida Public Personnel Association (FPPA), the Florida Public Employee Labor Relations Association (FPELRA), the International Public Management Association for Human Resources (IPMA), or the Society for Human Resource Management (SHRM) to provide for the sharing of resources or the cooperative, joint conduct of human resources activities and functions.
- (c) The director of human resources is specifically authorized to enter into contracts, letters of understanding, or other agreements with members of the Miramar Human Resources Consortium for the purpose of carrying out joint human resources activities, resource sharing, or mutual support in the best interest of the City of Miramar and consistent with the purposes set forth in these rules.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-8. - Definition of terms.

[For the purposes of this chapter the following definitions shall apply, unless the context clearly indicates or requires a different meaning:]

Anniversary date means the date an employee begins employment and the same date in following years unless the anniversary date is adjusted consistent with these rules and regulations. For the purposes of merit increases, the anniversary date, shall be that date one (1) year from the effective date of his or her last regular merit increase, change in classification, promotion, or demotion unless the anniversary date is adjusted consistent with these rules and regulations. For other purposes, such as longevity, anniversary date refers to an employee's date of hire into a full time position.

Appointing authority means the city manager, or designee granted authority to appoint or remove employees of the city service.

Block budgeting means non competitive promotion of incumbents occupying intern, trainee, or entry level positions to positions in a higher classification, following an established career path.

Certification means the act of the department of human resources in supplying a department or division with the names of applicants who are eligible for appointment to the classification and positions for which certification is requested.

Change in anniversary date means an adjustment in the anniversary date of an employee due to a promotion, demotion, change in classification, extended leave of absence, break in service, or other reason set forth in these rules and regulations.

Classification allocation means the assignment of an individual position to an appropriate classification on the basis of the nature, difficulty, or responsibility of the work performed in the position.

Classification means a position or group of positions that have similar duties and responsibilities, require similar qualifications, and can be designated by a single title indicative of the kind of work, and for which the same schedule of pay can be applied with equity.

Classification and pay plan means the official schedule of pay assigning one (1) or more rates of pay to each classification title and the official or approved system of grouping positions into appropriate classes.

Classification series means a number of classes related to each other in terms of ascending difficulties and responsibilities of work within the same occupational field, e.g., "clerk, clerk-typist, secretary" would constitute a clerical series.

Classification specification means a written document, which generally describes a classification and includes typical examples of work of the classification as well as the qualifications and guidelines for entrance into the kind of work described.

Classified civil service means all positions not specifically excluded under the civil service ordinance nor exempted by reason of other ordinance, act, or statute.

Classification level means the definition and assignment of classification to reflect the degree to which the work requires mastery of subject material and relative possession of knowledge skills and abilities of the incumbent necessary to perform assigned work. Typically, classification levels assigned are trainee, entry-level, journey level, advanced or lead level and supervisory level.

Classification title means the official designation or name of the classification as stated in the classification specification used on all personnel records and actions.

Continuous service means employment in the classified civil service which is uninterrupted except for authorized or unauthorized leaves of absence, suspension, or on return from separation due to reduction in work force, in keeping with reduction in force procedures. Time lost due to the foregoing will be deducted from total length of continuous service. Periods of authorized paid leave shall be included as part of continuous service.

Demotion means a change of employment status from a position of one (1) classification to a position of another classification having a lower maximum salary limit. Appropriate exceptions may be approved by the city manager upon the recommendation of the director of human resources based on a review of the supervisory versus non-supervisory responsibilities of the positions involved in the personnel action.

Division director means an employee appointed to head an established administrative sub-division of a department, established in the budget, who answers directly to the department head.

Eligible means a person who meets the requirements for a position and whose name is on an active employment eligibility list.

Eligible list means a list or register of the names of persons for classifications of employment for which they have competed and are determined qualified to be appointed.

Employee means any person holding a position of employment with the city and who is paid wholly or in part from city funds.

Examinations means methods used to determine eligibility of applicants for employment. Examinations may be assembled or unassembled and may include but shall not be limited to written, oral, physical, or performance tests, rating of training and experience, or any combination of these.

Exempt employee - Fair Labor Standards Act. FLSA exempt employee means employees is exempt from the overtime provisions of the Fair Labor Standard Act and does not receive overtime pay.

Exempt employee - Civil service. Civil service exempt employee means employees that are exempt from the civil service protections and rules covered in these rules and regulations.

Grievance means an employee-initiated allegation, made pursuant to the grievance procedure set forth in these rule and regulations, that a written city policy, procedure, rule, or regulation has been violated.

Incumbent means the person occupying a position.

Layoff means a separation of an employee from his or her position which has been made necessary by lack of work, lack of funds, organizational change, or for other reasons not related to fault, delinquency, or misconduct on the part of the employee.

Limited-term appointment means an appointment excluded from classified civil service for a limited duration, made to fill a regular position during the period of an incumbent's approved leave of absence with or without pay.

Merit increase means an increase in pay within a pay range, based upon job performance and service requirements.

Official personnel file means the employment record maintained in the department of human resources, which contains an employee's application(s), salary information and other formal personnel transaction documents.

Overtime means time worked in excess of scheduled work periods for those persons not working on an FLSA exempt basis. Overtime compensation shall be in accordance with the Fair Labor Standards Act.

Overtime exempt employees means employees that are ineligible to collect overtime pay due to their exempt status from the overtime provisions of the FLSA.

Part-time employees means employees hired on a continuing basis to work less than the regularly scheduled hours of a full-time work schedule. A part time employee may be covered by a collective bargaining agreement and may be eligible for benefits and paid leave under certain circumstances.

Performance evaluation means a periodic report reflecting management's job-related opinion of the conduct and performance of the employee.

Personnel cap means the maximum number of full-time and part-time budgeted positions allocated and authorized for each organizational unit.

Position means a group of current duties and responsibilities requiring the full or part-time employment of one (1) person. A position may be occupied or vacant.

Probationary employee means any employee appointed to a position in the classified civil service for whom a one (1) year probationary period has been assigned consistent with these rules and regulations and who has not completed the probationary period for that classification.

Probationary period means a limited period of at-will employment, which is a part of the selection and promotion process.

Promotion means a change of employment status from a position of one (1) classification to a position of another classification, which has a higher maximum salary. Appropriate exceptions may be approved by the city manager upon the recommendation of the director of human resources based on a review of the supervisory versus non-supervisory responsibilities of the positions involved in the personnel action.

Promotional examination means an examination or a group of examinations for a position in a certain classification, to which admission is limited to employees in the classified civil service, who hold a regular position in another classification in which they have completed a probationary period. The city manager may waive this provision.

Promotional eligible list means a list of persons who have been found qualified by a promotional examination for appointment to a position in a particular classification.

Provisional employee means an employee filling a position in the classified civil service without competition pending the establishment of an eligible list.

Reallocation means a change in the knowledge, skills, and abilities required of an existing classification which may result in an assignment to a different pay range.

Reclassification means the reassignment of a position to a different classification, which results from a significant and permanent change in the work assignments of the position.

Red lining means the freezing of an employee's base salary when such salary meets or exceeds the maximum of the approved salary range. Employees with redlined salaries shall not be eligible to receive salary increases, including across the board increases or consideration for merit increase, until such time as the employee's current base salary is below the maximum of the pay range of the job class.

Regular employee means an employee who has been appointed to a full-time position in the classified civil service in accordance with the civil service rules and regulations and has satisfactorily completed a probationary period.

Regular status means a condition, acquired by a full time employee who has completed the probationary period following initial appointment, giving rights accorded to regular employees.

Reinstatement. Reinstated employee means a person who has worked for the city before and is being returned to the same, or lower in series, classification previously held within two (2) years of separation.

Salary range means the minimum, maximum, and intervening rates of pay assigned to a given classification or group of classifications.

Temporary employee means an employee appointed for a special project or other work of a temporary or transitory nature for which employment is not to exceed a period of six (6) months.

Transfer means a change by an employee from one position to another position in the same classification.

Vacancy means a position duly created and still existent but not occupied, and for which funds are available.

(Ord. No. 05-04, § 3, 11-17-04)

Secs. 16-9—16-20. - Reserved.

ARTICLE II. - ORGANIZATION

Sec. 16-21. - City commission.

The city commission shall:

- Appoint members of the civil service board.
- Approve the civil service rules and regulations, including amendments or revisions.
- Approve collective bargaining agreements

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-22. - City manager.

The city manager shall:

- (1) Be responsible to the city commission for the administration and maintenance of the human resources system established by these rules and regulations.
- (2) Appoint and remove all subordinate officers and employees subject to provision of the city's Charter, except those appointed and removed by the city commission. The city manager may authorize any appointed department head to act as "appointing authority" to appoint, remove, promote, discipline, or take other human resources actions provided in these rules and regulations within that director's department or division.
- (3) Be responsible for the preparation of proposed amendments to the civil service rules and regulations and comprehensive pay plan in cooperation with the director of human resources.
- (4) Amend the classification plan and pay plan, in cooperation with the director of human resources, pursuant to these rules and regulations.
- (5) Perform such other duties and exercise such other powers as are set forth in the city's Charter, the City Code, these rules and regulations or as otherwise authorized.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-23. - Director of human resources.

The director of human resources shall:

- (1) Be responsible to the city manager for the administration and technical direction of the department of human resources and the interpretation of these rules and regulations in an efficient, cost effective, and equitable manner.
- (2) Represent the city manager as chief labor negotiator in the conduct of collective bargaining and other activities involving employees relations, including grievance handling and resolution, and the administration of disciplinary action.
- (3) Administer the civil service rules and regulations and issue related operating instructions to employees and officers.
- (4) Review actions, apply city policies, and represent the city manager, in consultation with affected department and division heads, in matters of discipline, outside employment, conflict of interest, critical workplace incidents such as workplace violence and security, and the maintenance of a safe and equitable workplace.
- (5) Manage the city's risk management and employee benefit programs.
- (6) Publicize through appropriate channels, job vacancies in the city to be filled by either initial appointment or by promotion, transfer, or demotion of existing employees and apply the required procedures for the administration of the job vacancy filling system.
- (7) Develop and administer recruitment and examination programs necessary to obtain an adequate supply of competent applicants to meet the city's needs.
- (8) Investigate periodically the operation and effect of the civil service rules and regulations and the policies and practices for their application and report findings and recommendations to the city manager as appropriate.
- (9) Advise the city manager on matters affecting the most effective use of human resources and the status of the city's human resources program.
- (10) Serve as executive secretary to the civil service board.
- (11) Perform such other duties and activities with regard to human resources administration in a manner consistent with federal, state or city laws, these rules and regulations, ordinances or resolutions of the city commission as may be necessary or desirable for effective human resources administration.
- (12) Formulate and establish forms and procedures deemed necessary to implement the provisions of these rules and regulations.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-24. - Duties and structure of the civil service board.

- (a) Pursuant to the provisions of the city's Charter, the civil service board shall:
- Serve in an advisory capacity regarding the utilization and promotion of merit principals of human resource administration.
 - The board shall review the examination process established by the human resources department relative to the recruitment of employees.

- The board may assist the human resources department in the administering of written examination and other examinations, as determined by the human resources department.
 - The board may monitor and oversee any examination process instituted by the human resources department.
 - The board may request that the director of human resources investigate matters concerning the enforcement and effect of these rules and regulations, and the board may thereby recommend appropriate actions within the civil service system. The board shall keep confidential all personal and family information, including health information, coming to its attention during the conduct of official board meetings or investigations as provided by the laws of the State of Florida.
- (b) The human resources director shall advise the board members at each meeting of all civil service appointments, transfers, and promotions.

(Ord. No. 05-04, § 3, 11-17-04)

Secs. 16-25—16-40. - Reserved.

ARTICLE III. - CLASSIFICATION PLAN

Sec. 16-41. - Purpose.

The classification plan shall provide for the systematic description and review of positions in the city service. The classification plan groups the various positions into classifications with a similar range of duties, responsibility, and knowledge, skills and abilities required of the incumbent. By describing and relating the various types and levels of classification throughout city service, the classification plan provides guidelines for establishing appropriate pay ranges. The classification plan shall be based on appropriate objective, job evaluation and shall be maintained on a current basis.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-42. - Content of the plan.

The classification plan shall be structured consistent with the provisions of the City Charter, the City Code, these rules and regulations, and effective human resources administration practices. The plan shall allocate each position in city service to the appropriate classification, with each classification consisting of one (1) or more positions which:

- (1) Require substantially similar knowledge, skills and abilities, experience or education.
- (2) Perform work of a substantially similar value to the organization which is appropriate to be placed in the same salary range.
- (3) Can be filled by substantially the same selection method.
- (4) Uses a title which appropriately describes the classification, which is indicative of the work of the class and which shall be used for administrative purposes such as payroll, budget, personnel records and transaction completion.
- (5) Consist of written classification specifications, describing the class name, and the nature of the work, examples of the central and typical tasks found in the classification, the minimum knowledge, skills, abilities, training, education and experience required, and any special qualifications necessary for entrance into classification.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-43. - Administration of the plan.

The director of human resources shall be responsible for the administration and maintenance of the classification plan. The director of human resources may request the assistance of other city officials or delegate authority to other staff members to assist in carrying out this responsibility. The director of human resources shall periodically review the classification of positions and recommend to the city manager appropriate amendments to the classification plan in the form of new amended salary grades, new classifications, creation of classification series, revision of existing classifications, consolidation of classifications and removal of classifications that are no longer required.

- (1) [*Generally.*] No person shall be appointed or promoted to any position in city service under a title not contained in the classification plan.
- (2) *Allocation of positions.* After the establishment of a new position has been approved, the director of human resources, in consultation with the appropriate department or division director, shall cause a position classification questionnaire to be completed, describing the duties and responsibilities of the proposed position. The director of human resources shall allocate the position to one (1) of the classes in the classification plan. If a suitable classification does not exist, the director of human resources shall recommend the establishment of a new classification and shall allocate the position to it after adoption of the new classification.
- (3) *Classification allocation reviews.*
 - a. If a department or division director has reason to believe that a position in a department or division is incorrectly allocated, a request in writing may be made to the director of human resources to review the allocation of the position.
 - b. If an employee has facts which indicate to him/her that the position he or she occupies is incorrectly allocated, the employee may request in writing through the chain of command that the director of human resources review the allocation of the position. Prior to any review by the human resources director, with prior approval of the affected department or division director is required prior to any review by the human resources director.
 - c. The director of human resources may conduct periodic reviews of individual positions or classifications or groups of classifications to ensure the positions are appropriately classified to investigate alleged inequities.
 - d. The director of human resources shall obtain information concerning any position believed to be incorrectly allocated by having a position classification questionnaire completed by the incumbent, the supervisor of the position, and/or the department or division director. The completed and reviewed position classification questionnaire and any subsequent investigation of the class allocation constitute a job audit, which may be conducted by the human resources department staff, if the director of human resources determines that additional information or clarification of existing information is required to make a determination regarding class allocation. After considering all the information obtained, the director of human resources shall place the position in question in the appropriate classification.
- (4) *Reclassification of positions.* Established positions may be reclassified from one (1) classification to a different classification under the following conditions:
 - a. There have been significant changes to the actual duties and responsibilities of the position.
 - b. The change in duties and responsibilities are of a permanent nature and are intended by management.
 - c. The reclassification is based upon new or added elements in the job or deletion of elements and not on the performance of the individual.

- d. Positions will not be reclassified when:
1. The assignment of new duties or responsibilities had the effect of creating a new position.
 2. The added duties and responsibilities are minor in nature and the logical function of the existing classification.
 3. The additional duties and responsibilities are to be performed for a temporary period only.
 4. The only change involved is an increase in the workload of the employee and not in the nature of the work performed.
 5. The primary purpose is to effectuate a promotion or an increase in salary for the employee.
 6. The purpose is to serve as a substitute for effective disciplinary action or is retaliatory.
- (5) *Classification appeals.* Classification decisions (i.e., reclassifications, title changes, salary range adjustments, etc.), are the result of judgments and analysis of trained human resources staff in the evaluation of classification and salary determinations and as such are not subject to review through the civil service grievance procedure. Instead, any appeals regarding classification or salary allocation judgments may be made to the director of human resources in writing within thirty (30) calendar days of the original decision. The appellant should indicate why he or she believes the original decision was not proper, and provide any other pertinent information in support of the appeal. Whenever possible review of the appeal determination will be made by an HR staff member other than the staff reviewer who made the original recommendation. Prior to notifying the appellant of the decision in writing, the director of human resources shall also review the appeal and render a written decision, which decision shall be final.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-44. - Classification plan maintenance.

(a) *Use of the position classification questionnaire.*

- (1) When a new position is proposed or significant changes are occurring in an existing position, a position classification questionnaire shall be completed by the incumbent, if any, or by the department or division director when a position is vacant. The documents are to be submitted to the director of human resources for review of the position allocation. The director of human resources may waive this requirement in cases where it is determined that no material changes have occurred in the position.
- (2) It shall be the duty of each department and division and director to submit to the director of human resources, a new position classification questionnaire for all affected positions each time the department or division is permanently or substantially reorganized, or otherwise upon request of the director of human resources.

(b) *Reclassification; incumbent qualifications.*

- (1) Where reclassification is recommended which would advance an incumbent from one (1) classification to a different classification at a higher salary range, the incumbent will be required to qualify in an appropriate noncompetitive examination, which may consist of a formal review of the employee's knowledge, skills, abilities, experience and education by the director of human resources.
- (2) If reclassification results in a classification grade higher than that of the original classification, or would otherwise be considered a promotion in accordance with these rules and regulations, such change shall be considered a promotion for the qualified incumbent. Should the incumbent fail a

noncompetitive promotional review or for some other valid reason is not promoted, the director of human resources may allow the employee to remain in the original position until he or she can qualify for the same or another classification which may exist. If no such vacancy exists, or for good reason cannot be affected, the director of human resources, in accordance with these rules and regulations may initiate a demotion of the employee to a lower existing classification vacancy. If the demotion is made to a lower classification, no examination will be required.

- (3) If a position is reclassified to a classification with a lower pay grade maximum or would otherwise be considered a demotion in accordance with these rules and regulations, the incumbent must be notified in writing of the proposed downward reclassification and efforts must be made to transfer the employee to another position in the same classification, if such position exists, or to any other position in the city service for which he/she qualifies. If no transfer or reassignment is available, the incumbent shall be demoted as described in the section on demotions in these rules and regulations, except that the incumbent's base salary at the time of reclassification will be "red lined" at the discretion of the director of human resources, following consultation with the affected department or division director.
- (c) *Pay range adjustments.*
- (1) In maintaining the classification plan, the director of human resources may determine that adjustment to the pay range of an existing classification is necessary. Such pay range adjustments will not entitle an incumbent to a salary increase unless the entry salary of the pay range is adjusted to a point where the incumbent's salary is below the new minimum of the pay range. In such cases, the incumbent's salary shall be adjusted to equal the minimum of the new pay range.
- (d) *Classification specifications and classification titles.*
- (1) Each time a new classification is established, a classification specification shall be written and incorporated into the classification plan and the classification title shall be added to the schematic list of titles in the city service. Likewise, an abolished classification shall be deleted from the classification plan by removing the class title from the list of titles.
 - (2) The title change of an existing classification does not reflect any significant changes to the duties or responsibilities of the position. As such title change does not require probationary period or result in a change in salary, anniversary date, or compensation for an incumbent.
- (e) *Interpretation of classification specifications.* The classification specifications are general and not necessarily inclusive of all duties performed. The use of particular descriptions as the duties qualifications or other factors shall not be held to exclude others of similar kind or quality. The specifications are intended to indicate the kinds of positions, which shall be allocated to the classification established.
- (f) *Block budgeting.* The director of human resources shall establish guidelines and designate classifications eligible for block budgeting in consultation with affected department or division director. This program shall allow for the noncompetitive promotion of incumbents occupying the position such as intern, or trainee, or incumbents in entry-level positions in a classification series who are performing the duties of journey level classification, provided that the established block budgeting guidelines are followed.
- (g) *Adoption and maintenance of the plan.* The city manager shall periodically present the classification plan to the city commission for adoption, including at the time of the adoption of the annual budget. Notwithstanding the above, the city manager is authorized to approve reclassifications of individual positions, title changes, salary range adjustments, addition of new classifications, deletion of unused classifications with no incumbents and other actions as are necessary for the maintenance of the classification plan, as he/she deems necessary during the course of the year, in cooperation with the director of human resources.

(Ord. No. 05-04, § 3, 11-17-04)

Secs. 16-45—16-60. - Reserved.

ARTICLE IV. - PAY PLAN

Sec. 16-61. - Purpose.

The pay plan is designed to provide a fair and equitable basis for the payment of salaries for employees covered by these rules and regulations. It establishes a uniform basis for administration and shall be directly related to the administration of the classification plan. The pay plan sets the basic salary ranges as approved by the city commission. Each salary range shall consist of a minimum and a maximum rate of pay for all classifications in city service.

The director of human resources shall prepare periodic amendments to the pay plan and present the amendments to the city manager for appropriate action. Approval and adoption of the proposed pay plan amendment shall be based on a majority vote of the members of the city commission and shall recognize the authority provided in Article III of these rules and regulations for the city manager to approve reclassifications and salary range changes as needed during the course of the year for the timely administration of the human resources system.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-62. - Scope.

All employees in city service shall be employed and paid in accordance with the rates and policies established by the pay plan for specific job classifications. Salary schedules included in collective bargaining agreements will be incorporated into the pay plan, and constitute an extension of it.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-63. - Exemption from overtime.

Notwithstanding any other provisions of this chapter, employees designated by the city as exempt from the provision of the Fair Labor Standards Act whether included in or excluded from the classified civil service, shall be considered to be compensated on a salaried, rather than hourly basis. Such employees shall not be subject to compensation reductions for absences of a less than a regular workday schedule, however, such absences must be approved by their supervisors.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-64. - Starting salary rates.

- (a) The starting salary for a new employee entering city service shall be the minimum rate of pay for the appropriate classification based upon the assumption that the new employee meets the minimum qualifications stated in the classification specification and the job announcement.
- (b) If the director of human resources and the affected department or division director concur that a selected candidate substantially exceeds the minimum qualifications as stated in the classification specification and the candidate in question will not accept appointment at the minimum salary rate for the classification, then the employee may be appointed above the prescribed minimum salary rate. No appointments shall be made in excess of ten (10) percent above the minimum of the classification salary range without specific approval of the city manager.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-65. - Performance evaluations.

- (a) *Purpose.* The performance evaluation will enable the employee to understand whether he/she is performing well or correctly, as well as where he/she stands with his/her supervisor. The object is to maintain or improve the high quality rate of performance of the city employee. In order to carry out the performance evaluation, each employee shall be evaluated according to the procedures outlined below. This article does not apply to employees holding positions contained in Article II, [former] Section 16-2.1.0(a), (b) and (c) [current section 16-4].

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-66. - Probationary employees.

- (a) All appointments to positions made from outside city service shall be subject to a one (1) year probationary period. All promotional appointments shall be subject to a six-month probationary period.
- (b) Prior to the expiration of the probationary period, the employee's immediate supervisor shall evaluate the employee's performance by completing the employee performance evaluation form, incorporated herein by reference. The department head will review and sign the evaluation form and provide written recommendations, if necessary, to the city manager for his/her approval. A copy of this evaluation shall be furnished to the employee, and the original shall be given to the human resources department for filing in the employee's personnel file.
- (c) Probationary employees receiving unsatisfactory evaluations at the expiration of the probationary period shall be subject to separation from of service by the city manager with the consultation of his/her department head. In every case, the department head shall notify the city manager in writing of said action and of the reasons for same. Upon approval of the city manager, a probationary employee who receives an unsatisfactory evaluation at the expiration of the probationary period may be granted an extension not to exceed sixty (60) days in order to improve his/her performance. If at the end of the extended probationary period the employee's performance is still rated unsatisfactory, the employee shall be subject to discontinuance of service.
- (d) Probationary employees terminated due to the unsatisfactory performance during the probationary period shall have no right to a statement of cause, or the reasons for rejection, or to a hearing and/or appeal.
- (e) If the employee so released was promoted or transferred to the position form within the city service and his/her work was satisfactory prior to the transfer or promotion, he/she may be returned to his/her previous position or to another suitable position in the same classification as previously held, if available, and if appropriately provided for in the budget.
- (f) Probationary employees who receive satisfactory performance evaluations shall, after one (1) year of employment with the city, attain civil service status. Such employees shall be eligible for all benefits and provisions of the city's civil service system, and become permanent employees of the city.
- (g) Employees must maintain a satisfactory standard of performance during and after the probationary period, and it shall be a responsibility of the department head to periodically converse with the employee during and after said employee's probationary period to determine whether or not said employee needs assistance for purposes of obtaining satisfactory performance.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-67. - Permanent employees.

- (a) All employees of the City of Miramar shall be evaluated annually from their date of hire or promotion by the use of the employee performance evaluation form. Fifteen (15) days prior to an employee's anniversary date, his/her supervisor shall evaluate the employee's performance. The department head shall review the evaluation with the employee and shall provide written recommendations of same to the city manager. Each employee, shall sign the evaluation form, although the signature of the employee shall not be interpreted agreement with the evaluation.
- (b) An evaluation rating received by a permanent employee prepared by his/her supervisor may be, if he/she so wishes, appealed to his/her department head. All appeal requests must be made in writing within five (5) days following notification of the employee's evaluation rating by his/her supervisor. If the employee is not satisfied with the department head's answer, he/she may then appeal the decision of the city manager with in five (5) days of the department head's answer. The city manager's findings shall be final.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-68. - Progress reports.

- (a) A department head, supervisor, or city manager may, evaluate an employee other than at the time of the anniversary date to indicate to the employee that improvement is needed in the performance of his/her duties, or that he/she has demonstrated outstanding performance.
- (b) Such an evaluation shall be done using the performance evaluation form, and the evaluator shall indicate that it represents a progress report. This report shall be placed in the employee's personnel file.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-69. - Merit increases.

- (a) Pay ranges are established to provide a means of rewarding an employee for meritorious performance and behavior on the job, to encourage career development for city employees, to provide incentives and to recognize individual differences in job related performance behavior. Increases within the pay range are not automatic but must be based upon formal performance evaluations of the employee in accordance with procedures developed by the department of human resources.
- (b) Effective on an employee's anniversary date, the salary of each employee in classified civil service, whose performance and behavior are rated at least satisfactory or above, shall be advanced to the next higher step in the classification salary range not to exceed the salary range maximum. Across the board increases, including those which may be negotiated in a collective bargaining agreement or those otherwise approved by the city commission, will not affect the employees' anniversary dates. Special increases within range may also be granted upon specific approval of the department director and the city manager.
- (c) An employee whose performance or behavior on the job is less than satisfactory shall not be eligible to receive a merit increase. Such an employee shall receive written notice of performance or behavior deficiencies in the form of a corrective action plan with specific time frames for the supervisor and affected department or division director to determine that an improvement in behavior or performance has occurred to at least satisfactory levels. Failure to see the job related improvement called for will result in appropriate disciplinary action, which may include termination, or demotion to a lower paying job classification. A step increase may also be delayed based upon a less than satisfactory evaluation and corrective action plan, and may be authorized prospectively upon a finding by the department's director that performance or behavior has improved to at least satisfactory level. An employee's anniversary date is not affected by such action following a corrective action plan.

(d) Part-time employees are eligible for merit increase consideration as specified in the comprehensive pay plan.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-70. - Performance excellence awards.

The objective of this program is to provide the city manager and department and division directors with authority and discretion to recognize individuals whose performance and behavior on the job is exceptional on either a sustained basis or in the performance of a particular assignment. Such recognition may take the form of monetary payments in addition to merit increases. The awards may also take the form of additional authorized paid time off. These awards will be granted only to those individuals who clearly demonstrate outstanding performance and behavior level.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-71. - Salary change on promotion.

When an employee is promoted from one (1) classification to another classification with a higher salary range maximum, the employee pay rate shall be increased by a minimum of seven and one-half (7.5) percent above the current salary and the employee shall be placed in the appropriate step of the higher salary range, which achieves this minimum level of increase. In the case of classifications without individual steps, the amount of increase within the salary range shall be seven and one-half (7.5) percent, provided that there is room within the new salary range to accommodate such an increase. In the absence of such room, the employee shall be promoted to the top step of the new salary range. In the case of an employee promoted to a classification with a minimum salary range higher than seven and one-half (7.5) percent above the amount currently received by the employee, the employee shall be advanced to the minimum step of the new salary range.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-72. - Salary change on demotion.

When an employee is demoted, whether the demotion results from a voluntary request by the employee, or disciplinary action or is in lieu of a reduction in force, the employee shall be paid at a rate which is in the approved salary range of the classification to which the employee is demoted, unless the director of human resources makes the discretionary determination that the employee's base salary amount is above the maximum of the lower paying classification and should be maintained, and further, that the prior base pay amount of the employee's salary is red-lined. The rate of pay and the lower paying job classification to which the employee is demoted shall be established by the director of human resources in consultation with the employee's department or division director, taking into consideration the circumstances surrounding the reasons for the demotion and the employee's performance rating. In no case shall the employee be paid less than he or she would receive had the employee's original appointment been to the lower pay grade. The department or division director, in consultation with the director of human resources, may require an employee to serve a new probationary period upon demotion. The anniversary date of an employee demoted shall be the effective date of the demotion. The employee shall be eligible for consideration for a merit pay increase one (1) year after the effective date of the demotion, unless the salary of the employee is at the top step or the employee has been red lined.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-73. - Salary upon downward range reallocation.

When an employee's position is reallocated to a classification in a lower salary range, the employee shall be permitted to continue at the base pay rate immediately prior to the downward reclassification and shall continue to be eligible for merit increases up to the maximum amount of the lower salary range. If the employee's present salary is above the maximum of the lower classification, the employee shall be permitted to continue at the present salary range amount during the period of incumbency in the classification (i.e., red lined), but shall not be entitled to a merit increase beyond the maximum of the lower salary range.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-74. - Salary upon transfer.

An employee may be transferred by order of the city manager or upon a request from an employee, approved by the city manager from a position in a specific job classification to another position in the same job classification. Upon such transfer, neither the employee's base pay amount, salary range, or anniversary date for consideration of a subsequent merit increase shall change.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-75. - Temporary work at a higher classification.

If a vacancy exists, or an employee is absent on approved leave (with or without pay) in a higher classification, or as otherwise determined by the department or division director, a qualified employee working in a lower classification may be authorized to work in a higher classification on a temporary, incidental, or emergency basis. An employee must meet at least the minimum qualifications for employment in the higher classification, except in an emergency situation, in order to be selected for work in a higher classification. In cases of such emergency, the department or division director, following consultation with the director of human resources, may approve the temporary work by an employee who does not fully meet the minimum qualifications. Appointment to perform the temporary work in a higher classification shall be in writing and, other than an emergency situation; the selection shall be made by a method determined in consultation with the director of human resources so that any similarly situated employees in the affected work group may have an opportunity to be considered for such assignment. If the employee is required to perform the work in a higher classification for a period of two (2) full pay periods or longer, the employee shall receive a temporary pay increase to the pay rate that the employee would have received had the employee been promoted to the higher classification for the time worked in the higher classification beyond the initial two (2) pay periods. At the conclusion of the assignment, the employee's base pay rate shall revert to the authorized rate established for his or her regular position. Periods of temporary work at a higher rate shall not affect the employee's eligibility for consideration for merit or other forms of salary increase. If such eligibility occurs during the period of the temporary upgrade, and the merit increase is authorized at the lower salary range, the rate of pay for the temporary upgrade shall also be proportionately increased. Temporary work in a higher classification shall not continue for a period longer than six (6) months.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-76. - Overtime.

Overtime is work authorized by the department or division director beyond the normal full time work schedule. For most employees working a forty-hour or thirty-seven and one-half-hour regularly scheduled work week, overtime means work authorized in excess of the employee's regularly scheduled seven-day work week. In any department or division, overtime shall be authorized or directed by the director only when it is in the interest of the city and is the most practical and economical way of meeting unusual workloads or deadlines. As a general rule, the requirement of frequent and considerable overtime in a department or

division shall be cause for the department or division director, in consultation with the director of human resources and budget director, to review the level of staffing in the organization.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-77. - Work week for fair labor standards act purposes.

The department and/or division director, in consultation with the director of human resources shall establish the starting time and ending time of the work week of the organization. For most employees, the work week will be a consecutive one hundred sixty-eight-hour period of time (seven (7) calendar days). In the absence of a differently established work week in a particular department, the default work week for city employees will be one hundred sixty-eight (168) hours beginning at midnight on Thursday and ending immediately prior to midnight on the following Wednesday. The work week for emergency service may be modified by the city manager

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-78. - Payment for overtime.

The standard method for compensation for overtime hours worked shall be cash payment at the rate of time and one-half time the employees' regular rate of pay. A department and/or division director may approve, in writing, the limited accrual of compensatory time off hours at the rate of time and one-half. Approved compensatory time off is subject to a maximum accrual limit of one hundred twenty hours (120). Any hours accrued beyond the limit are subject to cash payment by the city.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-79. - Living wage.

All full and part time employees of the city shall be paid a living wage, which is the minimum hourly income that the City Commission determines to be necessary for an individual to support himself or herself and to pay basic living expenses such as food, medical care, housing and transportation costs. The living wage shall be determined by the City Commission by resolution. The City Commission may amend the living wage at any time, subject to collective bargaining, if required.

(Ord. No. 15-12, § 2, 5-6-15)

Secs. 16-80—16-100. - Reserved.

ARTICLE V. - RECRUITMENT AND APPLICATIONS

Sec. 16-101. - Recruitment.

Recruitment of candidates (in positions covered by these rules and regulations) will be conducted, consistent with these rules and regulations, in order to identify the most qualified and available candidates for positions in city service. Recruitment will be based upon the principles of equality of opportunity and the avoidance of unlawful discrimination.

- (1) All recruitment announcements and publicity shall include reference to the city as any equal opportunity employer.

- (2) All recruitment will be carried out consistent with these rules and regulations, and be based upon a written recruitment plan, created jointly by the department of human resources and the appointing authority, in advance of the commencement of the recruitment, and based upon the contents of the job announcement.
- (3) The director of human resources shall determine the appropriate sources of advertising for the particular recruitment and shall give weight in the selection of advertising media to a focus, when possible, on local Miramar area advertising.
- (4) Recruitment will be conducted on the basis of either open competitive solicitation of candidates from within and outside of the city service, or promotional recruitment soliciting applications from qualified city employees from within the entire city service or within segments of the city service, such as departments or divisions, as defined in the job announcement.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-102. - Recruitment plan.

The director of human resources and the appointing authority shall agree on a written recruitment plan in advance of the announcement of a vacancy to be filled in the city service. The recruitment plan shall be completed on a form prepared by the director of human resources, which form shall include the following information:

- (1) Classification title, salary range, and application filing period.
- (2) Classification description, which shall be attached to the recruitment plan.
- (3) Essential elements of the position that may be unique to a particular situation.
- (4) Any specific criteria which may relate to alternative selection rules when the recruitment is complete.
- (5) Any specific criteria which may relate to selective certification when the recruitment is completed, such as requirements for shift work, second language capability, possession of specific licenses or certificates, etc.
- (6) The certification rule to be followed in the particular recruitment.
- (7) The duration and type of the eligible list.
- (8) Any other information specifically relevant to the proposed recruitment.
- (9) The selection examination method to be used, including the relative weighting of multiple components of the process such as a written and an oral examination, if applicable.
- (10) Identity of oral panel or rating panel members to insure the presence of supervisors, subject matter experts, a human resources representative and an overall panel membership, reflecting the city's ethnic and gender diversity.
- (11) The responsible department personnel assigned to work with human resources staff in coordinating recruitment.
- (12) Other information relevant to examination coordination and process.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-103. - Job announcement.

The establishment of all eligible lists for the filling of vacancies in classified service not otherwise being filled by transfer, demotion, reinstatement or noncompetitive examination shall be based upon the publicly

posted open competitive or promotional job announcement created by the director of human resources. The official posting of the job announcement shall occur in the public area of the department of human resources' office. Job announcements shall also be sent to the appropriate department and division directors for posting on bulletin boards and in other places as deemed advisable by the director of human resources. Announcements shall specify:

- (1) Classification title and salary range of the position to be filled.
- (2) Minimum qualifications for eligibility or for admission to the written, oral, or performance test, if required.
- (3) The manner of submitting an application.
- (4) The closing date for receipt of applications in those cases where the recruitment is not on a continuous basis.
- (5) A notice that the City of Miramar is an equal opportunity employer.
- (6) The duration of the eligible list and the applicable certification rule.
- (7) Other pertinent information.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-104. - Continuous recruitment.

When there is an urgent need for eligible applicants and past experience or knowledge of the labor market by the department of human resources indicates a probable scarcity of qualified eligibles, applicants may be examined and certified as received until such time as the vacancy is filled. This procedure is known as continuous recruitment, and may be authorized by the director of human resources in consultation with the department and division directors and noted on a recruitment plan. Notice of continuous recruitment will be included in applicable job announcements as well as in other advertising media.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-105. - Applications.

- (a) All applications for positions in the city service shall be made on a standard form prescribed by the director of human resources. The form shall require details covering training, experience, personal contact information, responses to job related questions and acknowledgement by applicant's signature of requirements for honesty and authorization for reference and background verification.
- (b) In lieu of a standardized application form, the director of human resources may authorize the acceptance of resumes and the submission of supplemental questionnaires.
- (c) All applications shall be signed by the applicants attesting to the truth of all statements contained on the application form.
- (d) All applications must be received prior to the closing date during the period of application filing as stated on the job announcement. All applications submitted shall be deemed accepted if received by the department of human resources within the filing period. The director of human resources may approve exceptions based upon unusual circumstances, including delays in receipt of the mail, or as otherwise approved by the director of human resources.
- (e) Incomplete applications may, at the discretion of the director of human resources, be returned to the applicant to provide an opportunity to complete the application.
- (f) Consistent with the requirements of the job announcement, no individual shall be denied the right to apply for a position in the city's service.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-106. - Minimum qualifications and information verification.

Recruitment for all positions in the city service shall be open to all persons who meet the minimum qualifications as listed on the job announcement. All information on the application is subject to verification by the city, consistent with the procedures established by the director of human resources. No person shall be certified as eligible for a position without meeting at least the minimum qualifications set forth in the classification specification and the job announcement.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-107. - Rejection or disqualification of applications.

The director of human resources may reject any application or disqualify an applicant when it has been determined that:

- (1) The application was not received in a timely manner.
- (2) The application was not completed on the prescribed form.
- (3) The applicant failed to sign the application form.
- (4) The applicant does not possess one (1) or more of the minimum qualifications or requirements as set forth in the job announcement.
- (5) The applicant falsified or failed to complete the application form or provide accurate and correct information in response to any of the questions on the application form, including omitting material facts.
- (6) Fraud has been committed in an attempt to secure employment with the city on either the application form, in any employment test or otherwise.
- (7) The applicant has been convicted of, pled guilty to, or pled nolo contendere (no contest) to a felony or misdemeanor. Applicants having such criminal history will be reviewed on a case by case basis by the director of human resources with due regard given to the nature of responsibilities to the position involved, the relevance and resensy of the criminal history and the applicant's veracity in completing application forms.

Whenever an application is rejected, or a candidate is disqualified, notice of such action shall be mailed to the applicant at the address noted on the application form.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-108. - Postponement, cancellation, or extension of examination.

The director of human resources may extend filing deadlines or other recruitment activity deadlines, postpone or cancel the recruitment. In case of postponement or cancellation, each applicant shall be notified by the department of human resources.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-109. - Retention and access to recruitment documents.

Recruitment documents including applications, recruitment planning documents, examination materials, etc., shall be maintained by the city, pursuant to public records law retention requirements and

shall not be returned to the applicant. Notwithstanding the above, recruitment materials with the exception of examination materials, and answer keys, shall be made available to applicants or other members of the public only upon request.

(Ord. No. 05-04, § 3, 11-17-04)

Secs. 16-110—16-120. - Reserved.

ARTICLE VI. - EXAMINATIONS

Sec. 16-121. - General.

Filling of positions covered by these rules and regulations shall be accomplished by selection from among those eligible candidates certified by the human resources department to the appointing authority. Placement on an eligible list shall be accomplished through job related competitive examination processes open to all candidates who meet at least the minimum qualifications as described on the job announcements. Notwithstanding the above, the director of human resources shall have the authority to designate classifications which may be filled through a non-competitive qualification process when appropriate. Examinations shall be impartial and job related, designed to fairly test the ability, knowledge and skills of the applicants to effectively perform the duties of the position to be filled.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-122. - Open competitive examinations.

Open competitive examinations shall be prepared and conducted under the direction of the director of human resources. Applicants for open competitive examinations may be current city employees or any member of the general public, meeting at least the minimum qualifications for the classification as set forth in the job announcement. One (1) or more of the following examination types may be selected based upon the classification involved, the number of candidates anticipated, or other factors determined by the director of human resources: written, oral, performance test, assembled ratings of education and experience, assessment center, or any combination of these as determined in the examination planning document. The examination process may take into account such factors as candidate education, experience, knowledge, skills, abilities, or other qualifications which are job-related and may be applied in an equitable manner to aid in the determination of the relative merit and fitness of applicants in relation to the needs of the city.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-123. - Promotional examinations.

Positions in the city service shall be filled by promotion from within when the appointing authority and the director of human resources determine it to be in the city's best interest to do so. Promotional job announcements may be prepared and distributed to all affected departments and divisions consistent with the recruitment plan document. Promotional examinations will be opened to all eligible city employees who meet at least the minimum qualification for the job classification, as set forth in the classification specification and the job announcement. The director of human resources may limit certification of eligibles for promotional appointments to qualified candidates in specific departments or divisions.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-124. - Fraudulent conduct or false statement.

Fraudulent conduct or false statements by an applicant or other parties with the applicant's knowledge in any examination or in preparation of application materials shall be deemed cause for exclusion of the applicant from an examination or removal of his/her name from all eligible lists or discharge from city service after appointment. In addition, applicants and employees falling under the above bases for disqualification may be excluded from taking subsequent examinations.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-125. - Evaluation process confidentiality.

All examination materials and ratings earned by applicants are to be treated as confidential information during examination processes by staff members of the department of human resources and others involved in the examination process. It is the policy of the city that no employee may participate directly or indirectly in the rating or examination of an applicant in which there is a conflict of interest situation, such as situation relating to the employment of relatives.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-126. - Identity of examinees in written examinations.

The director of human resources shall prescribe procedures to be used in examinations whereby the name of any examinee will not be identified until after the examination papers have been graded or evaluated. Any papers bearing the name of the applicant or other identification marks that otherwise identifies the applicant prior to the time that written examination papers are graded may be disqualified.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-127. - Method of rating.

- (a) As part of the recruitment plan document, the director of human resources, following consultation with the department or division director, shall determine the examination techniques and procedures to be applied in the examination. This determination shall include the methods of evaluating experience and training, the test devices to be used, and the relative weighting to be assigned to the various parts of the examination.
- (b) For all examinations, whether by written tests, interview, evaluation of educational experience, or performance examination, a rating system will be established by the director of human resources to determine the final result of the examination. Such system may be numerical, a relative ranking of candidates' qualifications, or a "pass, fail" rating. The rating system shall be specifically described in the job announcement. The minimum qualifying overall rating shall be established in the examination. Final ratings shall used as the basis for qualification to be on a list of eligibles. The assignment of veteran preference points or City of Miramar resident points shall occur only after the applicant has achieved at least a minimum passing score, exclusive of such additional points, in a numerical rating system.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-128. - Preference points.

- (a) All qualified applicants covered by these rules and regulations shall be eligible to receive Miramar resident preference points added to their overall qualifying rating when competing in open competitive and promotional examinations with a numerical rating basis.
- (b) Veterans of the Armed Forces of the United States, upon presenting their honorable discharge together with proper credentials from the Veteran's Administration, will be entitled to five (5) points which will be added to their total war time era, or to three (3) points if not a war time era (as defined in the Rules of the Department of Administration Division of Veteran's Affairs Chapter 22 VP-1). Other veteran points classifications are as follows:
 - (1) Five (5) points awarded to the unmarried widow or widower of a veteran who died of a service-connected disability.
 - (2) Ten (10) points awarded to disabled veterans who are receiving compensation, disability retirement benefits, or pension by the Veteran's Administration or Department of Defense.
 - (3) Ten (10) points awarded to the spouse of any person who has a total and permanent service-connected disability and who, because of the disability, cannot qualify for employment, or to the spouse of any person who is missing in action or is a prisoner of war.
- (c) Veterans preference. Credit can be allowed only once, at either the initial or entrance examination. A veteran's preference can be claimed and successfully used to obtain employment with any public employer only once after October 1, 1987.
- (d) Veterans preference will be allowed only after obtaining a passing score on all examinations.
- (e) Miramar resident preference points. Applicants who are residents of the City of Miramar will be given credit of four (4) points when competing in a civil service examination with a numerical basis of scoring. This credit can be allowed only once, that being at the initial or entrance examination. The additional points will be allowed only after obtaining a passing score on all examinations.
- (f) Permanent employees will be given credit of one (1) point for each year of completed service, not to exceed five (5) points, when competing by examinations for a civil service position in the same department in which he/she is employed. The additional points will be allowed only after obtaining a passing score on all examinations.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-129. - Notification of examination results.

Each person who is examined shall be notified in writing as to whether or not he or she received a qualifying score on the examination. The examination results and ratings for all competitors shall be released at the same time. Eligible candidates shall be advised of their ratings or their initial relative position on the eligible list.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-130. - Inspection of examination papers.

The department of human resources shall permit any applicant to make one (1) inspection of his/her own examination papers and other related documents for a period of thirty days (30) after the establishment of the eligible list. However, examination papers and score sheets shall not be opened to inspection by the general public. Inspections shall be made at the department of human resources offices during regular business hours. A manifest error in examination scoring shall be corrected if called to the attention of the director of human resources within the inspection period. However, any such correction shall not invalidate an appointment previously made from an eligible list.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-131. - Appeal from ratings.

- (a) Original examination ratings are subject to review or appeal by the director of human resources upon written request from a candidate. The candidate shall provide reasonable cause as to why the candidate believes the examination has been incorrectly rated. The director of human resources has the discretion to accept an oral request if warranted by the circumstances. In all cases, review of the rating will be accomplished by a professional staff member, other than the examiner, who made the original rating decision. The director of human resources shall also review the case prior to notifying the applicant of the decision concerning the appeal. The decision of the director of human resources is final.
- (b) Appeals from ineligible ratings will be considered only if submitted within thirty (30) calendar days from the date the register is established. Request for review of eligible ratings shall be considered at any time during the life of the register.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-132. - Confidentiality of the examination materials and retention of records.

All applications, examinations and tests materials, and other examination records shall be regarded as privileged and confidential information, available for public inspection only in accordance with the State of Florida law. All examination materials will be retained in accordance with the Florida law.

(Ord. No. 05-04, § 3, 11-17-04)

Secs. 16-133—16-150. - Reserved.

ARTICLE VII. - ELIGIBLE LIST

Sec. 16-151. - General.

Vacancies in the classified civil service shall be filled from the eligible list established by a competitive process determined by the director of human resources, by either internal transfer, demotion, reassignment, or by non-competitive qualification as provided elsewhere in these rules and regulations.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-152. - Establishment of eligible lists.

- (a) The director of human resources shall establish and maintain eligible lists as necessary to meet the needs of the city. Each list shall contain the names of those eligibles who have been determined to be qualified for appointment to the particular classification by the competitive or non-competitive qualification processes.
- (b) The names of eligible candidates shall be placed on eligible lists in the order of their numerical rating when such a basis of rating is utilized. Placement of such names on an eligible list utilizing numerical ratings shall include all additional points, which may be awarded based upon veteran's preference or Miramar residents' preference.

- (c) The director of human resources in consultation with appointing authorities shall have the option to certify eligible for a vacancy in one (1) classification from the eligible list established for that classification, for an equal or lower classification in the same job series, in the same classification series, or from classifications determined to be related.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-153. - Types of eligible lists.

(a) *Re-employment eligibility list.*

- (1) A re-employment eligible list shall be containing the names of any employees in the classified civil service who have been laid off as a result of a reduction in force, and the accompanying elimination of positions. Placement on a preferred re-employment list shall be made based upon the determination of the director of human resources that the person meets the minimum qualifications for the eligible list for the particular qualification. Names shall be placed on re-employment list in the order of total continuous service with the city, which the laid off employee possesses.
- (2) When a vacancy occurs in the same classification and department from which an employee was laid off and the department director wishes to fill the vacancy, the most senior employee on the re-employment eligible list for that classification and department shall be re-employed in that position provided that the employee meets the minimum qualifications in effect at the time of the re-employment. Refusal of an offer of re-employment shall cause the employee's name to be removed from the re-employment eligible list.
- (3) The eligibility for re-employment of any person on re-employment eligible list shall expire eighteen (18) months from the day upon which the employee's layoff from the city service occurred.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-154. - Promotional eligible lists.

- (a) Whenever it is determined by the director of human resources, in consultation with the department and division director, a promotional eligible list may be established. Such list shall consist of qualified employees from among regular employees of the city who have successfully completed probation in a lower classification covered by these rules and regulations. The director of human resources may establish a promotional eligibility list for vacancies within a specific department or division consisting only of applicants from that organizational unit.
- (b) All promotions will be made on the basis of merit from the best qualified of the candidates on the promotional list. A promotional candidate's position on the eligible list shall be based upon numerical or non-numerical qualification, as set forth in the recruitment plan and may be based upon evaluation of training and experience, written examinations, interviews, supervisory appraisals, assessment centers, performance tests or other rating or ranking methodology determined by the director of human resources.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-155. - Open competitive eligible list.

- (a) The director of human resources, in consultation with the appropriate department or division director, may establish an open competitive eligible list consisting of qualified candidates from within or outside of the city service. The names of qualifying candidates shall be placed on an open competitive eligible list in the order of their numerical score or their non-numerical rating depending upon the qualification

method set forth in the recruitment plan established prior to the commencement of the recruitment. Open competitive eligible lists may include city employee candidates as well as candidates from the general public.

- (b) The duration of an eligibility list shall be determined in accordance with the selection methodology set forth in the recruitment plan. In the absence of a recruitment plan specification as to the duration of a particular eligible list, an eligible list shall remain in effect for a period of one (1) year, unless sooner exhausted or extended by the director of human resources. When deemed necessary in the best interest of the city service, the director of human resources may extend the duration of any eligible list for up to an additional period of more than one (1) year from the date of its exhaustion.
- (c) An eligible list may be declared exhausted prior to its duration when the list contains the names of fewer than five (5) eligible candidates available for appointment or for other reasons determined appropriate by the director of human resources.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-156. - Removal of names from eligible list.

Names may be removed from eligible list for any one (1) or more of the following reasons.

- (1) At the written request of the eligible.
- (2) Upon the eligible's refusal of an offer for employment in the same, higher, or substantially similar job classification. A written statement by an eligible or preparation of a memorandum by the director of human resources shall be filed attesting to the fact that an eligible has confirmed that he or she is not willing to accept the appointment. Such statement of unwillingness may be restricted to a limited period of time, to a geographical location, to a particular shift, or related to other terms and conditions of employment. The name of the eligible may then be removed from the eligible list, or passed over for certification of vacancies for a particular period of time as determined by the director of human resources.
- (3) Failure to report for an interview or respond within the time specified in the notice to the candidate to respond.
- (4) Failure to report for work after accepting the appointment.
- (5) Notice by postal authorities of their inability to locate an eligible candidate at the last known address provided to the city.
- (6) Death of the eligible.
- (7) The candidate is no longer qualified for appointment since the establishment of the eligibility list for various reasons, included but not limited to the loss of a required license, certification or other requirement.
- (8) Dismissal for cause from the city service or from the service of another public agency in the same or similar job classification, or series.
- (9) The name of an eligible on a promotional eligible list shall be removed from the promotional list upon his or her separation from the city or from a position in the department or division specified in the establishment of the eligible list.
- (10) Determination of the candidate's eligibility was based upon fraud, willful misstatement of material fact, evasion of questions or other dishonesty or inaccuracy determined to be a substantial failure by the director of human resources.
- (11) Any other cause pursuant to these rules and regulations for rejection of an applicant may be cause for removal of the applicant's name from any and all eligible lists.

- (12) Upon the decline of an offer of appointment by an appointing authority, applicants will be removed from the eligible list and will not be eligible for consideration in the same classification for the duration of the eligible list unless otherwise determined by the director of human resources.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-157. - Restoration of names to an eligible list.

Whenever any person's name is removed from an eligible list, pursuant to these rules and regulations he or she shall be notified in writing by the director of human resources. Notification shall be sent to the last address provided to the city by the eligible on the application form. Such person may, during the life of that eligible list, submit a written request to the director of human resources requesting the restoration of his/her name to the eligible list for the duration of the life of such list. The request will set forth reasons for the conduct or conditions resulting in the removal of the name and will further specify the reasons for the restoration of the name. The director of human resources, after consideration of the request, has the authority to determine whether the name should be restored to the eligible list or the request should be declined.

(Ord. No. 05-04, § 3, 11-17-04)

Secs. 16-158—16-170. - Reserved.

ARTICLE VIII. - CERTIFICATION OF ELIGIBLES AND APPOINTMENTS

Sec. 16-171. - Request for certification.

Department and division directors shall request a certification of eligibles from the director of human resources in order to fill any vacancy in the classified civil service.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-172. - Anticipation of need.

Insofar as possible, vacancies in the classified civil service shall be anticipated sufficiently in advance to permit the director of human resources to establish an eligibility list. If a new classification is established, sufficient time should be allowed for the preparation of the new classification specification and recommendation of an appropriate salary range for the classification.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-173. - Priority order of list.

Eligibles shall be certified from an existing list. However, whenever a re-employment list is available for a specific classification, such list shall be the only list certified until that list is exhausted or expired. If there is no active re-employment eligible list for a classification, certification may be made from a promotional or open competitive eligible list as determined by the department and division director, in consultation with the director of human resources.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-174. - Alternative list.

Certification shall ordinarily be made from an eligible list established for the particular classification in which the vacancy exists, however the director of human resources shall have the option to certify names from other appropriate eligible lists if such lists are available. Such lists shall be for classifications in the same or higher pay range and with requirements equal to or superior than the classification in which the vacancy exists, e.g., Clerk II eligibles willing to accept a Clerk I position may be certified for consideration by the appointing authority.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-175. - Number of names to be certified; flexible certification.

- (a) Consistent with the provision of the recruitment plan established prior to the commencement of the recruitment activity, the number of eligibles to be certified and the duration of the eligible list shall be established by the director of human resources, in consultation with the department or division director. In the absence of any certification rule to the contrary in a recruitment plan, the certification "rule of five" shall be utilized in all classifications in the classified civil service. That is, the director of human resources shall certify to the department or division director four (4) more candidates than the number of vacancies specified in the request for certification of eligibles. In the case of one (1) vacancy, the director of human resources shall certify to the names, addresses, telephone numbers, and application documents for the five (5) candidates with the highest standing on the eligible list and any additional candidates tied for the fifth position.
- (b) All candidates certified shall be in order of score or rank on the eligible list and shall only include candidates who have expressed a willingness to accept employment in the department or division and under the terms and conditions of employment described in the job announcement or described by the department or division director.
- (c) The foregoing certification "rule of five" shall also apply in the case of promotional examinations unless specified differently in the recruitment plan.
- (d) If the number of names on an eligible list is fewer than five (5), the department or division director may select from among those certified, or may request that a new list be established.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-176. - Alternative selection rules.

If a certification rule other than the "rule of five" is specified in the recruitment plan, the director of human resources shall certify the number of eligibles provided in the recruitment plan. For example, if the selection "rule of three" is established, the director of human resources shall certify two (2) more eligibles than the number of vacancies in the manner described in the foregoing section. If a certification "rule of rank" is utilized, the director of human resources shall certify the names of all candidates on the eligible list in the highest rank on the list. For example, if the selection criterion specifies scoring of candidates based upon "most qualified", "qualified" and "unqualified", the director of human resources shall first certify to the appointing authority the names of all candidates achieving a ranking of "most qualified".

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-177. - Selective certification.

A department or division director may specify necessary or desirable job-related qualifications for candidates for appointments to a specific position. These may include requirements for shift work, second

language capability, possession of specific licenses or certification, etc. Upon receipt of a request for selective certification, the director of human resources may certify from the appropriate eligible list only those candidates possessing such qualifications. In all cases of selective certification, the director of human resources shall approve the request only upon a finding that the request is based on job related criteria and not based upon the desire to appoint a specific candidate who would not otherwise be available for certification or otherwise circumventing the spirit of these rules and regulations.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-178. - Elimination of ineligible candidates.

Candidates may be removed from the a certification or eligible list when:

- (1) The person declines an offer for employment in the classification.
- (2) Fails to reply, or when notification of certification is returned undelivered by United States Postal Service, when sent to the address shown on the application form.
- (3) The person has already accepted a position in the same, comparable, or higher job classification.
- (4) The person was separated for cause or resigned during or following disciplinary action, such as suspension.
- (5) A candidate against whose eligibility a department or division director has submitted an objection, which is sustained by the director of human resources.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-179. - Objection to an eligible.

Certification of a particular candidate for employment may be suspended or revoked in a particular certification when the appointing authority submits a written objection, which is sustained by the director of human resources, indicating that the candidate is disqualified for some or all of the positions to be filled in the eligible list, is not available in a reasonable time frame to accept employment or for any other job-related reason including those associated with the disqualification of applicants as set forth in these rules and regulations.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-180. - Consideration of applicants.

All candidates certified to the appointing authority shall be considered by the appointing authority through review of the candidate application materials, personal interview with the appointing authority or designee, or other reasonable steps applied in a consistent manner to all certified candidates.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-181. - Notice of certification.

Whenever an eligible candidate has been certified, the candidate shall receive written, telephonic, or e-mail notification of the certification and shall be provided with a time limit within he or she must confirm their continued interest and/or must report for an interview or other meeting with the appointing authority. Eligibles may waive certification for a particular position upon filing a written notice to the director of human

resources, who may approve the waiver or reject it. In the case of rejection of a waiver request, the name of the eligible candidate may be removed from the list.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-182. - Cancellation of a certification.

If at any time after eligibles have been certified, the department or division director decides not to fill the position or to fill the position at a lower level in a different classification or otherwise make organizational changes, the request for certification may be cancelled. In such cases the director shall advise in writing the director of human resources who shall notify the eligibles of the cancellation.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-183. - Selection from among certified eligibles.

The appointing authority, following a review of the qualifications of each certified eligible, may select the candidate considered by the appointing authority to be the best qualified and available candidate and shall make a conditional job offer to the selected candidate. Such conditional job offers are subject to completion of all required in processing, including background verification, medical review and other requirements established by the city. Once the conditional offer of employment is accepted, the candidate will be directed to report for completion of appropriate documents prior to commencing employment.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-184. - Pre-employment, post offer requirements.

No candidate shall begin city employment prior to completion of processing requirements established by the department or division and the department of human resources. Such requirements shall include completion of all necessary forms for the completion of benefit, payroll, and risk management purposes, and shall include verification of social security identification, proof of education or licensure, job related medical and substance abuse screening, depending on the nature of the position. They shall also include background and reference verification, including criminal history, and driving history, as appropriate. Any exception to the procedures set forth in this section may be recommended by the department or division director and must be approved by the director of human resources.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-185. - Probationary appointment.

All appointments in the classified civil service shall be made initially as a probationary appointment, and shall be subject to successful completion of the probationary period as described in these rules and regulations. Upon successful completion of the probationary period, the employee shall acquire regular status within the city's classified civil service.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-186. - Temporary and seasonal employment.

Temporary or seasonal appointment may be made for special projects or other temporary or transitory work and shall not continue for a period longer than six (6) months without approval by the city manager.

No temporary appointment shall be made of a person who does not meet at least the minimum qualifications for the classification. All temporary appointments shall be dependent upon successful completion of any required medical screening, substance abuse screening, criminal history, or driving history, and is further subject to other verification of any information provided by a candidate. Temporary employees may be drawn from the eligible list or from special recruitments conducted by the department of human resources. Temporary or seasonal appointments do not convey any assumptions of rights or privileges provided to classified civil service employees of the city. Temporary employees are at will employees who accrue no property rights to continued employment with the city, and are excluded from the provisions of these rules and regulations.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-187. - Emergency appointment.

In cases of emergency involving real or likely serious impairment of the public's business, the department or division director, subject to review and approval by the director of human resources, may appoint any qualified person to a vacant position in order to prevent stoppage of the public's business or loss or serious inconvenience to the public. An emergency appointment shall not last beyond ninety (90) calendar days; however, if circumstances warrant, the director of human resources may authorize extension of the emergency appointment for an additional ninety (90) days.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-188. - Provisional appointment.

- (a) Whenever there are urgent reasons for filling a regular position in the classified civil service, and an appropriate eligible list or sufficient qualified candidates on that list are not available at the time, then the director of human resources may authorize the vacancy to be filled by a provisional appointment.
- (b) Any candidate for provisional appointment must meet the minimum qualifications established for the classification being filled.
- (c) An appropriate eligible list for the classification shall be established at the earliest possible date and the person serving in the provisional appointment shall be given an opportunity to compete.
- (d) Should the provisional employee be subsequently appointed to the regular position, the time spent in the provisional appointment shall count towards the determination of continuous service.
- (e) Provisional appointments shall not be made for a period in excess of six (6) months. However, in exceptional circumstances, the director of human resources may authorize an extension not to exceed an additional six (6) months.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-189. - Exempt appointment and return rights.

An employee in the classified civil service who has successfully completed the probationary period for the classification, and is, thereafter, appointed to an "at will" position excluded from these rules and regulations may be removed from the excluded "at will" position at any time and for any reason or no reason, as long as the reason is not an illegal reason. Should the appointment of such an employee to the "at will" position terminate, that person shall have the right of return to a position in the classification, in the department or division formerly held. Notwithstanding the above, if the basis for terminating the "at will" employment also constitutes grounds for disciplinary action, pursuant to these rules and regulations, the appointing authority may institute such disciplinary action which could result in the suspension, demotion or discharge of the employee from the position in the classified civil service. Should the exercise of the

return right, as described in this section result, in the displacement of another employee, the provisions of the reduction in force section of these rules and regulations shall apply.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-190. - Probationary period.

All appointments to the classified civil service shall be subject to satisfactory completion of a probationary period. This applies not only to original appointment as a city employee, but also to any subsequent appointment to a position covered in the classified civil service. Regardless of whether the employee had previously completed a probationary period in another classification, the director of human resources, in consultation with the affected department or division director, may waive the probationary period for appointments resulting from reclassification, transfer, demotion, or reinstatement. The probationary period shall be regarded as an integral part of the selection process and it shall be utilized to closely observe the employee's behavior and performance in order to secure the most effective adjustment for the new or promoted employee to the position.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-191. - Duration.

The probationary period for appointments in classified civil service shall be twelve (12) months in duration and shall be subject to extension or rejection of probation as set forth in these rules and regulations.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-192. - Extension of probationary period.

Upon the written request of the department or division director and approval by the director of human resources, the duration of the probationary period may be extended. Such extension must be reviewed with the affected employee and submitted prior to the expiration of the probationary period. No extension shall be allowed to make the total probationary period longer than eighteen (18) months.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-193. - Rejection during probationary period.

- (a) At any time during the probationary period, the department or division director shall have the discretion to reject an employee if, in his or her opinion, the working test period indicates that the employee is unable or unwilling to perform the duties of the position or that his or her work habits or lack of dependability do not merit continuation in that position.
- (b) The termination of a probationary period for an employee shall be reviewed in advance with the director of human resources.
- (c) Such termination of probation represents a discretionary "at will" judgment by the department or the division director and are not subject to appeal unless the employee alleges that the basis of the rejection of probation was unlawful. In such cases, the employee shall notify the director of human resources within thirty (30) days of receiving notice of the rejection of probation so that the matter can be reviewed appropriately and expeditiously.
- (d) Upon rejection of a probationary period, the employee shall receive a written notification of the action. Failure to provide such notification to the employee or to the person's address as stated on the job

application, prior to the expiration of the probationary period, shall automatically grant the employee regular status in the classified civil service.

- (e) If an employee is removed during the probationary period, following a promotion, transfer or demotion, and the employee had previously successfully completed the probationary period in the city service immediately prior to the promotion, transfer or demotion, the employee shall be returned to the position in the classification held prior to the action or to a similar position in the city service. Should an appropriate vacancy not exist, the employee shall be restored to the position held prior to the promotion transfer or demotion in the provisions governing reduction in force. A probationary period rejection following promotion, transfer or demotion, does not affect an employee's regular status or rights in a classified civil service acquired through the prior position, unless the basis of the rejection was also a basis upon which disciplinary action is implemented.
- (f) There shall be no expectation or right to continuation of a probationary period and no right of appeal from a decision by the city to reject or extend the probationary period other than as described elsewhere in this section.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-194. - Reinstatement.

A reinstatement is the non-competitive appointment of a person formally employed in a classified service of the city who had satisfactorily completed probation and whose service record was at least satisfactory prior to his/her voluntary resignation or separation from city service. Any former regular employee as described above, who resigned or was separated in good standing may, within two (2) years of the effective date of his or her resignation or separation, upon written approval by the appointing authority and the director of human resources, be reinstated to a vacancy in the same or lower classification held at the time of the resignation or separation subject to the following conditions:

- (1) The former employee was separated or resigned for reasons other than discharge.
- (2) There are no regular employees who have been laid off and whose names remain on the re-employment eligible list for the classification.
- (3) The employee seeking reinstatement meets all of the requirements currently in effect for the classification.
- (4) Reinstatement is an appointment requiring a new probationary period, completion of a new and up to date employment application form and completion of other pre-employment processing requirements previously described.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-195. - Transfer.

A regular employee may be transferred to a position in the same classification within or between departments and divisions to meet the needs of the city or upon request of the employee and approval by the appointing authority. The employee remains in the same status in the new position that he or she held in the previous position except that the employee may be required to serve a new probationary period if the transfer involves a move to another department. An employee who is transferred shall continue at his or her same pay rate.

(Ord. No. 05-04, § 3, 11-17-04)

Secs. 16-196—16-210. - Reserved.

ARTICLE IX. - SEPARATION FROM CITY SERVICE

Separations or terminations from employment in classified civil service be designated as one (1) of the following types:

Sec. 16-211. - Resignation.

To resign in good standing an employee shall give written notice to the affected department or division director at least fourteen (14) calendar days in advance of the proposed date of resignation. Failure to comply shall be entered under the employee's service record and may result in denial of re-employment. The foregoing requirement may be waived by the appointing authority and the director of human resources. A notice of resignation accepted by the department or division director may not be withdrawn without specific written approval by that director. Such approval shall be included in the employee's personnel file.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-212. - Lay-off or reduction in force.

- (a) An employee may be laid off when the city determines it necessary to abolish one (1) or more positions by reason of shortage of funds or lack of work, changes in the organization of the city, or for related reasons which are outside the employee's control and which do not reflect discredit upon the employee's service.
- (b) The duties performed by an employee laid off may be re-assigned to other employees who hold positions in appropriate classifications.
- (c) No regular full time employees shall be laid off while another person is retained on a provisional, temporary, seasonal or part-time basis, in the same classification within the affected department or division without the employee being laid off having the right to move to such other position.
- (d) Whenever a layoff becomes necessary, the appointing authority shall notify the director of human resources at least twenty (20) days in advance of the effective date of the intended action. The director of human resources shall thereafter certify to the appointing authority the names of the employees to be laid off, in the order in which such layoff shall be affected. Employees will be laid off from the affected classification and from within the affected division or department in the inverse order of their total length of continuous time in the classified service of the city. The employee with the least amount of service shall be laid off first. In the event that two (2) or more employees affected have the exact same length of service, the employee with the best overall performance on the evaluation history in the city service, most recent performance evaluation, as determined by the director of human resources, shall be given preference for retention purposes.
- (e) Layoff may involve regular employees who have a right to "retreat" within the effected department or division. If a regular employee is serving a probationary period in an affected classification, such employee shall have the right of retreat within the affected division and shall return to the same or comparable classification from which he or she was promoted. A regular employee subject to layoff has the right to retreat to a lower classification in the same classification series within the affected division. The layoff shall then be made from the next lower applicable classification.
- (f) Regular employees shall have preference for re-employment as provided elsewhere in these rules and regulations, for a period of eighteen (18) months from the date of the layoff.
- (g) When a department or division director believes that the skills or qualifications of a certain individual are essential to the efficient operation of the department or organizational unit because he or she possesses special knowledge, skills or abilities, and the department or division director wishes to retain this individual in preference to a person with more seniority as described above, a written request from

the director shall be submitted to the director of human resources. Such request as set forth with specific knowledge, skills and abilities or other qualifications possessed by the individual and the reasons why these skills are essential to the effective operation of the organization. If the director of human resources concurs, then that individual may be retained and a more senior employee laid off.

- (h) If a regular employee is scheduled to be laid off, he or she shall be offered a demotion in lieu of layoff to a position in a lower classification if such a position exists in the employee's division or department and he or she is qualified to fill the position in the lower classification.
- (i) Regular employee affected by layoff shall receive written notification from the director of human resources at least fourteen (14) calendar days prior to the effective date of the layoff. If fourteen (14) calendar days notice cannot be provided, the employee shall receive compensation for the balance of that period.
- (j) Layoffs shall be affected only after other personnel actions aimed at avoiding a layoff have been considered to no avail, such as transfer or reassignment.
- (k) Separations by layoff or reduction in force are not considered disciplinary in nature. As with other types of separations, employees affected by layoff or reduction in force, shall have the right to appeal to the director of human resources. However, such an appeal shall not be subject to evidentiary hearing and shall be limited in scope to allegations regarding a violation of the established layoff procedures, such as an allegation that a less senior employee should have been laid off but was not affected.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-213. - Disability.

The director of human resources may direct, or approve a department or division director's request, to have an employee examined by a licensed physician or psychologist designated by the city, with such an examination paid for by the city, to determine the fitness for duty of an employee. Such request shall be based upon cause to believe that symptoms of impairment, which affect or could affect the ability of the employee to satisfactorily perform his or her job, have appeared or that the employee's continuation on the job may represent a threat to the safety of the employee or others. Following receipt of such a request, and consistent with the city's concern for equality of opportunity for employees who are or may be qualified individuals with disabilities within the meaning of the Americans with Disabilities Act, the following action may be taken:

- (1) If a medical condition is temporary in nature, is determined to exist, and is not a covered disability under the Americans with Disability Act, the director of human resources may authorize a specified period of time for a modified work schedule or modified work requirements in order to enable the employee to overcome the condition. Any such time off shall be based in part on operational need determined by the department or division director. Such time off is to be charged as sick leave or, if no or insufficient sick leave has been accrued, to annual leave or other paid leave, or thereafter to leave without pay. In unusual circumstances, administrative leave may be approved.
- (2) If the condition is sufficient to meet the criteria for disability within the meaning of the Americans with Disability Act, as determined by the city, and the employee remains otherwise qualified, the city will endeavor, with the employees' cooperation, to reasonably accommodate the impact of employees' disability. Such accommodations are determined on a case by case basis and only to the extent that they enable the otherwise qualified employee with a disability to perform essential functions of the job without creating an undue hardship for the city.
- (3) If, notwithstanding reasonable accommodation, the employee cannot perform essential functions of the job or will not cooperate by taking available steps to correct or modify the job related impact of the disability, then the department or division director may take the steps necessary to separate the employee from city service.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-214. - Loss of job requirement.

An employee who is unable to perform the duties of the job because of the loss of a necessary license or other minimum requirement shall not be permitted to continue to perform in that position and may be separated from city employment or provided with a notice of corrective action and requirement to act in specific ways to correct the loss of the job requirement within a limited period of time.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-215. - Dismissal.

Dismissal is a forced separation from city employment made for job-related reasons and under procedures set forth in these rules and regulations. All employees in classified civil service who have successfully completed probation shall, receive written notice prior to the implementation of proposed disciplinary action involving reduction in rank, loss of pay, or loss of employment receive written notice.

Such written notice shall provide a reasonable opportunity for the employee to present to the appointing authority information as to why the proposed action should not be taken, or should be modified. Consideration of the information provided shall be done prior to the approving authority taking final action with regard to the proposed discipline. The provisions of collective bargaining agreements or these rules and regulations shall govern actions and appeals from disciplinary action for employees in the classified civil service.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-216. - Retirement.

City employees shall be eligible to receive retirement benefits pursuant to the provisions of the retirement plans established for employees. There shall be no mandatory retirement age for city employees, except as may be required for sworn law enforcement and fire/rescue personnel.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-217. - Death.

Separation from city employment shall be effective as of the date of the death of an employee. All compensation owed to the employee, as of the effective date of separation, shall be paid to the surviving spouse, or to the estate of the employee as determined by law or by executed forms such as beneficiary designations.

(Ord. No. 05-04, § 3, 11-17-04)

Secs. 16-218—16-230. - Reserved.

ARTICLE X. - DISCIPLINARY ACTION

Sec. 16-231. - Intent.

It is inherent in the authority of the city manager and designees to take disciplinary action when warranted, when employees fail to perform or behave in relation to their employment in an effective, ethical and positive manner consistent with their obligations and responsibilities. Any disciplinary action affecting non-probationary employees in the classified civil service which results in the loss of employment property for that employee including, dismissal from employment, reduction in pay or rank, or suspension without pay, shall be based upon good cause and completed in a manner which provides appropriate due process for the affected employee. Disciplinary action shall not be based upon unlawful discrimination.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-232. - Reasons for disciplinary action.

The following non-exclusive list of activities or actions may result in disciplinary action:

- (1) Conviction, plea of guilty, or plea of nolo contendere, whether or not adjudication was withheld, of a felony, misdemeanor, or criminal infraction which is job related, a crime involving moral turpitude or failure to disclose a conviction, plea of guilty or plea of nolo contendere whether or not adjudication was withheld, for a felony, misdemeanor, or criminal infraction within five (5) regularly scheduled working days following such conviction or plea.
- (2) Absenteeism.
- (3) Absence without leave for three (3) or more consecutive working days or failing to report to work after a leave of absence has expired.
- (4) Excessive tardiness.
- (5) Abuse of sick leave.
- (6) Insubordination or breach of discipline including failure or refusal to comply with a job-related verbal or written directive of a supervisor or manager.
- (7) Incompetence or inability to perform work required for the position.
- (8) Misuse or theft of city property or failure to permit inspection of or turn in city property under the control of the employee upon request.
- (9) Loss of job requirement, such as loss of necessary licenses or certification which prevents adequate or legal performance of assigned duties.
- (10) Willfully providing false information, making false statements or failing to disclose material facts to supervisors, officials, the public, or an agency of the city government.
- (11) Violation of city rules and regulations, including departmental or division rules, or these rules and regulations.
- (12) Misuse or unlawful manufacture, distribution, dispensing, possessing or using controlled substances, including alcoholic beverages, on duty or off duty if such behavior affects or impairs on duty performance.
- (13) Making any false statements in a job application, omission or misrepresentation of pertinent or material information from an application or other intent to deceive the city in an application or examination for employment.
- (14) Violation of ethics, laws or rules, including those provided in these rules and regulations, relative to conflict of interest, acceptance of gifts, nepotism or other policies established by state laws, the city commission or the city manager.
- (15) Refusal to be examined by a city-designated licensed medical professional once so directed.
- (16) Harassing or wantonly offensive conduct or language toward the public, supervisor, or fellow employees, including but not limited to language or conduct reflective of sexism, racism, or

bigotry, such as the use of ethnic slurs disparaging comments or unwelcome harassing behavior based upon race, religion, national origin, disability, gender, sexual orientation, or other personal characteristic protected by city policy or state or Federal Civil Rights Law.

- (17) Violence or the threat of violence by any employee of the city directed towards another employee or any other person.
- (18) Possession, use, or threat to use a deadly weapon, including all firearms and explosive devices, in or on city property including city vehicles, unless carrying such weapon is a necessary or approved requirement of the job.
- (19) The foregoing is not a complete list of all activities, which could result in disciplinary action but is intended as a general disciplinary guide for employees and supervisors.

(Ord. No. 05-04, § 3, 11-17-04; Ord. No. 11-11, § 3, 9-21-11)

Sec. 16-233. - Types of disciplinary action.

The types of disciplinary action outlined in this section are not intended to prescribe required progressive steps, but rather to list various types of actions available to the appointing authority. In all cases, the level and type of discipline to be taken shall be based upon the specific facts relevant to failures of performance or behavior or the resulting outcomes of such failures on the part of an employee, consistent with the principles and intent described above.

- (1) *Oral admonition.* An oral admonition is an interview with an employee, conducted in private by his or her supervisor, who may or may not have another supervisor present, in which the employee's failure to perform or behave in compliance with work rules or regulations are discussed along with suggestion for improvement or directions. A simple reminder to an employee that he or she has committed an isolated minor infraction is not an admonishment.
- (2) *Written warning.* A written warning is an internal memorandum to an employee, which directs the employee's attention to performance, or behavior failures, which have not been corrected through previous oral admonishment or other actions which re-emphasizes in writing a discussion with the employee and sets forth the expected results in terms of the employee's future improvement. The memorandum also includes a warning of the consequences should the employee fail to improve or correct the job-related shortcomings identified.
- (3) *Formal reprimand.* Formal reprimand is a written notice to an employee describing his or her breach of standards, conduct, regulations or other job-related failures of behavior or performance. A formal reprimand is a more severe type of disciplinary action than the written warning and may be used in cases where past written warnings or verbal admonition has not been effective or where an offense has been committed which requires more severe action than an admonishment. An official reprimand puts the individual on notice that more severe disciplinary action will result unless improvement is demonstrated. A copy of the written reprimand is placed in the employee's personnel file, as well as provided to the employee. Formal reprimands are to be reviewed in advance with the director of human resources.
- (4) *Suspension without pay.* Suspension without pay is a release from duty without pay for a specified period of time based upon a job-related performance or behavior failure. A written statement setting forth the reasons for and the duration of the suspension shall be furnished to the effected employee and a copy placed in the employee's personnel file. Suspensions without pay are to be reviewed in advance with the director of human resources.
- (5) *Disciplinary demotion.* Disciplinary demotion is a reduction in rank and/or pay of an employee. A written statement setting forth a reason for the disciplinary action shall be provided to the employee and a copy placed in the personnel file. Disciplinary demotions are to be reviewed in advance with the director of human resources.

- (6) *Dismissal*. Dismissal represents the forced separation or discharge of an employee from city service. A dismissed employee may be ineligible for subsequent city employment as provided by these rules and regulations. Dismissals are to be reviewed in advance with the director of human resources.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-234. - Actions pending discipline.

The department or division director may, following consultation with the director of human resources, order the suspension with/without pay of an employee pending completion of an inquiry, review, or investigation of alleged behavior or performance failures which, if sustained, would lead to serious disciplinary action including possible termination. Such suspension with/without pay will allow for completion of an investigation and a reduction in potential liability of having an employee continue to perform work for the city during the pending investigation. A change in assignment, work location or other actions may also be taken pending a determination about disciplinary action.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-235. - Pre-disciplinary appeals.

Prior to implementing any disciplinary action which results in the loss of employment property for an employee past probation and covered by these rules and regulations, the appointing authority, in consultation with the director of human resources, shall provide reasonable notice in writing to an employee of proposed disciplinary action and the basis for such action. The employee will be provided with the option to submit information in writing or in person, to the appointing authority as to why the proposed disciplinary action or proposed basis for disciplinary action is incorrect or why the action should not be taken or should be modified. An employee shall have the right to be represented by the person of their choice in meeting with the appointing authority for the purpose provided in this section. An employee shall also have the discretion to decline to provide such information. Following such an opportunity for the employee, the appointing authority shall consider the information provided, if any, and may then take the disciplinary action deemed job-related, and appropriate to the nature of the circumstances and the employee's past employment history. After any such disciplinary action is implemented, an employee will have the option to appeal the disciplinary action pursuant to procedures established through collective bargaining agreements, if applicable, or by appeal to the civil service board pursuant to the authority of that body to hear disciplinary appeals from unrepresented employees covered by these rules and regulations.

(Ord. No. 05-04, § 3, 11-17-04)

Secs. 16-236—16-250. - Reserved.

ARTICLE XI. - CIVIL SERVICE GRIEVANCE PROCEDURE

Sec. 16-251. - Purpose.

The purpose of the grievance procedure is to provide an orderly and consistent process for employees to bring forward allegations that written policy, procedure, rule, or regulation of the city has been violated by an action of a supervisor or manager or fellow employees. The grievance procedure permits such allegations to be aired in a non-retaliatory manner so that the matter can be reviewed and, if necessary, corrective action can be taken. By the same token, a grievance procedure is not established for the purpose

of providing an additional vehicle or substitute for collective bargaining or to diminish the authority or need for supervisors or managers to make job-related decisions.

It is the policy of the City of Miramar that every employee at all times be treated in an equitable, job-related and respectful manner. Conversely, each employee has an obligation to perform and behave in the workplace in an effective, respectful, and efficient manner in relation to fellow employees, supervisors, managers, clients and members of the general public.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-252. - Grievance procedure.

When an employee has reason to believe that a written city policy, procedure, rule or regulation has been violated, the following procedure will apply:

- (1) *First step—Verbal grievance.* An employee will present to the immediate supervisor a verbal description of the grievance including a citation of the policy, procedure, rule, or regulation alleged to have been violated along with recommended corrective action. Such verbal grievance will be presented within fourteen (14) calendar days of the time the employee first knew or should have known about the alleged violation. The immediate supervisor will meet as needed with the employee informally and attempt to clarify whatever events occurred in an effort to resolve the grievance. Such efforts shall be extended for a period of up to four (4) calendar days from the date when the verbal grievance is first presented to the supervisor.
- (2) *Step 2—Written grievance.* If the action described in the first step of the grievance procedure fails to resolve the matter, the employee shall have the right to submit a written grievance to the immediate supervisor within fourteen (14) calendar days of receipt of the verbal response of the supervisor provided in the first step of the procedure. Such grievance shall include a citation of the policy, procedure, rule or regulation alleged to have been violated along with recommended corrective action. The supervisor shall provide a copy of the written grievance immediately to the department director and shall meet with the employee and further attempt to resolve the grievance. The supervisor shall provide a written response to the grievance to the employee within fourteen (14) calendar days of the date when the written grievance was first received. A copy of the response shall be provided to the department director and the director of human resources.
- (3) *Step 3—Department head appeal.* If the employee is not satisfied with the written response of the immediate supervisor, the employee may, within fourteen (14) calendar days of the day of receipt of the written response of the supervisor submit a written appeal of the grievance to the department director. The department director shall, within fourteen (14) calendar days of the date of receipt of the written grievance, review the matter, meet with the employee or others as needed and provide a written response to the employee. The written response will affirm, amend, or revoke the action taken, which led to the grievance.
- (4) *Step 4—City manager appeal.* If the employee is not satisfied with the written response of the department head, the employee may within fourteen (14) calendar days of receipt of the department head's response, submit a written appeal to the city manager for final decision making. The employee shall also submit a copy of the written appeal to the department head and the director of human resources. The city manager or his designee shall, within thirty (30) calendar days of the date of receipt of the written appeal of the employee, review the matter, meet with any of the parties deemed to be appropriate to the review of the grievance, and provide the employee with a written response which affirms, amends or revokes the action taken which led to the grievance being submitted. A decision of the city manager shall be the final step in the grievance procedure.
- (5) *Advisory opinion of the director of human resources.* At any time during the grievance procedure, up to, but not including submission of a grievance to arbitration, the director of human resources

may, upon request by either party or upon his or her motion, review the grievance and prepare a written advisory opinion on the matter. The advisory opinion of the director of human resources shall not be binding upon either party, but may be useful in alternative dispute resolution or helpful, as information which may be submitted to the employee, or the department head, or the arbitrator.

- (6) At any point during the grievance procedure, the employee may be represented in the process by the person of his/her choosing.
- (7) At any time during the grievance procedure, up to the filing of a discipline-related grievance through arbitration, the parties may agree to an extension of time deadlines herein set forth as long as such agreement is submitted in writing and signed by both parties.

(Ord. No. 05-04, § 3, 11-17-04)

Secs. 16-253—16-270. - Reserved.

ARTICLE XII. - MANAGEMENT OF CRITICAL WORKPLACE INCIDENTS

Sec. 16-271. - Policy and intent.

Violence, threat of violence, sexual or other inappropriate harassment, or unlawful discrimination has no place in the workforce of the City of Miramar. It is a goal of the city to rid worksites of any such violent, threatening or inappropriate behavior. It is a shared obligation of all employees, law enforcement agencies, and employer organizations to individually and jointly act to prevent or defuse actual implied, threatening, violent or inappropriate behavior at work. Such behavior is contrary to city policy and will subject the perpetrator to serious disciplinary action and possible criminal charges. The city will work with law enforcement to aid in the prosecution of any person who commits such acts against employees.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-272. - Coordination.

The director of human resources is designated as a workplace critical incident coordinator to ensure that appropriate resources, including the employee assistance program, insurance benefit providers, city attorney, law enforcement or others as needed are coordinated in their support and response. In pursuit of this objective, the director of human resources is authorized to establish relevant policies or take appropriate actions providing for intervention and mitigation of violent, threatening or inappropriate behavior.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-273. - Retaliation prohibited.

Any employee acting in good faith who reports real or implied violent, threatening or inappropriate behavior, including sexual harassment, shall not be subject to disciplinary action or other adverse personnel action or harassment as a result of reporting their concerns through established city procedures.

The director of human resources shall ensure that city policies relative to violent or threatening behavior, unlawful discrimination, and inappropriate harassing conduct, including reporting procedures are distributed to all city employees and that training is also available.

(Ord. No. 05-04, § 3, 11-17-04)

Secs. 16-274—16-300. - Reserved.

ARTICLE XIII. - UNION REPRESENTATION AND LABOR RELATIONS

Sec. 16-301. - Non-discrimination.

The city will not discriminate against employees based upon membership in a collective bargaining unit or the individual's choice to join or not to join a labor union. No employee shall be required to become or remain a member of a labor union as a condition of employment with the City of Miramar.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-302. - Civil service rules and regulations versus union contracts.

Civil service rules and regulations prevail over collective bargaining agreement provision except in areas of conflict. When these rules and regulations conflict with the terms of collective bargaining agreements, the collective bargaining agreements prevail.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-303. - Bargaining procedures.

The director of human resources shall serve as the city's chief labor negotiator with recognized labor unions. When a labor union request a meeting with the city to bargain collectively, the director of human resources shall meet at reasonable and agreeable times with the representatives of the labor union for the purpose of good faith collective bargaining pursuant to Florida Statute Chapter 447 and other applicable laws and procedures.

(Ord. No. 05-04, § 3, 11-17-04)

Secs. 16-304—16-320. - Reserved.

ARTICLE XIV. - ETHICS AND CONFLICT OF INTEREST

Sec. 16-321. - Gifts prohibited.

No employee or member of an employee's immediate family, as defined in sections of these rules and regulations defining employment of relatives shall accept gifts, gratuity, loans, or services from individuals, business entities or organizations with whom the employee has official relationships in his or her role as an employee or official in the City of Miramar. These limitations are not intended to prohibit the acceptance of articles of negligible value which are distributed generally, nor to prohibit the employees from accepting loans or purchasing goods and services under the same terms or conditions as would be available to members of the general public. The purpose of the foregoing provision is to protect against the reality or appearance of relationships which might be construed as evidence of favoritism, coercion, unfair

advantage, collusion, or conflict of interest for city employees whose primary mission is to objectively serve the citizens in the conduct of city business on an equitable and discrimination free basis.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-322. - Solicitation.

No employee shall solicit or offer contributions, services, or goods from another employee as a gift to an employee in a superior, official position, nor shall any such official in a supervisory or managerial position accept a gift presented as a contribution from employees receiving a lower salary. However, the foregoing does not prohibit a voluntary gift from of a nominal amount when made as part of the social courtesy of celebration of an anniversary, birthday, or well wishes in case of illness, accident or death.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-323. - Conflicts of interest.

No employee shall use his or her city position for unauthorized personal gain. Any conflict between personal interest and official responsibility is to be resolved by the employee consciously avoiding possible conflicts, or disclosing the basis of such real or possible conflicts to a supervisor. The foregoing policies are aimed at ensuring that the public's business is faithfully and ethically carried out, and not intended to stand in the way of active participation in community or professional organizations, or the pursuit of an individual's affairs.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-324. - Employment of relatives.

Except as to persons employed as of the effective date of these rules and regulations, no person shall be employed in a position in city service who has a relative, as defined below, who is also an employee of the city where such employment would create a conflict of interest.

- (1) A relative is defined as a person related by blood, marriage, legal guardianship or adoption to the first degree of relationship to another employee. Such relationships include parents, step parents, in-laws, children, brothers, sisters, grandparents, grandchildren, step children, aunts, uncles, and first cousins.
- (2) A relative for the purpose of these rules and regulations also extends to other members of the employee's immediate household or persons who stand in loco parentis.
- (3) A conflict of interest relationship will be deemed to exist when one (1) employee - relative is in a position to exercise authority over job related decisions or effectively recommend such decisions, affecting the other employee/relative. Such matters will include authority to act or effectively recommend the appointment, promotion, assignment, evaluation, transfer, disciplinary action, salary or compensation changes, supervision or other human resources actions which the director of human resources may deem to constitute a conflict of interest.
- (4) If a supervisory employee marries or otherwise becomes related to a subordinate employee, the city shall attempt, if possible, to transfer either party to a different work assignment not involving a conflict of interest. If the transfer of either party is not possible, or the party to be transferred does not wish to accept another work assignment, or if one (1) of the parties does not resign, the city shall terminate the employment of the relative with the least total service with the city.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-325. - Conflicting or incompatible outside employment enterprise, or business.

- (a) Employment with the City of Miramar is deemed to be an individual's primary employment. Outside employment, enterprise, or business activity is permitted as long as there is no incompatibility or conflict of interest with the employee's city responsibilities. An employee who wishes to engage in paid employment in addition to city employment or who owns or has an interest in a business activity, or economic enterprise outside of city employment shall disclose such employment or activity to the city, on a form provided by the director of human resources. The department or division head and the director of human resources shall review such outside employment, enterprise or business activity in relation to the following criteria: Such activity shall not interfere with the efficient performance of the employee's responsibility with the city.
- (b) Such activity shall not cause the reality or the perception of conflict of interest with the employee's duties.
- (c) Such activity shall not involve the performance of duties which the employee should perform as part of city employment.
- (d) Such employment shall not occur during the employee's regular or assigned working hours unless the employee is on paid or unpaid leave of absence, or is exempt from the Fair Labor Standards Act and works on a flexible status. An employee engaging in outside employment shall recognize the obligation to, and be available for city work when called to work by the supervisor for an emergency or for the performance of overtime work required by the city.
- (e) The work shall not be incompatible or conflicting with the responsibilities of the person as a city employee.
- (f) The director of human resources shall review with the affected employee any request for outside employment, or business activity or enterprise which is not approved, and provide the employee with an opportunity to amend or modify the request to be compatible with these rules and regulations.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-326. - Reporting ethical violations or wrong doing; no retaliation.

It is the policy of the City of Miramar that employees, applicants for employment, and members of the general public have open opportunities to bring to the attention of city government, allegations of malfeasance, wrong doings, or violation of the City Charter, ordinances, resolutions or policies on the part of the city, its officers, employees, and independent contractors. Such wrong doing or malfeasance would include violations of law, abuse or gross neglect of duties, or gross waste or misuse of public property or funds.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-327. - Procedure.

Any person wishing to bring such allegation of malfeasance or wrong doing to the attention of the city may do so by sending a written and signed statement of the allegations, with as much detail as possible to the city manager. All such allegations will be reviewed and a written response provided to the employee or citizen making the allegation.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-328. - Retaliation prohibited.

No employee shall be discharged, suspended, demoted or subject to other adverse personnel action because he/she acted in good faith to bring to the attention of the city allegations of malfeasance or wrong doings pursuant to this policy. No applicant for employment with the city shall be denied employment solely because he/she brought such allegations to the attention of the city or participated in the investigation of the allegations. Notwithstanding the above, employees who it is determined have willfully filed complaints based upon information known by the employee making the allegations to be false, inaccurate, misrepresents such allegations, or who are themselves parties to the violations complained of in the allegations, shall be subject to disciplinary action in accordance with these rules and regulations.

(Ord. No. 05-04, § 3, 11-17-04)

Secs. 16-329—16-340. - Reserved.

ARTICLE XV. - HOLIDAY AND LEAVE TIME

Sec. 16-341. - Meal periods.

Meal periods and duration shall be scheduled by the department, division, or office director in a manner to best serve the public. Employees are expected to utilize their meal period during the hours designated by their supervisor and this time cannot be accumulated.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-342. - Attendance.

Each department, division, and office director shall be responsible for the attendance of all persons in his-her department, division, or office and shall keep complete attendance records including annual leave, sick leave, overtime, etc. Records of attendance shall be reported as provided in these rules and regulations. Employees in positions covered under the provisions of the Fair Labor Standards Act (FLSA) shall be required to complete such timesheets and other attendance records as may be required by the finance department.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-343. - Holidays.

(a) Employees as defined herein shall be eligible for the following schedule of paid holidays. When a holiday falls on a Saturday, the previous Friday will be observed, and if the holiday falls on a Sunday, the following Monday will be observed.

½ New Year's Eve Day

New Year's Day

½ Christmas Eve Day

Christmas Day

Washington's Birthday

Independence Day

Martin Luther King Day

Thanksgiving Day

Friday following [Thanksgiving Day]

Labor Day

Memorial Day

Veteran's Day

Columbus Day

- (b) Where it is necessary to maintain regular services requiring an FLSA covered employee to work on an official holiday, the employee shall receive an extra days pay for the holiday, and for all hours worked exceeding the normal work week will be paid at the overtime rate. This section only applies to employees who are eligible for overtime pay as outlined in these rules and regulations.
- (c) If an employee is on an authorized leave when a holiday occurs, that holiday shall not be charged against leave (authorized leave refers to vacation, illness, injury, compensatory time, etc.).

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-344. - Family and Medical Leave Act of 1993 (FMLA).

The leave policies and procedures described in these rules and regulations provide benefits equal to, or greater than, the benefits of the FMLA. However, benefits of these rules and regulations shall not be construed to entitle the employees to a length of leave greater than to which an employee may be entitled under the FMLA. (see appendix A).

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-345. - Vacation leave.

(a) Paid vacation shall accrue at the following schedule:

Years of Service	Days Per Year
Less Than 4 Years	10 days
4 Through 10 Years	15 days
Over 10 Years	20 days
Over 20 Years	25 days

- (b) Vacation leave shall be cumulative; however, the following limitations shall be placed on the amount of vacation leave remaining to an employee's credit at the end of the calendar leave year (December 31), which can be carried over to the following year.

Years of Service	Days Per Year
Less Than 4 Years	10 days
4 Through 10 Years	15 days
Over 10 Years	20 days
Over 20 Years	25 days

- (c) At the end of the calendar leave year (December 31), vacation leave credits in excess of the amount that can be carried over from shall be credited to the employee's sick leave account. Credits will be accumulated from January 1 to December 31.
- (d) The city manager may waive the limitation of vacation leave carried over to the following year as stated above because of emergency or unusual circumstances arising where an employee was unable to take his/her earned vacation leave. In lieu of waiving the limitation of vacation leave carry over because of a city emergency or unusual circumstance, which resulted in an employee not taking the required vacation time, the city manager, at his/her discretion, may authorize cash payment of vacation leave in excess of the limitation.
- (e) Vacation leave for new employees will begin to accrue from the first month of employment. However, new employees will not be eligible to take accrued vacation leave until they have been in the employ of the city for three (3) consecutive months.
- (f) Employees shall be permitted to take vacation leave as approved by the agency director or his/her duly authorized representative. If the employee is of department head rank, his/her vacation leave will be taken at such time as will least interfere with efficient operation of the department and only with the approval of the city manager. Requests for vacation leave shall be made by the use of the leave request form signed by the employee and approved by the department head at least ten (10) days prior to the start of the vacation. Under exceptional circumstances may warrant vacation leave may be approved with less notice.
- (g) Employees shall, under no circumstances, be allowed to use sick leave for vacation leave except as otherwise provided in these rules and regulations.
- (h) An employee who becomes seriously ill while on vacation may request that sick leave be substituted for vacation leave while under the care of a physician. Such care must be certified by the physician in writing.
- (i) Vacation leaves already approved may be canceled or postponed by the agency director or his/her designee or the city manager in cases of emergency wherein subject employee's services are deemed necessary for public interest.
- (j) Accounting for leaves shall be reported on payroll time cards and initialed by the department head prior to being submitted to the finance department.

- (k) Employees scheduling vacation of one (1) full week or more may request vacation pay in advance, provided they have the necessary accumulation of vacation leave to cover the period of the vacation, and provided they do so by the use of the leave request form submitted to the department head or his/her designee at least ten (10) days prior to the leave commencement date.
- (l) An employee who has resigned or has been terminated, and who has been employed for at least one (1) month, shall be entitled to and shall be paid or given leave for all accrued vacation leave, providing that those employees who resign shall give two (2) weeks notice.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-346. - Sick leave.

- (a) An employee shall accrue sick leave at the rate of one (1) day of "sick leave" per month. Sick leave shall be used on an hour for hour basis.
- (b) Sick leave for new employees will begin to accrue from the first month of employment; however, new employees will not be eligible to take accrued sick leave until they have been in the employee of the city for three (3) consecutive months. There shall be no limit on the amount of accumulation, except for payout purposes.
- (c) Sick leave will be granted to employees only when they are unable to perform their duties because of sickness or injury. Visits to a physician or dentist are chargeable to sick leave. Proof of such must be supplied to the department or division director upon request.
- (d) In every case of unscheduled absence resulting from sickness or injury, the employee's department head, or designee, shall be notified promptly. Upon return to work, the employee and his/her department head must fill out a leave request form with the necessary information and submit it to the human resources department with the related time card. Failure to comply with the above provisions may be considered grounds for denial of sick leave and the employee will not be paid for the absence.
- (e) A statement from the attending physician must be presented if requested by the department head upon return to work in cases where the period of sick leave extends beyond three (3) days and may be requested for lesser periods of absence if the department head believes sick leave is being abused. Should it be discovered that an employee is taking sick leave under false pretenses, that time off shall be without pay and the employee will be subject to disciplinary action.
- (f) In absences when the illness of an employee extends beyond his/her sick leave credits, he/she may elect to apply earned compensatory time, holiday time, and upon exhaustion of the foregoing, vacation leave credits towards sick leave to the extent available, with the approval of the department head. Days lost because of illness after both vacation and sick leave credits are exhausted shall be without pay.
- (g) Upon retirement, resignation with two (2) weeks notice, and layoffs, accumulated sick leave will be paid on the basis of the following schedule, provided the accumulation is no more than twelve hundred (1,200) hours for employees hired before October 1, 1992, six hundred (600) hours for employees hired after October 1, 1992 and four hundred (400) hours for employees hired after July 1, 1996 and that employee has been here for at least one (1) year. All employees shall be paid for their accumulated sick leave prior to the effective day in accordance with the following schedule:

Years of Service	% of Sick Leave Paid at Break in Service
Less than 5 years	25%

Over 5 years	100%
Accumulated sick leave percentage will be paid based on the closest year	

- (h) Any employee who does not use any sick leave within one (1) of the below described six-month period, shall, for each six-month period for which no sick leave is used, earn one (1) day of vacation with pay at the employee's then existing salary level. For the purposes of this section the first six-month period shall begin on October 1 and terminate on March 31, with the next six-month period to commence on April 1 and terminate on September 30, to repeat each year.
- (i) At the option of the employee, following the accrual of fifty (50) days of sick leave, any additional earned sick leave may be added to the employee's vacation time to a maximum of forty (40) hours per fiscal year. If election is made to add these hours to vacation, they will be deducted from the sick leave accruals.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-347. - Family illness leave.

- (a) Family illness leave consists of the use of an employee's accrued sick leave in the case of actual sickness or disability of an immediate family member. Immediate family shall be defined as the employee's spouse, father, mother, one (1) who has stood in the place of a parent (in loco parentis), child, and stepchild domiciled in the employee's household. Approval of the department head is required for family illness leave.
- (b) Employees who have successfully completed an initial probationary period and who are otherwise eligible to earn and use sick and annual leave may be allowed to use up to a maximum of forty (40) hours of their accrued sick leave in any one (1) calendar year for an ill immediate family member. Use of such leave shall be in accordance with the provisions specified in these rules and regulations. Leave in excess of the forty (40) hours may be granted by the city manager in cases of extraordinary circumstances.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-348. - Parenting leave.

- (a) Time off under this section is a period of approved leave pursuant to these rules and regulations, which may be requested by a parent for the purpose of pregnancy complications, postpartum recovery, assistance in that recovery related to temporary disability, illness of a new child, bonding with a new child by either or both parents, other related medical conditions, or other reasonable need associated with adjustment to the addition of a child to a parental family. The child may arrive as a result of childbirth, adoption, legal guardianship, or assumption by an employee of an "in loco parentis" relationship. Leave requested in relation to an "in loco parentis" relationship must receive the prior approval of the director of human resources.
- (b) Parenting leave may consist of a combination of paid time off and unpaid leave of absence. Portions of the time off may be charged to accrued sick leave, family illness leave, accrued vacation leave, or leave without pay consistent with the leave provisions of these rules and regulations and the requirements of the FMLA. Normally, an employee requesting sick leave as part of the overall parenting leave will be permitted to use sick leave throughout any medically valid temporary disability

of the employee, prior to the use of annual leave. Requests for the use of paid sick leave or family illness leave are subject to the same terms, conditions and restrictions as is the case for any other use of these benefits. Accumulated leave will be exhausted prior to granting of leave of absence without pay.

- (c) The employee desiring parenting leave shall request specific amounts of leave time with as much advance notice as possible, e.g., early in pregnancy so that the department, division, or office director may have maximum opportunity to plan for any needed office or workload adjustments.
- (d) The length of parenting leave will be determined on an individual basis and will include consideration by the employee and the city of the reason for the leave, the nature of the job, the personal objectives of the employee, and any Family Medical Leave Act entitlements. The city will work with employees requesting parenting leave to identify any possible work or job modifications. Considerations may include the dates that the leave will begin and end, any medical verification required concerning an employee's or family member's condition, and any medical judgments as to the ability of an employee to safely and effectively perform the required work prior to and upon return from leave.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-349. - Military leave.

All military leave requests will be made based upon the procedure specified in the city's current military leave policy. (see appendix A),

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-350. - Civil leave.

An employee shall be granted civil leave with pay when performing jury duty, when subpoenaed to appear before any public body or commission on a job-related matter when performing emergency civilian duty in connection with national defense. An employee regularly scheduled to work the evening or midnight shift may receive civil leave, as described above, for their regularly scheduled shift when their court-ordered service occurs immediately before or after their scheduled shift. An employee subpoenaed in the line of duty to represent the city shall either be paid per diem or travel expenses by the city or may retain witness fees and mileage received from the court. Employees will be granted up to one (1) hour off for voting on election days when it is not feasible to vote before or after working hours.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-351. - Bereavement leave.

- (a) Bereavement leave of up to five (5) regularly scheduled work days for in state funerals and six (6) regularly scheduled work days for out of state funerals of paid leave will be granted for absence from duty of a full-time employee or part-time employee that accrues leave time in the event of death in his-her immediate family and up to two (2) additional regularly scheduled work days of paid leave to attend a funeral outside of Florida. Any absence in excess of these amounts shall be charged to vacation leave, if accrued, or to leave without pay if the employee has no vacation leave accumulated. The employee's immediate family shall be defined as the employee's spouse, father, mother, son, daughter, brother, sister, step-parent, step-child, step-sister, step-brother, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, persons determined in loco parentis (in the place of the parent) by the director of human resources, or any relative who is domiciled in the employee's household. Bereavement leave shall not be charged to annual or sick leave or to compensatory time.

- (b) The employee shall provide upon request of the department, division, or office director sufficient proof of a death in his-her family as defined above before compensation is approved and paid.
- (c) The granting of bereavement leave for relatives not listed above shall require the specific approval of the director of human resources.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-352. - Employment examinations.

Employees may be allowed to participate in city employment examinations during working hours, subject to supervisory approval, without loss of pay.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-353. - Leave of absence without pay.

- (a) A department, division or office director, in consideration of operational needs, may grant a employee a leave of absence without pay for a period not to exceed ninety (90) calendar days. Leaves of absence without pay exceeding ninety (90) calendar days may be granted with the approval of the city manager, however, in no case shall the total period of a leave of absence without pay exceed one (1) year. Subject to operational needs, every effort will be made to accommodate leave of absence requests greater than ninety (90) calendar days for the purpose of parenting leave.
- (b) All departments, divisions and offices are required to adhere to the following practices regarding leaves of absence without pay
- (c) Leave without pay shall be granted only when the employee has exhausted all applicable paid leave beginning first with the exhaustion of any accrued compensatory time.
- (d) Failure of an employee to return to work at the expiration of approved leave shall be considered as unapproved absence without leave and grounds for dismissal.
- (e) An employee granted leave of absence without pay who wishes to return before the leave period has expired, may be required to give his/her department division/office director at least two (2) weeks notice. Upon receipt of such written notice, the employee may be permitted to return to work provided, however, that the employee remains eligible for the particular job classification.
- (f) No sick leave or vacation leave shall be earned for the time that an employee is on leave without pay. Employees on leave of absence without pay will not receive holiday pay or credit toward a bonus sick leave day. Credit towards anniversary date driven compensation increases shall not be earned for time spent on leave without pay in excess of forty (40) consecutive hours or any forty (40) hours, which accumulate in a pay period, unless the leave is due to a work related injury. Leave of absence without pay beyond these limits will cause the employee's anniversary date to be adjusted accordingly.
- (g) A benefits eligible employee on approved leave without pay will continue to receive any applicable city provided insurance benefit funding for the first seven (7) full pay periods of the approved leave of absence. Employees are responsible to pay any applicable excess premiums above the city's insurance benefit contributions based on the employee's selected plan. Failure to pay for any excess premium applicable for the employee's coverage and/or the premium for dependent coverage may result in termination of insurance coverage during the leave.
- (h) After the first seven (7) full pay periods that a benefits eligible employee is on approved leave without pay, the city will discontinue the city provided insurance benefit contributions for the employee. If the employee wishes to continue his/her benefits during the leave, he/she will be required to pay the total premiums for the employee's selected coverage and any applicable premiums for dependent coverage.

- (i) An employee who is on leave of absence as a result of a work-related illness or injury will continue to receive city provided insurance benefit contributions during the period of leave. However, the employee is responsible for any premiums which exceed the city's contributions for the employee's selected coverage and/or the premium for dependent coverage.
- (j) An employee while on authorized leave of absence without pay, who obtains employment elsewhere automatically forfeits his/her position with the city, unless the leave of absence is for the purpose of allowing the employee to be a candidate for public office in which case said employee may engage in outside employment which does not conflict in any manner with said employee's city employment, as determined by the city manager.
- (k) An employee returning from leave of absence without pay shall be entitled to employment in the same department, division or office in the same or comparable class in which the employee worked when leave began so long as the employee remains qualified.

(Ord. No. 05-04, § 3, 11-17-04)

Sec. 16-354. - Absence without approved leave.

An absence from duty, including any absence for a single day or part of a day, that is not authorized by a specific grant of leave of absence under the provisions of these rules and regulations shall be deemed to be an absence without approved leave. Any such absence may be without pay and may subject the employee to disciplinary action.

(Ord. No. 05-04, § 3, 11-17-04)

**CITY OF MIRAMAR CHARTER
WITH 2010 AMENDMENT**

**ARTICLE I. CORPORATE EXISTENCE, FORM OF GOVERNMENT, BOUNDARY AND
POWERS.**

Section 1.01. Corporate existence.

A municipal corporation known as the City of Miramar (the "City") is hereby confirmed and continued pursuant to this Charter and the Constitution of the State of Florida (the "State").

Section 1.02. Form of government.

The City shall have a Commission-Manager" form of government.

Section 1.03. Boundaries.

The corporate boundary of the City shall be as follows:

Commence at the southwest corner of Section 27, Township 51 South, Range 41 East, for a point of beginning; thence proceed westerly along the south line of Sections 28, 29 and 30 of Township 51 South, Range 41 East, to the easterly line of Township 51 South, Range 40 East; thence proceed southerly along the east line of Section 36, Township 51 South, Range 40 East, to the southeast corner of said Section 36; thence proceed westerly along the south line of Sections 36, 35, 34, 33, 32, and 31 to the west line of Township 51 South, Range 40 East, and the east line of Township 51 South, Range 39 East; thence proceed westerly along the south line of Sections 36, 35, and 34, Township 51 South, Range 39 East, to the southwest corner of said Section 34, Township 51 South, Range 39 East; thence proceed northerly along the west line of Sections 34, 27, and 22 of Township 51 South, Range 39 East, to the northwest corner of the south half of said Section 22; thence proceed easterly along the north line of the south half of Sections 22, 23, and 24 to the east line of Township 51 South, Range 39 East, and the west line of Township 51 South, Range 40 East; thence continue easterly along the north line of the south half of Sections 19, 20, 21, 22, 23, and 24 to the East line of Township 51 South, Range 40 East, and the West line of Township 51 South, Range 41 East; thence continue easterly along the north line of the south one-half of Sections 19, 20, 21, and 22 of Township 51 South, Range 41 East to the northeast corner of the said south one-half of said Section 22, said corner being the same as the northwest corner of the south one-half of Section 23, Township 51 South, Range 41 East; thence proceed easterly along the north line of the south one-half of said Section 23, to a point of intersection with the centerline of S.W. 70th Avenue; thence proceed southerly along the last described centerline and its southerly extension to a point of intersection with the northwesterly right-of-way line of Sunshine State Parkway as shown on the plat of WYN HOMESITE No. 3 AMENDED, as recorded in Plat Book 60, at Page 46, of the Public Records of Broward County, Florida; thence proceed northeasterly along said northwesterly right-of-way line to a point of intersection with the said north line of the south one-half of Section 23; thence proceed easterly along said north line of the south one-half to a point of intersection with the west line of the

southeast quarter of said Section 23, as shown on the plat of RESUBDIVISION OF WELWYN PARK, FIRST ADDITION, as recorded in Plat Book 53, at Page 7, of the Public Records of Broward County, Florida; thence proceed southerly along the last described line to a point of intersection with the northerly right-of-way line of S.W. 18th Street; thence proceed easterly along the last described right-of-way line to a point of intersection with the westerly right-of-way line of S.W. 66th Avenue, as shown on said Plat of RESUBDIVISION OF WELWYN PARK, FIRST ADDITION; thence proceed northerly along the last described right-of-way to a point of intersection with the said north line of the south one-half of Section 23 as shown on said Plat of RESUBDIVISION OF WELWYN PARK, FIRST ADDITION; thence proceed easterly along said north line of the south one-half to the northeast corner of said south one-half of said Section 23, said corner being the same as the northwest corner of the south one-half of Section 24, Township 51 South, Range 41 East; thence proceed easterly along the north line of the said south one-half of Section 24, to a point of intersection with centerline of State Road No. 7 (U.S. 441), also known as S.W. 60th Avenue; thence proceed southerly along said centerline of State Road No. 7 over and across said Section 24 and Section 25, Township 51 South, Range 41 East, Broward County, Florida, to a point of intersection with the south line of said Section 25; thence proceed westerly along the said south line to the southwest corner of said Section 25, the same being the southeast corner of said Section 26; thence proceed westerly along the south line of said Sections 26 and 27, Township 51 South, Range 41 East, to the southwest corner of said Section 27, and the point of beginning.

The legal description of the City that is set forth above shall be revised, from time to time, as provided by Ordinance, so as to conform with annexations to the territory of the City, as authorized by Section 166.031(3), Florida Statutes. Any such provisions previously made shall be deemed to be incorporated into the legal description provided above. The latest legal description of the City shall be maintained on file in the office of the City Clerk, accompanied by a map to be used for convenience of reference.

Section 1.04. Powers.

The City shall have all available governmental, corporate and proprietary powers and may exercise them for municipal purposes, except when prohibited by law.

Section 1.05. Construction.

This Charter and the powers of the City shall be construed liberally in favor of the City.

ARTICLE II. CITY COMMISSION; MAYOR.

Section 2.01. City Commission.

The City Commission shall consist of five (5) members, one of whom will be the Mayor, duly elected by the qualified voters of the City as provided by this Charter.

Section 2.02. Powers.

All powers of the City, except such as are vested in the City Manager and except as otherwise provided by this Charter or the Constitution or laws of the State of Florida, are hereby vested in the City Commission. The City Commission may, by Ordinance or Resolution, prescribe the manner in which any power of the City may be exercised. The City Commission shall be the judge of the election and a qualification of its own members. The City Commission may determine its own rules of procedure and may punish its own members for misconduct. If the Mayor or any Commissioner shall fail to attend meetings for a consecutive period of three (3) months, he/she may be relieved of his/her office by a majority vote of the City Commission. The City Commission shall have the power to designate or create such offices, departments, or divisions, other than those provided for by this Charter, as may be necessary for the administration of the affairs of the City, to prescribe the duties and powers of such office, department or division, other than those provided for by this Charter, as may be necessary for the administration of the affairs of the City; to prescribe the duties and powers of the officers or employees to such office, department or division; and to fix the salary or compensation of all officers or employees.

Section 2.03. Powers and duties of mayor.

It shall be the duty of the Mayor to serve as the president of the Commission and preside over all meetings of the City Commission. The Mayor shall be the recognized head of City government for all ceremonial purposes, for service of process, by the governor for military purposes, and shall be the City official designated to represent the City in all dealings with other governmental entities but shall have no administrative duties. The Mayor shall execute, with approval of the City Commission as provided by law, all Ordinances and Resolutions.

Section 2.04. Qualifications.

The members of the City Commission, including the Mayor, shall be residents of the City and have the qualifications of electors in the general municipal election of the City. Only electors of the City who reside in the City at the time of qualifying and election and who have resided continuously in the City for at least one year immediately preceding the first day of the qualifying period shall be eligible to qualify as a candidate and hold the office. When any Mayor or Commissioner shall cease to possess the qualifications required herein, he/she shall forthwith forfeit his/her office. Whenever the Mayor or any Commissioner shall cease to be a Mayor or Commissioner for any reason, his/her successor to fill out the unexpired term will be named in accordance with section 5.05 of this Charter.

Section 2.05. Appointing powers of the City Commission.

The City Commission shall have the power to appoint the City Manager, City Attorney and commission secretary and members of all municipal boards, except civil service boards.

Section 2.06. Residence.

For purposes of this Article, "Residence" shall require all of the following:

- (a) A place of abode within the City;
 - (b) A declaration of intent of making that place of abode the person's permanent home;
 - (c) Registration to vote at the address of that place of abode; and
 - (d) A Florida driver's license (or, if the person does not possess a driver's license, an official Florida state identification) that reflects the address of that place of abode.
- The terms "Resident," "Resided" and "Residing" shall be based upon this definition.

ARTICLE III. ADMINISTRATIVE.

Section 3.01. City Manager

The City Manager shall be the chief executive officer and chief administrative officer of the City and shall supervise, control and direct all other officers of the City except the commissioners, commission secretary and the office of the City Attorney, and be otherwise answerable to the City Commission and to the citizens of the City for the conduct of the City affairs.

Section 3.02. Qualifications, absence and removal of City Manager.

The Commission shall appoint a City Manager who shall be the administrative head of the municipal government and shall be responsible for the efficient administration of all departments (excluding the City Attorney), and may be the head of such department as the Commission may by ordinance or resolution provide. He/She shall be chosen on the basis of his/her executive and administrative qualifications. He/She may or may not be a resident of the City or the State of Florida. No members of the Commission shall be appointed City Manager. He/She shall hold office at the will of the commission and may be removed by a majority vote of its members during his/her first six (6) months in office. After serving six (6) consecutive months in office he/she may be removed by a four-fifths (4/5) vote of the Commission. In the case of the sickness or absence of the City Manager, the City Commission shall appoint another person or employee to act for the City Manager and such appointee shall, during the absence or sickness of the City Manager, act for him/her and perform all his/her duties, and all such acts of the person appointed shall be as valid as though performed by the City Manager. The appointee serving as acting City Manager in the absence or sickness of the manager shall not be entitled to nor paid the compensation of the manager but shall receive such compensation as the Commission prescribes.

Section 3.03. Powers and duties of City Manager.

The powers and duties of the City Manager shall be:

- (a) To see that laws and Ordinances are enforced.
- (b) To appoint, suspend and remove, except as herein provided, all directors of the departments and all subordinate officers and employees (excluding the commission secretary and City Attorney) in the departments in both the classified and unclassified service; all appointments to be upon merit and fitness alone, and in the classified service all appointments and removals shall be subject to the civil service provisions of this Charter and Code.

- (c) To exercise control over all departments and divisions created herein or that may be hereafter created by the e Commission (excluding City Attorney and commission secretary).
- (d) To attend all meetings of the Commission with the right to take part in the discussion but having no vote.
- (e) To recommend to the commission for adoption such measures as he/she may deem necessary, expedient or otherwise in the City's best interests.
- (f) To keep the commission fully advised as to the needs of the City.
- (g) To examine, without notice, the affairs of any department or any officer or employee to be examined.
- (h) To execute, with the approval of the City Commission as required by law, all contracts, deeds, bills of sale, and other instruments in writing to which the City is a party.
- (i) To act as a liaison between the City administration and the City Commission.
- (j) To perform such other duties as may be prescribed by this Charter or be required of him/her by Ordinance or Resolution of the Commission.
- (k) To have charge of the department of finance, under his/her direction and control and administer (himself/herself or through his/her designee) the financial affairs of the e City, including the keeping and supervision of all accounts, the levy, assessment and collection of revenues and special assessments, the custody and disbursement of City funds and monies, the control over expenditures, and such similar duties as the Commission may by Ordinance prescribe.

Section 3.04. City officers; appointment by City Manager.

- (1) The City Manager shall appoint all department heads and other appointive officers, except as specifically provided in this Charter. The salaries of such officers shall be determined by the e City Manager and ratified by the City Commission. Any such appointive officer shall serve a probationary period of one year during which year he/she may be dismissed without being afforded a hearing.
- (2) The City Manager shall make all appointments within ninety (90) days after either the creation of an office or within ninety (90) days after the time of appointment for offices already created, and if the City Manager does not make such appointment upon showing of good cause by the City Manager, the City Commission may grant a sixty-day extension for making appointments.

Section 3.05. Bonds of officers.

The Commission shall determine by Resolution what officers, clerks or employees shall give bond and the amount of penalty thereof. All officers, clerks and employees of whom bond is required by the Commission shall, before entering upon their respective duties, give bond with surety to be approved by the Commission, conditioned for the faithful performance of the duties of their respective offices. All such bonds shall be payable to the City.

ARTICLE IV. LEGISLATIVE.

Section 4.01. Commission Meetings Procedure.

- (a) *Meetings.* The City Commission shall meet at such time and place as may be prescribed by Resolution or Ordinance. All meetings of the Commission shall be public, except as provided by Florida law. Special meetings may be held upon written request to the City Clerk by the Mayor, the City Manager, or three Commissioners, and upon no less than 24 hours' notice to each member and the public, or such shorter time as the City Manager shall deem necessary in case of an emergency.
- (b) *Rules and Minutes.* The City Commission shall determine its own rules of procedure and order of business and shall keep minutes that shall be open for public inspection.
- (c) *Quorum and voting.* Any three members of the Commission shall constitute a quorum but a smaller number may meet from time to time. No action of the Commission shall be valid or binding unless adopted by the vote of at least three Commissioners; provided, however, in the event that less than four members of the Commission are eligible to vote on a particular matter due to vacancies or required abstention pursuant to Florida law, then the remaining members of the Commission may vote and approve such matter by majority vote.

Section 4.02. Prohibitions.

- (a) *Appointments and removals.* Neither the Commission nor any of its members shall in any manner dictate the appointment or removal of any City administrative officers or employees whom the City Manager or any of his/her subordinates is empowered to appoint, but the Commission may express its views and fully and freely discuss with the City Manager anything pertaining to the appointment and removal of such officers and employees.
- (b) *Interference with administration.* The commission shall seek all requests, inquiries or actions of City officers and employees through the City Manager, and all responses thereto shall be made as promptly as possible. The Commission and its members shall deal with the administration solely through the City Manager and neither the Commission nor any members thereof shall give orders to, nor make requests of, any of the subordinates of the City Manager either publicly or privately.
- (c) *Holding other office.* No elected City official shall hold any appointive City office or employment while in office.

Section 4.03 Emergency Ordinances.

(a) *Authorization; form.* To meet a public emergency affecting life, health, property, or the public peace, the Commission may adopt, in the manner provided in this Section, one or more emergency Ordinances, but such Ordinances may not: enact or amend a land use plan or rezone private property; levy taxes; grant, renew, or extend any municipal franchise; set service or user charges for any municipal services; or authorize the borrowing of money except as provided under the emergency appropriations provisions of this Charter if applicable. An emergency Ordinance shall be introduced in the form and manner prescribed for Ordinances generally, except that it shall be plainly designated in a preamble as an emergency Ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and a description of the emergency in clear and specific terms.

(b) *Procedure.* Upon the affirmative vote of a majority of the City Commission, an emergency Ordinance may be adopted, with or without amendment, or rejected at the meeting at which it is introduced. After its adoption, the Ordinance shall be advertised and printed as prescribed for other Ordinances.

(c) *Effective date.* Emergency Ordinances shall become effective upon adoption or at such other date as may be specified in the Ordinance.

(d) *Repeal.* Each emergency Ordinance except emergency appropriation Ordinances shall automatically be repealed as of the 91st day following its effective date, but this shall not prevent reenactment of the Ordinance under regular procedures, or, if the emergency still exists, in the manner specified in this Section. An emergency Ordinance may also be repealed by adoption of a repealing Ordinance in the same manner specified in this Section for adoption of emergency Ordinances.

(e) *Emergency appropriations.* To meet a public emergency affecting life, health, property, or the public peace, the Commission, by Resolution, may make emergency appropriations. To the extent that there are no unappropriated revenues to meet such appropriation, the Commission may by such emergency Resolution authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals in any fiscal year shall be paid not later than the last day of the fiscal year succeeding that in which the emergency appropriations were made.

ARTICLE V. ELECTIONS.

Section 5.01. Qualifications of electors; absentee voting; state election laws.

All elections shall be held in accordance with the provisions of the general election laws of the State of Florida, except as is otherwise provided by this Charter or by Ordinance. Nothing contained in this Charter as to voting is to be construed as an attempt to vary any constitutional provisions that would govern in elections prescribed by the Constitution.

Section 5.02. Procedure for becoming candidates.

The name of any elector of the City shall be printed upon the ballot after he/she has paid to the City Clerk a qualifying fee of twenty-five dollars (\$25.00) and has filed with the City Clerk a written notice of candidacy, which notice shall designate which seat of the City Commission he/she desires to fill, exclusive of seat 5 which shall be designated for the Mayor's seat, such Commission seats being designated 1, 2, 3, and 4, as appropriate, and which notice shall state that if elected he/she will qualify and serve in such office during the term for which he/she is elected. It shall be the duty of the City Clerk forthwith on the paying of said qualifying fee and filing of such notice to make and to deliver to such candidate a written certificate acknowledging the receipt of said qualifying fee and such certificate shall state the date of paying said qualifying fee and filing of such notice. The payment of said qualifying fee and the filing of such notice must be done thirty-five (35) days before the day of election and not more than fifty (50) days before, unless otherwise dictated by the requirements of general or special law. If the candidate fails to comply with the provisions of this section, his name shall not appear on the ballot.

Section 5.03. Candidates elected.

At any regular or special election, the ballot shall name all candidates who have qualified for any of the designated seats of the City Commission and for the office of Mayor. The candidate receiving the highest number of votes for Mayor shall be declared elected. The candidate for each designated Commission seat receiving the highest number of votes shall be declared elected. In case of any tie vote for Mayor or Commission candidate, in which the question cannot be resolved, a run-off election shall be held.

Section 5.04. Election of Mayor and Commission.

The Mayor and each City Commissioner shall be elected at-large. Each Commissioner and the Mayor shall remain in office until his or her successor is elected and assumes the duties of the position. The election for Commission Seats 1, 2, and 3 shall be held on the second Tuesday in March 2009, and every four years thereafter. The election for Commission Seat 4 and the Mayor (Seat 5) shall be held on the second Tuesday in March 2011, and every four years thereafter.

Section 5.05. Vacancies in Elective Office; Temporary appointments; Special Elections.

If any vacancy occurs in the Commission, including the Mayor, the remaining City Commissioners (including the Mayor) shall by majority vote elect an eligible person to fill the same for the remainder of the term of that office provided that an election for that office is not more than six (6) months away. If an election for that office is more than six (6) months away, then a special election shall be held within 180 days of the effective date of such vacancy, provided, however, if the Supervisor of Elections cannot conduct the special election within the 180 day period, then the special election shall be held at the earliest possible time. If an appointment is called because there is six (6) months or less left in the term of that office and the Commission fails to make said appointment within thirty (30) days, then a special election shall be held within 180 days of such vacancy's effective date, provided, however, if the Supervisor of

Elections cannot conduct the special election within the 180 day period, then the special election shall be held at the earliest possible time.

Section 5.06. Form of ballots.

All ballots used in any general election held under authority of this Act, shall be without party mark or designation and without any insignia or mark of any association or organization thereon, and shall be substantially in the same form as the election ballots used in all general elections.

Section 5.07. Oath of office.

All elective officers, before entering upon their duties, shall take and subscribe to the following oath of office:

"I do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States and of the State of Florida, and of the Charter of the City of Miramar; that I am duly qualified to hold office under the Constitution of the State and the Charter of the City of Miramar and that I will well and faithfully perform the duties of _____ upon which I am now about to enter. So Help Me God."

If any elective officer shall fail to qualify for the office to which elected within thirty (30) days after election thereto, said office shall be declared vacant and a successor appointed as by this Act provided. If any elective officer through illness or unavoidable absence cannot be present to take the oath of office as herein provided the Commission may by a majority vote extend for a reasonable period of time within which said elective officer shall take office.

ARTICLE VI. CHARTER AMENDMENTS.

Section 6.01. Charter amendments.

This Charter may be amended in accordance with the provisions of this Article.

Section 6.02. Procedure to amend.

- (a) *Initiation.* This Charter may be amended in two ways:
 - (i) *By Ordinance.* The Commission may, by Ordinance, adopted by the affirmative vote of at least three members of the City Commission, propose amendments to this Charter and upon passage of the initiating Ordinance shall submit the proposed amendment to a vote of the electors at the next general election held within the City or at a special election called for such purpose.
 - (ii) *By petition.* The electors of the City may propose amendments to this Charter by petition signed by 10 percent of the registered electors as of the last preceding municipal general election. Upon certification of the sufficiency of a petition, the Commission shall submit the proposed amendment to a vote of the electors at a general election or special election to be held not less than 60 days or

more than 120 days from the date on which the petition was certified or at a special election called for such purpose.

(b) *Results of election.* If a majority of the qualified electors voting on a proposed amendment vote for its adoption, it shall be considered adopted upon certification of the election results. If conflicting amendments are adopted at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

ARTICLE VII. GENERAL PROVISIONS.

Section 7.01. Severability.

If any Section or part of any Section of this Charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Charter or the context in which such Section or part of Section so held invalid may appear, except to the extent that an entire Section or part of Section may be inseparably connected in meaning and effect with the Section or part of Section to which such holding shall directly apply.

Section 7.02. Conflicts of interest; ethical standards.

All Commissioners, officials and employees of the City shall be subject to the standards of conduct for public officers and employees set by State or other applicable law.

Section 7.03. Variation of pronouns.

All pronouns and any variation thereof used in this Charter shall be deemed to refer to masculine, feminine, neutral, singular or plural as the identity of the person or persons shall require and are not intended to describe, interpret, define or limit the scope, extent or intent of this Charter.

Section 7.04. Calendar day.

For the purposes of this Charter, a day shall mean a calendar day.

Section 7.05. No Discrimination.

The City shall not adopt any measure or policy or otherwise discriminate against any person due to age, race, religion, color, national origin, physical or mental disability, creed, sexual orientation or sex.

ARTICLE VIII. CIVIL SERVICE.

Section 8.01. Civil service board, civil service system authorized.

The City of Miramar shall have the power to create a civil service board and civil service system.

Section 8.02. Composition of civil service board; election and term of members; vacancies in office; removal for cause.

The civil service board shall be made up of seven (7) members, two (2) of whom shall be appointed by the City Manager, two (2) of whom shall be elected by a majority of the elected City Commission members; one member of the board shall be elected by and from the nonprobationary law enforcement officers employed by the City; one member shall be elected by and from the nonprobationary fire fighters employed by the City; and one member shall be elected by and from employees other than nonprobationary law enforcement officers and the three (3) members selected by the employees shall not be required to be confirmed by the City Commission, but the City Commission shall prescribe the candidate qualifications, rules, regulations and procedure for the purpose of holding of elections of City employees for the members of the civil service board to be named by such employees. The City Commission shall further prescribe the terms of each member and the dates for the election and the appointment of the first member.

Any vacancies among the members to be named by either the elected City Commission members, the employees, or the City Manager, shall be filled for the unexpired term in the same way as the original appointment was made. Nothing herein or hereinafter set forth shall make it unlawful for any member of the board to serve for more than one term.

Members of the board may be removed by the City Commission for cause, and the method of removal shall be prescribed by the City Commission.

The method of electing and appointing the members of the civil service board shall be an exception to the requirements of this Charter which requires all appointments to be made by the City Manager.

IX. CONTINUATION.

Section 9.01. Continuance of rights, powers, privileges, property, Ordinances, Resolutions, taxes, fees, offices, departments, boards, and agencies of City.

- (a) All Ordinances and Resolutions passed by the City shall remain in effect to the extent that they are not inconsistent with this Charter.
- (b) All taxes and fees passed by the City shall remain in effect to the extent that they are not inconsistent with this Charter.
- (c) All offices, departments, boards, and agencies created and established by the City shall continue to the extent that they are not inconsistent with this Charter.

Section 9.02. Time of taking effect.

Any proceeding, action, Resolution or Ordinance that was commenced or the adoption of which was initiated prior to the effective date of this Charter may be completed under the provisions of either the former Charter or this Charter.