

**TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
SPECIAL MEETING MINUTES
Jarvis Hall
4505 Ocean Drive
Tuesday, April 10, 2018
4:30 PM**

1. CALL TO ORDER

Mayor Chris Vincent called the meeting to order at 4:43 p.m. Also present were Vice Mayor Elliot Sokolow, Commissioner Edmund Malkoon, Commissioner Alfred "Buz" Oldaker, Commissioner Randy Strauss, Town Manager Bud Bentley, Deputy Town Manager Tony Bryan, Assistant Town Manager Sharon Ragoonan, Development Services Director Linda Connors, Town Attorney Susan L. Trevarthen, Assistant Town Attorney Robert Meyers, Municipal Services Director Don Prince, Special Projects Coordinator Debbie Hime, Public Information Officer Steve d'Oliveira.

2. INTERACTIVE ETHICS TRAINING FOR TOWN COMMISSION BY: Town Attorney Susan L. Trevarthen and Assistant Town Attorney Robert Meyers

Assistant Town Attorney Robert Meyers explained that elected officials in Broward County are required to undertake four hours of ethics training each calendar year relating to both local ethics regulations and State Statutes.

Assistant Town Attorney Meyers first addressed the issue of lodging, citing the example of an elected official using lodging provided by a friend who works for a city contractor. If the official reimburses the friend fair market value for this lodging, it is not considered a gift and does not have to be reported. If an individual does not have an ownership interest or acts on behalf of a contracting entity, or if company funds are not used to offer a gift, s/he is not a contractor. Because the lodging is provided by a friend rather than an individual acting in an official capacity, the \$50 limitation under State law does not apply.

Vice Mayor Sokolow asked if a restaurant with no contractual ties to the Town could take action such as offering a free meal. Assistant Town Attorney Meyers advised that if an offer is available to all patrons, it is not considered a gift; in addition, the \$50 limit on gifts of an official capacity does not apply to an elected individual's spouse. It would be permissible to accept the offer if it is valued below \$50, or if it is below the \$100 threshold for State law. Town Attorney Trevarthen added that if that restaurant, however, has submitted an application to the Town and may be seeking a positive vote, it could be perceived as an attempt at influence.

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Assistant Town Attorney Meyers continued that if the meal in question is, for example, \$55, the Commissioner could accept it but must reimburse any amount over \$50. Whether or not the gift was solicited is immaterial.

Assistant Town Attorney Meyers advised that all opinions on ethics issues are now available in a database as required under the amended Broward County Ethics Ordinance. He cited another example of an official invited to attend an event that is partially underwritten by a city contractor, with the total per-person cost of the event set at over \$50. In this case, the County Attorney's Office would not consider the event to be a gift, as it is not for the benefit of the elected official. In addition, the portion of event value attributable to non-alcoholic beverages may lower the cost of the event to below the \$50 gift limit, as these beverages are an exception under County Code.

Town Attorney Trevarthen stated that attorneys have the authority under County regulations to issue specific opinions to elected officials if the attorneys are presented with all the facts. Even if the Inspector General does not concur with the opinion, the elected official is considered to be protected by that opinion. She emphasized, however, that the opinion must be written in order for this protection to apply. If the official has any doubt of the appropriateness of a response, s/he must ask for a safe harbor opinion in order to receive any immunity. These opinions may not protect officials from State or other laws.

Assistant Town Attorney Meyers noted that another key consideration is determining who is a contractor, vendor, or lobbyist. A vendor or contractor is defined as a person or entity currently supplying goods or services to the Town, who has done so within the prior two years, or who has submitted a response to a currently open competitive solicitation. He recommended that if an official is offered a gift, that official should seek to determine if the offering party is a vendor or contractor.

It was noted that elected officials must report their salaries from their regular jobs once their first year of service has been completed. Payments such as disability would not be considered a form of income, as they are not connected to employment activity. Wages, profit distributions, and bonuses are considered income; other payments, such as business expenses, reimbursements, paid training, return of capital, insurance contributions, or payment of interest related to capital are not income. Volunteer work, income generated from passive activities, and remuneration from the Town are also not outside employment.

Assistant Town Attorney Meyers returned to the issue of gifts and their reporting requirements, reiterating that gifts valued over \$50 and received by an elected individual in his/her official capacity must be reported. If an official has a professional relationship with a firm, a gift from that firm would be seen as offered in a personal or unofficial capacity. Gifts from friends or associates unrelated to Town business may be of any value. Gifts over \$100, including food, must be reported under State law. The official has the option of reimbursing the value of a gift down to the \$50 limit.

The Ethics Ordinance includes an exception for gifts that are tied to training and education for elected officials. State and County law allow officials to accept gifts in recognition of their community service, as long as the gifts are considered reasonable. Items won in raffles or similar charity events may be accepted or may be donated back, as these events are considered games of chance, but officials are advised to report any such items out of an abundance of caution. The official must, however, have purchased the raffle ticket(s).

Gifts from lobbyists, vendors, or contractors are limited to a value of \$5. Exceptions include training or education as well as non-alcoholic beverages. Admission to charitable events may be accepted but must be disclosed, and the official must reimburse the donor for the value of any beverages consumed by the person using the ticket.

The Commissioners and Attorneys further discussed the role of contractors, with Town Manager Bud Bentley pointing out that some Town businesses may contract with the Town once each year for the annual Bugfest event. Assistant Town Attorney Meyers cautioned that this contract must be taken into consideration, and if the business meets the definition of a contractor, gifts are limited to a value of \$5. Town Manager Bentley clarified that event contracts are authorized once per year. Assistant Town Attorney Meyers advised that the business may fall under the category of a contractor or vendor who has had a contract with the Town within the last two years. He added that if a Commissioner attends such an event and limits his/her consumption to non-alcoholic beverages only, s/he is complying with the law.

If an elected official is provided with a ticket to a charitable event, Assistant Town Attorney Meyers reiterated that s/he must reimburse the vendor for the value of any food or drink consumed. The official also has the option of not consuming food or drink at the event, or of purchasing his/her ticket, which negates the need to reimburse for consumption. If an individual attends in the elected official's stead, the official must reimburse for that person's food and drink as well.

Assistant Town Attorney Meyers continued that governmental entities, such as neighboring municipalities, Broward County, or the School Board, are no longer considered to be contractors. Town Attorney Trevarthen cautioned, however, that while Broward Sheriff's Office (BSO) is a governmental entity, they are also contracted to provide Police services for the Town. The Attorneys were not aware of whether or not an opinion on this issue has been provided for another municipality.

With regard to entities such as the League of Cities, Assistant Town Attorney Meyers reiterated that gifts related to training or education for officials are exempt from reporting requirements; however, with regard to other events, such as the League's annual gala, the League of Cities is not considered a governmental entity. If the Town serves as a sponsor of the event by purchasing a table, the Town may distribute the tickets for that table to the Commissioners, which are not considered to be gifts. If a Commissioner brings his/her spouse, however, the ticket is seen as a gift and must be reported if its

value is over \$100, although reimbursement is not required. The \$50 limit does not apply in this case because the gift comes from the Town.

Vice Mayor Sokolow pointed out that sponsorship of a table at the gala has benefits for the Town, such as publicity. Assistant Town Attorney Meyers advised that this would need to be taken into consideration when a determination is made regarding whether or not a ticket is a gift. Town Attorney Trevarthen recommended strong caution in cases where a "gray area" is perceived regarding whether or not an item is a gift.

Assistant Town Attorney Meyers addressed lobbying, citing the example of a County Commissioner reaching out to a municipal elected official to determine how a planned development might affect that County Commissioner's property. He explained that if the County Commissioner is communicating on his/her own behalf, that communication is excluded from the definition of lobbying. If the County Commissioner hired a lobbyist to address this issue, however, and then spoke personally about the issue, the County Commissioner would be considered a principal of the lobbyist. The critical test lies in whether or not an individual is employed by a company that engages in lobbying, as well as that individual's role within the company. An individual who is not principally employed to lobby would not be considered a lobbyist.

Commissioner Oldaker asked what regulations would apply if he reaches out to another municipality to request information, but is not acting in his capacity as a Town Commissioner. Assistant Town Attorney Meyers confirmed that this is not considered lobbying, even if the other municipality recognizes that he is a Commissioner. Lobbying occurs when a representative is attempting to persuade an elected individual in his or her official capacity. If the representative is sharing information about an event, it is not considered lobbying.

Regarding the difference between registered or unregistered lobbyists, Assistant Town Attorney Meyers recommended asking an individual if s/he is registered as a lobbyist. He noted that an elected official is not under any obligation to meet with a lobbyist, and speaking with an unregistered lobbyist does not result in a penalty to that elected official. A property owner in the Town advocating with regard to a decision is considered to be speaking on his/her own behalf.

Town Attorney Trevarthen further clarified that while there is no penalty for speaking to an unregistered lobbyist, officials should not do so. The intent is for lobbyists to register within Broward County so it will be known if third parties are attempting to influence government officials. A resident representing another group of residents, such as the president of a civic association, is an exception to this rule, as are other elected officials acting in their official capacity.

Other exceptions include employees, board members, or officers of nonprofit public interest entities, such as the League of Women Voters or the Sierra Club. Nonprofits without a public interest, however, such as the Chamber of Commerce, would not be seen

as an exception. Town Attorney Trevarthen pointed out that in a small municipality, there may be a level of regular interaction with members of groups like the Chamber of Commerce that does not meet the definition of lobbying. A separate meeting with a Chamber representative, however, may fall under this definition, as the Chamber has a contractual relationship with the Town.

If an individual is a registered lobbyist, it is his/her responsibility to submit a contact log, no matter where the communication with an elected official occurred. The elected official is not obligated to report the contact.

Officials may serve in purely honorary capacities on a steering committee for a charitable foundation, but may not solicit donations or sign fundraising letters. A distinction is made between the steering committee and the full organization: if an action is taken by the host committee and the official's name is on a document sent by that committee, this is considered to be engagement in charitable fundraising activity and must be reported.

If an elected official chairs a political committee and does not receive compensation for that position, but is fundraising with respect to an issue and not for another candidate, the Ethics Ordinance does not consider this to be political fundraising. If funds are solicited for another candidate, this is considered political fundraising and the activity must be reported. If the official receives any type of salary for this activity, it must be reported as outside employment. Fundraising activity must be reported within 50 days.

Assistant Town Attorney Meyers continued that the required ethics training for elected officials must take place by the end of the calendar year. This training must be reported in two ways: by providing a completed form to the Town Clerk within 30 days, and by July 1, 2019 as part of the filing of Form 1, a State financial disclosure form, as required by State law. The County requires that at least two hours of ethics training must be interactive, such as today's training session.

Assistant Town Attorney Meyers advised that safe harbor opinions should be requested in writing. While opinion does not insulate an elected official from an investigation by the Inspector General, receiving this opinion is often the end of the inquiry. It does not provide immunity from claims under federal or State law. Within 15 days of receipt of the opinion, the Town Attorney(s) will send it to the County's database.

In addition to the Broward Ethics Ordinance, which is enforced by the Inspector General's Office, there are State ethics laws, enforced by the Florida Commission on Ethics. The Commission on Ethics also serves in an advisory capacity if an official wishes to request an opinion from them, although this is a longer process than seeking an opinion from a Town attorney.

If an appearance of voting conflict is disclosed on the record by an elected official, the official is still required file a memorandum of voting conflict, even if the conflict is only perceived. If there is no factual basis for voting conflict, but some residents perceive the

appearance of a conflict and feel the official should have abstained from voting, the official is not required to file the memorandum and may participate in the vote. Assistant Town Attorney Meyers cautioned against abstaining if an official simply does not want to weigh in on a particular issue. In the absence of a conflict or perceived conflict, an official is legally obligated to vote.

Mayor Vincent asked if a Town Attorney may provide an opinion on conflict to an elected official at the time a vote is taken. Town Attorney Trevarthen recommended that if this issue is expected to arise, the official should discuss it with the Attorney ahead of time. If an allegation is made at the time of a vote, the Town Attorney may provide guidance.

In the event that an official has a bias, s/he may recuse him/herself from a vote. Assistant Town Attorney Meyers offered the example of an official who has campaigned against "big box" retailers in a municipality, and is then presented with an application by one such retailer. If that official feels s/he can be objective on the matter, s/he is not required to abstain from voting, despite any position taken in the past. If the official believes s/he has a bias because of this past position, however, s/he is then permitted to abstain under State law. This only applies to quasi-judicial issues, and not to contract decisions, Resolutions, or Ordinances.

Town Attorney Trevarthen added that the perception of bias may become a basis by which a decision could be invalidated: if a quasi-judicial applicant is rendered a decision by a biased official, this is a violation of that applicant's rights. She added that she would counsel against a biased official participating in discussion of the application, as this could be seen as influencing the process. The official is not, however, required by law to abstain from discussion.

Because there is no clear definition of bias under the Ethics Ordinance, the determination of what constitutes bias is left to the elected official. Assistant Town Attorney Meyers advised that if an official is one of many individuals affected by a particular decision, State law presumes that a 1% interest constitutes a conflict; if that interest is less than 1%, the issue is perception of conflict. A private economic gain or loss to the official, a relative, a business associate, or an employer must occur to constitute a conflict. If a conflict exists, it is still allowable under State and Town law for an official to participate in discussion of the item, although s/he may choose not to do so.

Assistant Town Attorney Meyers advised that State law requires that corrupt intent be demonstrated in order for an official to be charged with wrongdoing. He concluded that the Inspector General has significant authority in Broward County and may choose to investigate almost any allegation. If an official finds him/herself under investigation, that official should inform the Town Attorney at once.

3. ADJOURNMENT

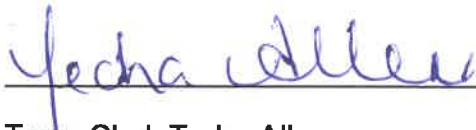
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With no further business to come before the Commission at this time, the meeting was adjourned at 6:20 p.m.



Mayor Chris Vincent

ATTEST:



Town Clerk Tedra Allen



Date