

The regular meeting of the Lake Wales City Commission was held on July 5, 2011 at approximately 6:02 p.m. in the Commission Chambers at the Municipal Administration Building. The meeting was called to order by Vice-Mayor Terrye Y. Howell following the Invocation and Pledge of Allegiance.

INVOCATION

The invocation was given by Dr. Jim Moyer

PLEDGE OF ALLEGIANCE

CALL TO ORDER: Terrye Y. Howell, Vice-Mayor

COMMISSIONERS PRESENT: Terrye Y. Howell; Jonathan Thornhill; John Paul Rogers; Betty Wojcik; Michael S. Carter; via telephone conferencing

COMMISSIONERS ABSENT: None

CITY REPRESENTATIVES PRESENT: Judith H. Delmar, City Manager; Albert C. Galloway, Jr., City Attorney; Clara VanBlargan, City Clerk; Jacquie Hawkins, Deputy City Clerk.

[The minutes are recorded, but are not transcribed verbatim.]

MAYOR

APPROVAL OF MINUTES

**Agenda Item 5. Approval of Minutes: June 21, 2011, Workshop Meeting
June 21, 2011, Regular Meeting**

City Attorney Chuck Galloway made the following corrections to the June 21, 2011 regular meeting minutes:

- Agenda Item 13, comment section, first paragraph, second sentence: "Florida Tangers" should be "Florida Gas Transmission Company"
- Agenda Item 13, comment section, first paragraph, third sentence: The word "remove" should be "request removal of"

Commissioner Thornhill made a motion to approve the minutes for the June 21, 2011 regular meeting with the corrections and the June 21, 2011 workshop meeting. The motion was seconded by Commissioner Rogers.

By Voice Vote:

Commissioner Thornhill	"YES"
Commissioner Rogers	"YES"
Commissioner Wojcik	"YES"
Mayor Carter	"YES"
Vice-Mayor Howell	"YES"

OLD BUSINESS

Agenda Item 6. Ordinance 2011-09, Provision Solid Waste Collection, Recycling and Disposal Services – 2nd Reading and Public Hearing

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Dorothy Pendergrass, Finance Director]

SYNOPSIS

The City Commission will consider approval of contractual service relating to solid waste collection, recycling and disposal services to Republic Services of Florida, L.P. d/b/a Florida Refuse.

RECOMMENDATION

It is recommended that the City Commission adopt Ordinance 2011-09 after second reading and public hearing.

The City Commission approved Ordinance 2011-09 after first reading on June 21, 2011.

BACKGROUND

On May 17, 2011, the City Commission directed staff to bring forward a renewal contract with Republic Services of Florida, L.P. d/b/a Florida Refuse for provision of solid waste collection, recycling and disposal services.

Significant changes with the renewal contract consist of the following:

- 1) Residential Contract Fee: The contract fee for residential curbside service with alley pickup eliminated where possible and recycling picked up on a weekly basis will be \$12.07 for solid waste and \$1.00 for recycling service, effective for fiscal year 2011'12.
- 2) Commercial Contract Fee: Commercial customer's rates will \$6.50, per cubic yard, effective for FY 2011'12.
- 3) Florida Refuse will not collect commercial or residential customers prior to 6:00 a.m.
- 4) Florida Refuse will provide compost bins upon request.
- 5) Florida Refuse will continue support of City events.
- 6) Contract service fees will only apply to actual services rendered per residence ("actual service" will be linked to the status of utility service at the residence; i.e., utility service on "vacation status" or disconnected for any reason are not considered to be "active;" solid waste collection service will not be considered to have been rendered while the utility account is not on active status.)
- 7) Florida Refuse has requested a seven-year renewal. Staff recommends a seven-year contract.
- 8) Florida Refuse will provide access and training on "InfoPro" software which will allow City staff to directly enter customer complaints into the Florida Refuse computer system. This system will also allow staff the ability to track the progress and results of customer complaints.

FISCAL IMPACT

Negotiated Options - Fiscal Impact

Pass Thru

Pass Thru

2011-369

	<u>Monthly Customer Saving</u>	<u>Annual Customer Saving</u>	
) Residential	2.62	31.44	Elimination of use of alleyways. Every week recycling. Anticipated customer complaints.

0B2) COMMERCIAL FRANCHISE FEE REDUCTION

A reduction from \$8.75 to \$6.50 per cubic yard is expected to result in an annual loss of recurring revenue in the amount of \$34,700 for fiscal year 2011'12. This reduction is expected to result in a cumulative annual savings to commercial customers during FY 2011'12 of \$289,082, based on historical data.

- 3) **Florida Refuse not beginning collection services prior to 6 a.m.** does not have a measurable fiscal impact.
- 4) **Florida Refuse provision of compost bins upon request** does not have a measurable fiscal impact.
- 5) **Florida Refuse continued support of City events** has a fiscal impact equal to the market value of the services provided.
- 6) **Clarification of the contract fee being only applicable to actual services rendered per residence** has a fiscal impact savings equivalent to \$45,000 per year.
- 7) **Florida Refuse request for a seven-year contract** does not have a measurable fiscal impact.
- 8) **Access and training on "InfoPro" software** to assist in processing customer complaints does not have a measurable fiscal impact.

[End agenda memo]

Ms. VanBlargan read Ordinance 2011-09 by title only.

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, GRANTING A FRANCHISE FOR THE PROVISION OF SOLID WASTE COLLECTION, RECYCLING AND DISPOSAL SERVICES TO REPUBLIC SERVICES OF FLORIDA, L.P. D/B/A FLORIDA REFUSE, ITS LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS; IMPOSING CERTAIN CONDITIONS RELATING THERETO; AND PROVIDING FOR AN EFFECTIVE DATE.

Ms. Pendergrass reviewed Agenda Item 6.

OPENED PUBLIC HEARING

Clinton Horne, 507 E. Polk Ave., said the public had not been told when the contracted term would begin or end and that should be part of the public record.

Dick Davis, owner of Woody's BBQ, expressed his dissatisfaction with Florida Refuse. He said that after the previous hearing, Florida Refuse had been asked to contact him to resolve any outstanding issues and it was a week before they contacted him, thus displaying a lack of urgency on their part. He said he

was disappointed that it did not go out for competitive bid and he felt that the City was rubber stamping the 7-year contract.

CLOSED PUBLIC HEARING

Mayor Carter said he had the same concerns as he had at the last meeting:

- The contract term is too long
- The vendor seems to be in control of the contract instead of the City
- The automatic price increases are too severe
- The handling of the problems with Woody's BBQ suggests that future problems will not be resolved adequately

Commissioner Wojcik made the following comments supporting approval:

- Complaints that are not resolved will come back to the City and Florida Refuse will be charged for staff time spent on resolving them, which will be deducted from the next payment to Florida Refuse.

Ms. Pendergrass confirmed and explained a clause in the contract that lets the City Manager intervene if necessary and demand that missed garbage, residential or commercial, be removed. Because Mr. Davis' garbage was skipped twice, she said it constituted a breach of contract because commercial trash is supposed to be picked up at least twice a week. The responsibility lies with Florida Refuse because they have the manpower and equipment to make the corrections. Staff can record problems and requests, and in some instances demand corrections.

- The problems and concerns the Commission had have been mitigated, and Ms. Pendergrass made sure the City has some recourse.
- There is a clause in the contract that allows the City to terminate services for breach of contract.

Ms. Pendergrass added that Florida Refuse has 5-7 business days to resolve issues after written notification from the City. If a breach of contract is established, the vendor is required to continue service until a new vendor is hired, or the City could take over providing services using their equipment. If the City has to get a substitute vendor there is a clause requiring a performance bond so the City is not paying the cost.

Commissioner Thornhill made the following comments in support of approval:

- The changes requested by the Commission have been made so he did not think the contract was "rubber stamped." He said the City came out further ahead than he expected.
- He said he knows of other municipalities and counties that have longer contracts and that the contract was based on sound accounting principles.
- He said he expects Florida Refuse to give businesses and citizens good customer service and he will hold them 100% accountable. He also said he expects Mr. Davis to hold the Commission accountable as well.

Commissioner Rogers complimented Ms. Pendergrass on the negotiated contract and said his only concern was with the 7-year contract because he thought 5 years was long enough.

Vice-Mayor Howell made the following comments:

- She was happy with the termination clause.
- She asked if there was a way to keep complaints from being between a driver and the customer.
- She asked if there was a legal way of sending Florida Refuse an outrageous bill as a drastic penalty when the City has to do their jobs for them and a customer or company has continued problems. She suggested making Florida Refuse give free service to the wronged party for six

months or give the whole town a free month. She asserted that taking money from the company's pocket will let them hear the message loud and clear.

Ms. Pendergrass said part of Commissioner Howell's idea was in the reimbursement of staff time, but the City cannot negotiate lower fees for individual customers. Once the contract is approved the fees will be what the contract stipulates. She added that hopefully the measures in place will reduce the number of unhappy customers and the number of complaints coming back to staff or the Commission.

City Manager Judith Delmar added that the City also has liquidated damages of \$250 per violation for things like failure to maintain established schedules. Vice-Mayor Howell asked if it would be \$250 each time they have to come back to pick up missed trash. City Attorney Chuck Galloway said, for example, if Florida Refuse missed both required pickups in a week, it was his understanding that it would be considered two violations and Florida Refuse would have to pay \$250 for each missed pickup. Commissioner Wojcik asked if the money would go to the City or to the customer and Mr. Galloway said it would go to the City, but it would act as an incentive for them to comply.

- Vice-Mayor Howell said that citizens need to report their complaints to Florida Refuse instead of letting it pass and becoming angry. If after reporting it, they do not get resolution, they need to contact the City because we want the system to work. The company will then be hit hard and fast to assure it resolves the issue.

Commissioner Thornhill made a motion to adopt Ordinance 2011-09 after second reading and public hearing. The motion was seconded by Commissioner Wojcik.

By Roll Call Vote:

Commissioner Thornhill	"YES"
Commissioner Wojcik	"YES"
Commissioner Rogers	"NO"
Mayor Carter	"NO"
Vice-Mayor Howell	"YES"

The motion carried 3-2.

Agenda Item 7. Ordinance 2011-10, Recreation Commission – 1st Reading

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Judith H. Delmar, City Manager]

SYNOPSIS

The Commission will consider adopting an ordinance to restructure the Recreation Commission to serve as a steering committee that will coordinate community-run recreation programs and serve as a liaison between those organizations and the city.

RECOMMENDATION

It is recommended that the City Commission approve Ordinance 2011-10 after first reading.

BACKGROUND

Lake Wales Code section 2-162 defines the role of the Recreation Commission as one of supporting a recreation director and promoting the City's recreation program in the community. Since 2004, the City has not employed a full-time recreation director and has not had the resources to fund a fully operational recreation program. As a result, the Recreation Commission has not been able to function in the capacity for which it was created.

Impressed by the quality and success of parent-run recreation programs (Little League, soccer, football, pram fleet) and YMCA-run programs (basketball) in Lake Wales, the prior city manager felt that the City should not be competing with these well-run recreation programs for participants. He believed the public would be best served by allocating its limited resources to the maintenance of parks, ball fields, and other recreation facilities instead. Accordingly, after some turnover in the position, the parks & recreation director position was eliminated in July 2004.

Supervisory and administrative duties previously assigned to the parks & recreation director were absorbed by staff in the Public Services Department and the City Manager's office. In July of 2005, a recreation manager position was created with responsibility for youth recreation programs and assigned to a police officer with expertise in this area. There were problems with the implementation of this arrangement, and it was subsequently eliminated after a few years.

It is unlikely that the City will be able to fund a recreation director and a municipal recreation program for the next several years, but there is a real need for coordination of the various programs run by parent, church, and other community organizations.

Ordinance 2011-10 proposes to restructure the Recreation Commission to serve as a steering committee that will, in the absence of a recreation director, coordinate the various recreation programs that are being run by community groups and serve as a liaison between these groups and city staff. The Recreation Commission will consist of members representing each of these community groups plus three citizens who reside in the city. As a result of discussion at the June 21 Commission meeting, three groups were added to groups originally proposed.

If the ordinance is adopted by the City Commission, the following groups will be granted a seat on the Recreation Commission and each group will appoint one delegate who will serve a 3-year term:

- Green & Gold Foundation
- Historic Lake Wales Society
- Lake Wales Boys & Girls Club
- Lake Wales Charter Schools
- Lake Wales Little League
- Lake Wales PAL
- Lake Wales Pram Fleet
- Lake Wales Public Library
- Lake Wales Soccer Club
- Lake Wales YMCA
- Polk County School Board
- Steelers Football & Cheerleading
- Webber International University

Duties of the Recreation Commission will be as follows:

- Serve as a steering committee to:
 - coordinate publication of and participation in recreation programs currently run by various parent, church, or other community organizations;
 - identify recreation needs that are not currently being met; and
 - facilitate development of programs by various parent, church, or other community organizations to meet those unmet needs.
- Serve as liaison between the various parents, church, and other community organizations that provide recreation programs and city staff for the maintenance and improvement of the city's recreation facilities.

- Make recommendations to city staff for recreation improvements to be included in the city's capital improvement plan.
- Make recommendations to city staff for program funding assistance to be included in the city's operating budget.

Proposed Ordinance 2011-10 was presented to the current members of the Recreation Commission for review and discussion at a special meeting held on June 16, 2011. The members unanimously voted to recommend that the City Commission adopt this ordinance.

At the June 21 Commission meeting, Commissioners approved Ordinance 2011-10 after first reading. During discussion, however, changes were made to the composition of the Recreation Commission which necessitates a second first reading.

In addition, the proposed ordinance has been further amended to establish that "a quorum will consist of six members" rather than "one-half the number of seats available on the recreation commission plus one." This change was made in response to concerns that as more members are added to the board it will become more difficult to obtain a quorum in order to hold a meeting; i.e., under the original proposed language, the presence of 9 members would be required to obtain a quorum.

OTHER OPTIONS

Do not adopt Ordinance 2011-10 or modify the proposed language.

FISCAL IMPACT

None.

[End agenda memo]

Ms. VanBlargan read Ordinance 2011-10 by title only]

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES CHAPTER 2, ADMINISTRATION, ARTICLE II, BOARDS, COMMITTEES, AND COMMISSIONS BY AMENDING THE DUTIES OF THE RECREATION COMMISSION; AMENDING THE MANNER IN WHICH MEMBERS ARE APPOINTED; ESTABLISHING THAT A QUORUM CONSISTS OF SIX MEMBERS; PROVIDING FOR AN EFFECTIVE DATE.

Ms. Delmar reviewed Agenda Item 7.

Commissioner Thornhill reminded the Commission that one of the duties of the new Board will be to make recommendations for program funding and therefore there will be 13 different organizations making funding requests.

Mayor Carter said he thought this new board was an excellent temporary solution for not having a recreation director because it includes all those who are presently getting the job done.

Mayor Carter made a motion to approve Ordinance 2011-10 after first reading. The motion was seconded by Commissioner Thornhill.

Roll Call Vote:

Mayor Carter	"YES"
Commissioner Thornhill	"YES"
Commissioner Wojcik	"YES"

Commissioner Rogers "YES"
Vice-Mayor Howell "YES"

The motion carried 5-0.

Agenda Item 8. Ordinance 2011-11, Establishment of Rules for Administration and Use of Funds in Emergency Sinking Accounts – 1st Reading

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Dorothy Pendergrass, Finance Director]

SYNOPSIS

The City Commission will consider establishing administrative policies for the creation and use of emergency sinking accounts.

RECOMMENDATION

It is recommended that the City Commission approve Ordinance 2011-11, either as proposed or with Commission revisions, after first reading.

BACKGROUND

The City's auditors, for several years, have strongly recommended that the General Fund should have an unreserved fund balance amount equal to 15%-20% of the total operating costs. Fiscal year 2007'08, 2008'09 and 2009'10, realized General Fund unreserved fund balances of 17.88%, 24.13% and 29.51%. On June 11, 2011 the City Commission directed staff to prepare a reserve policy which should include reserve lower and upper limits. The policy also needed to include provisions for surplus or shortfalls within the accounts.

Ordinance 2011-11, creates policies for the provision of emergency sinking accounts in the General Fund and the Utility System Fund. This ordinance also defines lower and upper account balance limits for the General Fund and the Utility System Fund. There are recommended priorities for surplus balances and procedures for possible shortfalls within the accounts. This ordinance would supersede Resolution 2008-11.

Creation of Emergency Sinking Accounts:

In each of the various governmental fund types (general fund, special revenue funds, debt service funds, and capital projects funds) and proprietary fund type (enterprise funds) of the City, the following reserve accounts are recommended:

1. **General Fund - Emergency Sinking Account** - In the general fund, there shall be created an emergency sinking account with a lower limit of 15% and an upper limit of 20% of General Fund operating expenditures calculated based on the original adopted fiscal year budget. The purposes of the sinking account shall be to:
 - (a) To advance the funds necessary to pay for non-discretionary expenses such as payroll and insurance premiums that must be paid during the first quarter of the fiscal year and that will be reimbursed when ad valorem revenues are received; and
 - (b) To advance the funds necessary to pay for construction of grant-funded projects that will be reimbursed by federal or state agencies; and
 - (c) To advance financial resources necessary for responding to emergencies that will be reimbursed by insurance proceeds or grants from FEMA or other federal or state agencies; and

- (d) To mitigate current and future revenue shortfalls, unanticipated expenditures, and to ensure stable tax rates.

General Fund - Analysis of Sinking Account

Description	Source	General Fund Adjusted Operating Expenditures	Percentage of General Fund Adjusted Operating Expenditures
FY 2010'11 - Original Budget Operating Expenditure (Budget, page C-1)	Budget Summary - page C-1	10,620,325	
Less:			
Capital Outlay - Computers	001-519-300-664-200	(12,000)	
Capital Outlay - Other Improvements	001-572-200-663-900	(50,000)	
		10,558,325	
			1,055,833
			1,161,416
			1,266,999
			1,372,582
			1,478,166
	Proposed Policy - Lower Limit	15%	1,583,749
		16%	1,689,332
		17%	1,794,915
		18%	1,900,499
	Proposed Policy - Upper Limit	20%	2,111,665
		21%	2,217,248
		22%	2,322,832
		23%	2,428,415
		24%	2,533,998
		25%	2,639,581

2. **Special Revenue Funds** - By definition, special revenue funds are created to account for the proceeds of specific revenue sources (other than expendable trusts or for major capital projects) that are legally committed to expenditure for specified purposes. As such, no specific reservation of funds is created by virtue of enactment of this ordinance; rather the amount of any reservation of funds shall be governed by the legal authority underlying the commitment.
3. **Debt Service Fund** - Debt service funds are typically subjected to the creation of very specific committed amounts as a part of the ordinance or resolution which authorizes the issuance of the debt instrument which is being repaid. Therefore, this policy does not create any specific reservation of funds within the debt service fund; rather, reserve requirements for any outstanding City debt instruments will be as derived from the ordinance or resolution authorizing the issuance of the debt.
4. **Capital Projects Fund** - The capital projects fund was created to account for financial resources to be used for the acquisition and construction of major capital facilities and improvements. Occasionally, these projects may extend beyond a single fiscal year. At a minimum at fiscal year-end committed funds, coupled with estimated revenues for the ensuing fiscal year, must be sufficient to fund all outstanding fund obligations.

5. Utility System - Emergency Sinking Account - In the utility system fund, there shall be created an emergency sinking account with a lower limit of 15% and an upper limit of 20% of utility system operating expenses based on the original adopted fiscal year budget. The purposes of the sinking account shall be shall be to:

- (a) To advance the funds necessary to pay for construction of grant-funded projects that will be reimbursed by federal or state agencies; and
- (b) To advance financial resources necessary for responding to emergencies that will be reimbursed by insurance proceeds or grants from FEMA or other federal or state agencies; and
- (c) To mitigate current and future revenue shortfalls, unanticipated expenditures, and to ensure stable fee structure.

Utility System - Analysis of Sinking Account

Description	Source	Utility System Adjusted Operating Expenditures	Percentage of Utility System Adjusted Operating Expenditures
FY 2010'11 - Original Budget Operating Expenditure	Budget Summary -page C-1	10,044,557	
Less:			
Capital Outlay - Revenue Source From Operating Revenues	Budget - page 116	(5,046,797)	
Depreciation (Not included in the TRIM Notice)	Budget - page 101	-	
Debt Service	Budget - page 117	(1,462,802)	
		3,534,958	
			10%
			11%
			12%
			13%
			14%
Proposed Policy - Lower Limit		15%	530,244
			16%
			17%
			18%
Proposed Policy - Upper Limit		20%	706,992
			21%
			22%
			23%
			24%
			25%

Surplus

In the event the emergency sinking account balance exceeds the amounts set forth within the upper limit the surplus may be utilized for any lawful purpose. The following priorities are recommended:

1. Reduction or avoidance of debt. If there is short-term debt within the fund the surplus may be applied to reduce or eliminate the debt if financial analysis proves this to be advantageous for the City.

2. One-time capital needs. Since a surplus does not represent a recurring source of revenue it should not be used to fund a recurring expense; however, if a one-time capital expenditure has been identified, but is not already funded through an appropriation, the surplus may be appropriated for this use.
3. Tax, fee, or rate stabilization. Surplus funds may be designed for stabilization in order to avoid raising taxes, fees, or rates related to a fund in subsequent years.

Shortfall

If it is determined there is a shortfall (an amount below the lower limit of the sinking account), the sinking account balance is to be rebuilt through the following mechanism:

An appropriation during the next annual budget process of at least 10% of the lower limit of the sinking account range until the lower limit has been reached. If this is financially infeasible, a written plan shall be forwarded by the City Manager to the Commission for approval in order to restore the sinking account balance to an amount within the range within a reasonable time frame. The plan may require reduction of services, increases in taxes, fees, or rates, or some combination thereof.

Repeal of Resolution 2008-11

On July 11, 2008, the City Commission through Resolution 2008-11, approved rules for administration and use of funds deposited into a Tax Anticipation account. This resolution included funding restrictions for the possibility of constructing a municipal swimming pool. However, the possibility of constructing and operating a municipal swimming pool is not feasible in the near future due to the severity of the effects of property tax reform and the decline of the national economy, both of which adversely affect the City's ability to fund critical public services. Ordinance 2011-11 will supersede Resolution 2008-11 to incorporate monies currently held in the Tax Anticipation account into the General Fund Emergency Sinking Account.

OPTIONS

Do not adopt Ordinance 2011-11; however, adoption is recommended to ensure administrative use of these funds in accordance with the wishes of the City Commission.

FISCAL IMPACT

There is no fiscal impact associated with adoption of Ordinance 2011-11

[End agenda memo]

Ms. VanBlargan read Ordinance 2011-11 by title only.

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA, AMENDING CHAPTER 2, ARTICLE V OF THE LAKE WALES CODE, ESTABLISHING RULES FOR ADMINISTRATION AND USE OF THE FUNDS IN EMERGENCY SINKING ACCOUNTS; SPECIFICALLY SUPERSEDING RESOLUTION 2008-11; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Ms. Pendergrass reviewed Agenda Item 8.

Vice-Mayor Howell thanked Ms. Pendergrass for doing as they requested, giving them the percentages and how much those percentages would be. She asked if the Commission was being asked to decide on a percentage between the upper and lower limits. Ms. Pendergrass explained that it would be a Commission policy decision if they want a different lower or upper limit, but the staff recommendation was a 15% to 20% reserve account based on the operating expenditures of those funds, which is what the auditors recommended. Ms. Delmar said the actual dollar value established by Commission policy is set during the budget process. They could now change the percentages to, for example, 10% to 15%, if they wished, but the adoption of the ordinance as proposed would set the range between 15% and 20%.

Mayor Carter made the following comments:

- Mayor Carter said he thought the 15% to 20% range would give staff the necessary discretion they need to be able to do their jobs. The Commission can always come back later and change it if needs be.
- Mayor Carter said he liked the use of the established surplus funds.
- Mayor Carter said it was his understanding that staff recommended putting 100% of the money from the tax anticipation/pool money account into the General Fund, but his recommendation was to take only 50% out and the remainder placing in another account, renamed to something like the reserve account.

Commissioner Wojcik said the money is currently part of the General Fund but instead of having two reserves the 15% to 20% would be put into a Sinking Fund Account to cover emergencies and shortfalls etc. Ms. Delmar said the ordinance as written would prohibit that fund from sinking below the 15%. Ms. Pendergrass said the Commission would know if they were nearing the lower limit as it would be in the budget. If the Commission wanted to spend it on a one-time capital project, such as the pool, thus going below the lower limit, there is a provision in the policy that in the next budget year at least 10% of the lower limit must be put back into that fund, thus providing a way to build that fund back to where it should be.

Commissioner Rogers said the City is already expecting a \$1.5 million shortfall next year. Ms. Delmar said that was the starting point and explained that staff has been working with that number and has gotten it down to about \$800,000.

Commissioner Rogers said that we still have to dip into the emergency fund to keep operating and it was confirmed.

Commissioner Thornhill congratulated City staff for a job well-done. He said the report was clear, to the point, and easily understood. He said he has been asking for a cap since he became a Commissioner and the new established cap is better than he asked for; all his questions were answered; and everything that might come up was included.

Commissioner Wojcik said that everything they discussed at the June 11, 2011 workshop meeting was addressed and that they were going to have to make tough financial decisions. She commented that she would love to have a pool but it would be several years before the economy would make it possible.

Vice-Mayor Howell said it never was locked in that the money had to be for a pool. The money could be used for emergencies as long as it was replaced. She just asked that all other options be used first before using this money so it can be used for true emergencies. Ms. Pendergrass explained again how 10% of the lower limit had to be replaced in the next year's budget and Vice-Mayor Howell said they would not need to repeal Resolution 2008-11 to do that. Ms. Delmar said the ordinance as written says the money has to be replaced by September 30th of the current fiscal year and the change would allow 10% of it to be replaced each year until fully replaced.

Commissioner Thornhill made a motion to approve Ordinance 2011-11 after first reading. The motion was seconded by Commissioner Wojcik.

By Voice Vote:

Commissioner Thornhill	"YES"
Commissioner Wojcik	"YES"
Commissioner Rogers	"YES"
Mayor Carter	"NO"
Vice-Mayor Howell	"NO"

The motion carried 3-2.

Agenda Item 9. Ordinance 2011-12, CRA Contraction – 1st Reading

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Judith H. Delmar, City Manager]

SYNOPSIS

The City Commission will consider modifying the boundaries of the CRA to exclude land included in the Longleaf Business Park and the future Mayfair Development.

RECOMMENDATION

Staff recommends that the City Commission approve Ordinance 2011-12 contracting the CRA Area boundaries.

BACKGROUND

During last year's budget hearings there was brief discussion about the possible contraction of the CRA Area boundaries to delete land included in the Longleaf Business Park and the future Mayfair Development. The concept of contraction was mentioned during a larger discussion pertaining to limiting the expenditure of CRA tax increment revenues to projects related solely to economic development or projects directly related to increasing the value of specific properties in the CRA's commercial districts (historic downtown and Lincoln Avenue).

The property today known as the Longleaf Business Park and the Mayfair Development was still known as the "Cooperative Fruit Property" in 1999 when it was included in the expansion of the CRA boundaries. The reason for including the Cooperative Fruit Property in the CRA expansion is discussed in the following paragraphs excerpted from a report forwarded to the City Commission on August 28, 2001:

As has been discussed elsewhere, the Cooperative Fruit Property is within the boundaries of the expanded CRA which were specifically established to include this property as the "engine" that would drive the increase in the value of the tax increment which would, in turn, fund the redevelopment and revitalization of the "core" city. It has been estimated that the completed business park will have an assessed value of \$75 million and yield approximately \$1.1 million in tax increment revenues on an annual basis.

Because economic development projects, in general, and development of the Longleaf Business Park, specifically, are included in the Plan as activities to be undertaken for redevelopment of the CRA, the cost of infrastructure improvements for the business park are reimbursable by future tax increment revenues. Of greater significance to the City and the CRA, however, is the fact that this property will ultimately generate a large portion of the revenues that will fund road improvements, infrastructure improvements, parks and recreation projects, and other essential redevelopment activities throughout the redevelopment area, thus enabling the full implementation of the Community Redevelopment Plan.

To reiterate, the then-undeveloped business park and Mayfair properties were included in the CRA expansion project primarily to enhance the value of the tax increment as development occurred. It was envisioned that the City and County tax increment payments to the CRA would, in turn, fund the redevelopment and revitalization of the core city through road improvements, infrastructure

improvements, parks and recreation projects, and other essential redevelopment activities throughout the redevelopment area.

Because the CRA Board no longer wishes to fund these types of projects with tax increment revenue, it will fall solely to the City's general fund to provide the revenue sources necessary for such improvements. At the same time, as develop occurs in the business park and Mayfair property, the City will be faced with increasing expenditures for police, fire and other municipal services funded by the general fund. With 95% of the ad valorem tax revenue generated by the business park and Mayfair property going to the CRA, it will be impossible for the general fund to pay for the basic municipal services and capital improvements required by this area.

Staff strongly recommends that the City Commission, approve contracting the boundaries of the CRA to exclude land included in the Longleaf Business Park and the future Mayfair Development. Although the City will no longer receive tax increment revenue from the County for this property, such an action will allow the general fund to retain the future revenues necessary to provide the required municipal services and fund the required improvements.

The proposed contraction of the CRA boundaries was reviewed and recommended by the CRA Citizens Advisory Board at their meeting on May 12, 2011 and by the CRA Board of Commissioners at their meeting on June 2, 2011.

FISCAL IMPACT

The following chart indicates the tax increment value of the property proposed for exclusion from the CRA. If the proposed contraction takes place before the end of the current fiscal year, the City's general fund will retain \$58,881 and the County's general fund will retain \$54,693 in FY11'12. Although the CRA will give up a total of \$113,574 in revenue, expenditures for departments currently funded by the CRA, such as code enforcement (\$104,966 in FY10'11) and community policing (\$324,871 in FY10'11), will be funded in the future by the general fund.

CRA Area Proposed for Exclusion - Analysis of Fiscal Impact			
	1998-99	2010-11	at Buildout est 2020-2025
Taxable Value of Property	0	8,458,285	215,000,000
		x 95%	x 95%
Value used to calculate Tax Increment	0	8,035,370	204,250,000
City Tax Increment (value x city rate) ¹	0	58,881	1,496,683
County Tax Increment (value x county rate) ¹	0	54,693	1,390,228
Total Tax Increment	0	113,574	2,886,910
¹ using 2010 millage rate		Mayfair Residential	125,000,000

[End agenda memo]

Ms. VanBlargan read Ordinance 2011-12 by title only.

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING THE LAKE WALES COMMUNITY REDEVELOPMENT PLAN BY MODIFYING THE BOUNDARIES OF THE REDEVELOPMENT AREA TO EXCLUDE LAND DESCRIBED HEREIN; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES OR RESOLUTIONS; PROVIDING SEVERABILITY; DIRECTING CITY CLERK TO NOTIFY TAXING AUTHORITIES; PROVIDING FOR AN EFFECTIVE DATE.

Ms. Delmar reviewed Agenda Item 9.

Commissioner Carter said this provides more tax revenue in the future, which is the right time for it to be done.

Commissioner Thornhill made a motion to approve Ordinance 2011-12 after first reading. The motion was seconded by Commissioner Rogers.

By Voice Vote:

Commissioner Thornhill	"YES"
Commissioner Rogers	"YES"
Mayor Carter	"YES"
Commissioner Wojcik	"YES"
Vice-Mayor Howell	"YES"

The motion carried 5-0.

Agenda Item 10. Audit Engagement Letter, Fiscal Year Ending September 30, 2011

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Dorothy Pendergrass, Finance Director]

SYNOPSIS

The City Commission will consider approval of the Audit Engagement Letter submitted by Purvis, Gray & Company for auditing services for fiscal year ending September 30, 2011.

STAFF RECOMMENDATION

It is recommended that the City Commission authorize the City Manager to execute the Audit Engagement Letter submitted by Purvis, Gray & Company for the audit of the City's financial statements for Fiscal Year Ending September 30, 2011.

BACKGROUND

On September 9 2009, the City Commission selected the accounting firm Purvis, Gray & Company to audit the City's financial statements for the fiscal year ending September 30, 2009 with an optional renewal for the four subsequent fiscal years.

Mr. Joseph Welch of Purvis, Gray & Company has provided an Audit Engagement Letter for the fiscal year ending September 30, 2011. The letter provides a detailed description of the services that will be provided through the audit process. The audit will be conducted in accordance with generally accepted auditing standards.

FISCAL IMPACT

The audit fee, including expenses, will not exceed \$71,100. The proposal fee for 2011 represents a 3% increase over the 2010 fee. A fee increase not to exceed 3% per year is in compliance with Purvis, Gray & Company's fee schedule as provided within their 2009 proposal to provide professional auditing services dated August 3, 2009.

[End agenda memo]

Ms. Pendergrass reviewed Agenda Item 10.

Mayor Carter said it seemed to him that the amount spent to audit the airport was extremely high. Ms. Pendergrass said the overall bid from Purvis and Gray was lower than the other bids; was lower than what was spent in 2008-2009, which was close to \$100,000. After 2009, staff was able to bring all five audits under one contract, which lowered the price. Ms. Delmar added that Ms. Pendergrass was also doing some of the work normally done by the auditors thereby lowering the City's cost even further.

Commissioner Thornhill made a motion to authorize the City Manager to execute the Audit Engagement Letter submitted by Purvis, Gray & Company for the audit of the City's financial statements for Fiscal Year Ending September 30, 2011. The motion was seconded by Commissioner Wojcik.

By Voice Vote:

Commissioner Thornhill	"YES"
Commissioner Wojcik	"YES"
Commissioner Rogers	"YES"
Mayor Carter	"YES"
Vice-Mayor Howell	"YES"

The motion carried 5-0.

Agenda Item 11. Edward Byrne Memorial State and Local Law Enforcement Assistance Grant

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Police Chief Chris Velasquez]

RECOMMENDATION

Staff recommends that the Honorable Mayor and the City Commission authorize the Police Department to apply for funding through the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant.

BACKGROUND

Since 1999, the Police Department has received funding from the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program. Since that time, the Police Department has utilized this funding to create numerous community programs as well as purchase needed equipment to enhance public safety.

This year the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant award amount is \$12,450.00 and if approved would be included in the 2011/2012 budget. Match is not required with this program.

The Police Department proposes to use these funds to continue the Lake Wales Community Safety Program and purchase in-car video camera systems. This equipment will allow law enforcement officers to effectively document traffic violations and enforcement activities. Additionally, it will provide valuable evidence that will enhance criminal prosecutions.

OTHER OPTIONS

The Commission may choose not to authorize application for and accept the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant.

FISCAL IMPACT

The Finance Department has reviewed this application and found no fiscal impact as matching funds are not required.

[End agenda memo]

Chief Velasquez reviewed Agenda Item 11.

Mayor Carter asked how many cameras the \$12,000 represented and how many cars are now equipped with cameras. Chief Velasquez said the grant would be for three cameras, and including the grant cameras, almost all the patrol cars will have them. He explained that they were trying to phase out the older cameras that are not as reliable anymore. The Mayor asked if the other cars would be equipped and the Police Chief said it was more important to have cameras in the marked patrol cars.

Mayor Carter made a motion to authorize the Police Department to apply for funding through the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant. The motion was seconded by Commissioner Rogers.

By Voice Vote:

Mayor Carter	"YES"
Commissioner Rogers	"YES"
Commissioner Thornhill	"YES"
Commissioner Wojcik	"YES"
Vice-Mayor Howell	"YES"

The motion carried 5-0.

Agenda Item 12. Special Event Permit: First Assembly of God "Kids Zone"

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Katie Kinloch, Administrative Asst. to the City Manager]

SYNOPSIS

Approval of the Special Event Permit application will allow the First Assembly of God to set up the Kids Zone and other activities on the fourth Saturday of each month between the hours of 3:00 p.m. and 9:00 p.m. for the next six months

RECOMMENDATION

It is recommended that the City Commission take the following action:

1. Approve the Special Event Permit application from the First Assembly of God for their "Kids Zone" and other family activities on the fourth Saturday of each month between the hours of 3:00 p.m. and 9:00 p.n.
2. Approve the permit for the Kids Zone beginning on August 1, 2011 and ending on January 31, 2012

BACKGROUND

Pastor Walter Nelson of the First Assembly of God submitted a Special Event Permit application to continue holding the Kids Zone and other family activities on the fourth Saturday of each month between the hours of 3:00 p.m. and 9:00 p.m. The Kids Zone includes a bounce house, face painting, balloons, stories and games. They will be using the parking lot on the east side of SR17 at Stuart Avenue which belongs to the First Presbyterian Church located at 16 N. Third Street. Written approval has been provided to the City by the church for these activities.

The First Assembly of God would be responsible for meeting all requirements for site set up, site cleanup, sanitary facilities and insurance of which they have provided to the City. They are required to notify the City at any time the event would be canceled during a given month. If at any time during the six month period changes or modifications are made to the event activities, a new special event permit application will be required.

OTHER OPTION

Do not approve this special Event Permit application.

FISCAL IMPACT

There will be no cost to the City associated with the Kids Zone event.

[End agenda memo]

Ms. Kinloch reviewed Agenda Item 12.

Mayor Carter asked why the renewal was not for a year instead of six months because it would cut down on paperwork. Ms. Kinloch explained that staff limited this type of permit to six months because they did not want to give sponsors exclusive rights to those parking lots for an entire year. Ms. Delmar said the Commission could change the length of the permit if they wanted to, but it would limit other organizations from requesting it for a year. Ms. Kinloch said the parking lot this particular sponsor wanted is not a City lot but belongs to the Presbyterian Church and the church only approved the use for six months. The Commission could extend it but they would have to get permission from the church for that extended use.

Commissioner Thornhill made a motion to approve the Special Event Permit application from the First Assembly of God for their "Kids Zone" and other family activities on the fourth Saturday of each month between the hours of 3:00 p.m. and 9:00 p.m. from August 1, 2011 to January 31, 2012. The motion was seconded by Commissioner Rogers.

By Voice Vote:

Commissioner Thornhill	"YES"
Commissioner Rogers	"YES"
Commissioner Wojcik	"YES"
Mayor Carter	"YES"
Vice-Mayor Howell	"YES"

The motion carried 5-0.

Agenda Item 13. Special Event Permit: "Lake Wales Car Show"

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Katie Kinloch, Administrative Asst. to the City Manager]

SYNOPSIS

Approval of the Special Event Permit Application will allow the "Lake Wales Car Cruise" to be held on the fourth Saturday of each month in the downtown area for the next six months.

RECOMMENDATION

It is recommended that the City Commission consider taking the following action:

1. Approve the Special Event Permit application from Keller Williams Realty for the "Lake Wales Car Cruise" to take place the fourth Saturday of each month between the hours of 3:30 p.m. and 8:30 p.m. beginning August 1, 2011 and ending January 31, 2011
2. Approve the temporary closing of Stuart Avenue from First Street to Scenic Highway, partial closing of S. Market Street from Stuart Avenue to the alley directly north of Central Avenue and the temporary closing of the parking lot at the intersection of SR17 and Stuart Avenue (west side of SR17)

BACKGROUND

Mr. Larry Bossarte and Mr. Mathew Schreier, Managing Member of Keller Williams Realty submitted a Special Event Permit Application to continue holding the "Lake Wales Car Show" in the downtown area on the fourth Saturday of each month beginning August 1, 2011 and ending on January 31, 2012. The event hours would be from 3:00 p.m. to 8:30 p.m. which includes set up and take down. This event will showcase custom, classic and antique cars which will be located along Stuart Avenue. Musical entertainment and food vendors will be set up on a portion of S. Market Street at Stuart Avenue and directly adjacent to the alley north of Central Avenue. They are requesting the temporary closing of the parking lot at the intersection of SR17 and Stuart Avenue, closing of Stuart Avenue from First Street to SR17 and a portion of Market Street from Central to Stuart.

City departments have reviewed the Special Permit Application and have approved the event. The sponsor is responsible for all requirements for site preparation, site cleanup, food vendor licensing, and sanitary facilities. Proof of liability insurance has been submitted to the City.

OTHER OPTION

Do not approve this special event permit application.

FISCAL IMPACT

There will be no cost to the city associated with this event.

[End agenda memo]

Ms. Kinloch reviewed Agenda Item 13.

Commissioner Thornhill suggested renewing the permit application for a year instead of six months and the made the following motion:

1. Approve the Special Event Permit application from Keller Williams Realty for the "Lake Wales Car Cruise" to take place the fourth Saturday of each month between the hours of 3:30 p.m. and 8:30 p.m. beginning August 1, 2011 and ending July 31, 2012.
2. Approve the temporary closing of Stuart Avenue from First Street to Scenic Highway, partial closing of S. Market Street from Stuart Avenue to the alley directly north of Central Avenue and the temporary closing of the parking lot at the intersection of SR17 and Stuart Avenue (west side of SR17)

The motion was seconded by Mayor Carter.

By Voice Vote:

Commissioner Thornhill	"YES"
Mayor Carter	"YES"
Commissioner Wojcik	"NO"
Commissioner Rogers	"NO"
Vice-Mayor Howell	"NO"

The motion failed 3-2.

Commissioner Wojcik made a motion to:

1. Approve the Special Event Permit application from Keller Williams Realty for the "Lake Wales Car Cruise" to take place the fourth Saturday of each month between the hours of 3:30 p.m. and 8:30 p.m. beginning August 1, 2011 and ending January 31, 2011.
2. Approve the temporary closing of Stuart Avenue from First Street to Scenic Highway, partial closing of S. Market Street from Stuart Avenue to the alley directly north of Central Avenue and the temporary closing of the parking lot at the intersection of SR17 and Stuart Avenue (west side of SR17)

The motion was seconded by Commissioner Thornhill.

By Voice Vote:

Commissioner Wojcik	"YES"
Commissioner Thornhill	"YES"
Commissioner Rogers	"YES"
Mayor Carter	"YES"
Vice-Mayor Howell	"YES"

The motion carried 5-0.

Agenda Item 14. Fair Housing – Public Hearing

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Jennifer Nanek, Special Projects Administrator]

SYNOPSIS

As part of the CDBG requirements the City must hold a public meeting to provide information about fair housing regulations and practices to the general public and elected officials.

RECOMMENDATION

Staff recommends that a brief presentation be given by Andy Easton, the City's grant consultant, about fair housing regulations and practices to the general public and elected officials.

BACKGROUND

The purpose of this meeting is to provide information about fair housing regulations and practices to the General Public and Elected Officials. Attendees are asked to sign an attendance sheet for this meeting. This meeting will provide an overview of the Fair Housing Act, provide examples of housing discrimination and will describe information sources to learn more about fair houses. Training materials will be available to the public.

OTHER OPTIONS

Do not hold public hearing

FISCAL IMPACT

There is no cost involved with holding this public hearing. Failure to hold this public hearing will jeopardize the City's \$750,000 CDBG grant application.

[End agenda memo]

Ms. Nanek reviewed Agenda Item 14.

Andy Easton, the City's grant administrator with Andy Easton and Associates, gave a presentation on policies regarding discrimination for public housing.

Commissioner Wojcik said the Commissioners did not receive the detailed material Mr. Easton was referring to and Mr. Easton distributed the documents.

City Attorney Chuck Galloway said that Mr. Easton had characterized this as a fair housing public hearing but the body of the document says it was public meeting for him to provide information about public housing, so they need clarification as to whether or not it needs a public hearing. Mr. Easton concurred but said he was not sure if a public hearing was required. After discussion the consensus was to open and close a public hearing.

OPENED PUBLIC HEARING

Clinton Horne, 507 E. Polk Avenue, asked if this agenda item was a hearing on fair housing or was a grant request, and if a grant request, which one. Mr. Easton said there were two agenda items; a public hearing for the CDBG Grant; and a fair housing meeting or public hearing. Mr. Horne asked if it had any bearing on the number of grant requests. City Manager Judith Delmar said the fair housing presentation was simply a requirement for the grant application process. Mr. Easton said the next agenda item will address the CDBG grant application.

CLOSED PUBLIC HEARING

Agenda Item 15. CDBG – 1st Public Hearing

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Jennifer Nanek, Special Projects Administrator]

SYNOPSIS

This is the required first public hearing regarding the City's CDBG application for funding for the C Street Sewer project.

RECOMMENDATION

It is recommended that the City Commission take the following action:

1. Approve preparation of a CDBG application in one of the four CDBG grant categories: Housing, Neighborhood Revitalization, Commercial Revitalization or Economic Development.
2. Designate the use of \$250,000 included in the \$1,062,527 set aside for the C Street Sewer project as the local match for the 2011-2012 CDBG application; and
3. Approve August 2, 2011 as the date for the 2nd CDBG public hearing.

BACKGROUND

In conjunction with our 2011-2012 application, the City's grant consultant, Andy Easton, will be present to conduct the first public hearing on the CDBG grant application. The City of Lake Wales is eligible to receive up to \$750,000 in CDBG funds through the Small Cities Program. These funds must be used for one of the following purposes:

1. To benefit low and moderate income persons;
2. To aid in the prevention or elimination of slums or blight; or
3. To meet other community development needs of recent origin having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and where other financial resources are not available to meet such needs.

The categories of activities for which these funds may be used are: housing, neighborhood revitalization, commercial revitalization, or economic development including such improvement activities as acquisition of real property, loans to private-for-profit business, purchase of machinery and equipment, construction of infrastructure, rehabilitation of houses and commercial buildings, and energy conservation.

At the Commission meeting, Mr. Easton will lead a discussion on the following issues:

- Authorizing a meeting of the recently appointed Citizen Advisory Task Force
- Submitting an application in one of the four CDBG grant categories:
 - Housing
 - Neighborhood Revitalization
 - Commercial Revitalization
 - Economic Development
- Commitment to funding a \$250,000 match requirement
- Future meetings for the grant application process

OTHER OPTIONS

Do not apply for a 2011-2012 Small Cities Program grant. Since the deadline for reentering the County's program has passed, no CDBG funds could be expected in FY11'12.

FISCAL IMPACT

The City is eligible for up to \$750,000 in CDBG funding and will be submitting an application for that amount. In order to improve the competitiveness of the grant application, it is recommended that the City Commission designate \$250,000 included in the \$1,062,527 already set aside for the C Street Sewer project as the local match.

[End agenda memo]

Andy Easton, the City's grant administrator with Andy Easton and Associates, reviewed Agenda Item 15. He explained the four categories for which the City was eligible to apply.

Vice-Mayor Howell asked if they were being asked to choose a category or if they would be applying to all four categories. Mr. Easton said the Commission needs to choose a category, but one that will give them a good chance of being funded. He explained that it was the responsibility of the grant writer to determine which category will give the City the best chance because all the grants are highly competitive in nature and funding cannot be assured. Vice-Mayor Howell asked for confirmation that they were then voting on whether or not to apply for a grant but not necessarily for a specific category. Mr. Easton said it is a public hearing to determine what citizens think the community's needs are. He added that there will be a second public hearing that presents the draft and application itself.

OPENED PUBLIC HEARING

Clinton Horne, 507 E. Polk Avenue, expressed his concern that the \$750,000 CDBG grant was not sufficient to complete the C Street Sewer problem, and he suggested that the City finance the rest of the project by taking out a low interest loan now because the rates are as low as they will ever be, possibly as low as 1%. He did not want the project done on a piecemeal basis over the next five or ten years because it was imperative that they get the job done.

CLOSED PUBLIC HEARING

Vice-Mayor Howell asked Mr. Easton if he thought we had a chance of getting the grant and Mr. Easton said that everything possible is being done to give the City that chance. He said the City has the advantage because they put in a local match and many cities can't afford to do that. Ms. Delmar said the City presently has a little over \$1 million set aside for the estimated \$3 million project, so if the City Commission ultimately decides to borrow the balance so they can finish the project all at once rather than in two or three phases, the \$750,000 will be deducted from the amount the City would have to borrow.

Commissioner Wojcik asked if they needed to devote more time to discuss how they were going to get the C Street project completed. Ms. Delmar said the workshop meeting in September was for that purpose but it may be time to have another one once we get further into the project.

Commissioner Rogers expressed the urgency of getting the job done for health reasons and Ms. Delmar agreed that it needed to be done and said the City was committed to completing the project.

Commissioner Thornhill made a motion to:

1. Approve preparation of a CDBG application in Neighborhood Revitalization category.
2. Designate the use of \$250,000 included in the \$1,062,527 set aside for the C Street Sewer project as the local match for the 2011-2012 CDBG application; and
3. Approve August 2, 2011 as the date for the 2nd CDBG public hearing.

The motion was seconded by Mayor Carter.

By Voice Vote:

Commissioner Thornhill	"YES"
Mayor Carter	"YES"
Commissioner Rogers	"YES"
Commissioner Wojcik	"YES"
Vice-Mayor Howell	"YES"

The motion carried 5-0.

Agenda Item 16. Hearing – Vivint, Inc., denial of Peddler/Solicitor Permit Applications

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Clara VanBlargan, City Clerk]

SYNOPSIS

This is a hearing for the City Commission to consider approving the applications for peddler/solicitor licenses that were submitted to the City of Lake Wales by employees or agents of Vivint, Inc. and denied by Deputy Chief Troy Schulze.

REQUEST

Nathan B. Wilcox, General Counsel of Vivint, Inc., is requesting that the City Commission approve the applications for peddler/solicitor licenses that were previously denied by Deputy Police Chief Troy Schulze.

BACKGROUND

In May 2011, Vivint, Inc. submitted 23 applications for peddler/solicitation licenses to the Lake Wales Police Department. Approval of the applications would allow representatives of his company to solicit door to door to sell and install security systems in the City of Lake Wales.

In accordance with City Code of Ordinances, Section 14-155, an investigation of each applicant's business and moral character was conducted. Based on information received from the Better Business Bureau, Deputy Chief Schulze did not approve the applications. The applicants were notified accordingly of the reasons for those denials.

In accordance with City Code of Ordinances, Section 14-160, Mr. Wilcox has exercised the right to appeal the denial.

Although §14-160(c) provides that the decision of the City Commission is final and conclusive, that does not mean that it may not be appealed to the Circuit Court. Such an appeal would be a petition for Certiorari for review of this Commission action.

FISCAL IMPACT

None

OTHER OPTIONS

The City Commission could deny the approval of the peddler/solicitation applications.

[End agenda memo]

Dylan Rivers, Attorney from Ausley and McMullen in Tallahassee representing Vivint, Inc. gave the following reasons for reversing the denial:

- The wording of the City ordinance does not permit denial based on employer character but solely on the character of applicants.
- The investigation was flawed because it and the resulting denials were based on the Better Business Bureau report, which is composed of hearsay with no way for them to be able to verify or cross examine the complainants because they don't know who filed the complaints.
- The City ordinance is unconstitutional because it conflicts with Florida law.

City Attorney Chuck Galloway said his suggestion under the circumstances was that Mr. Rivers should get the testimony he wants. The City Commission would then take the facts under advisement while he looks into the case. He will then have time to give advisement based on what he hears during the testimony and what he sees in the case law and the City Commission can then make its determination at the next City Commission meeting in two weeks.

Mr. Rivers was in agreement subject to the understanding that it would be based on the City Council's recommendation and the record presently given so he would not have to give record again. The Commission was in agreement to the terms.

Vice-Mayor Howell called a recess at 7:37 p.m. The meeting reconvened at 7:47 p.m.

Mr. Rivers interviewed Deputy Chief Troy Schultz and the following comments were made:

- All 23 applicants had been handled in the same way.
- One applicant had a criminal record.
- All but five or six of the applications had missing data which indicated to Deputy Chief Schulze their lack of professionalism and thoroughness.
- The Better Business Bureau listed over 1,400 complaints against the company, though Deputy Chief Schulze did not know the criteria used in determining their rating system, and of which all but two had been satisfied.
- Deputy Chief Schultz's decision had been made in the best interest of the citizens of Lake Wales.
- Except for one applicant, nothing negative was found in the background checks of the 22 other applicants.
- Vivint Inc. has approximately 600,000 customers and 5,000 employees.
- The company name had been changed from APX Alarm Security Solutions, Inc. to Vivint Inc. as an alternate business name.
- Vivint, Inc. is licensed in 49 states and in Canada, and though their license was revoked in Louisiana and South Carolina, the company can still sell in South Carolina even though there are some issues going back and forth.

Commissioner Wojcik was concerned with strange persons coming to resident's door asking them if they have a security system because giving out that information would require trust.

Commissioner Rogers was concerned that they may use 'strong arm' tactics, not taking no for an answer.

The Appeal Hearing was closed at approximately 8:29 p.m.

Commissioner Wojcik said that if the City ordinance is unconstitutional, the Commission cannot change the ordinance and then deny the permit by using the new ordinance. They will have to make their decision based on the facts and then work on changing the ordinance to comply with the State's.

Mr. Galloway suggested letting the six applicants that had been approved start their sales and ask the other applicants to submit the missing requirements, so they too can be added.

Deputy Chief Schulze said there was a three week window on the application, which has expired. He suggested having all 23 resubmit their application to include the missing data so that all of them can have the permit during the same three week window, making it easier for the police force to do their jobs.

Commissioner Wojcik made a motion to:

1. Require all the applicants to resubmit their applications for consideration
2. Give Deputy Chief Schulze the authority to complete background checks on each applicant as soon as possible
3. Give City Attorney Chuck Galloway the authority to research the constitutionality of the City's ordinance and give his recommendation at the next City Commission meeting.

The motion was seconded by Commissioner Thornhill.

By Voice Vote:

Commissioner Wojcik	"YES"
Commissioner Thornhill	"YES"
Commissioner Rogers	"YES"
Mayor Carter	"YES"
Vice-Mayor Howell	"YES"

The motion carried 5-0.

Agenda Item 17. Disposal of Surplus Property

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Bonnie Hodge, Purchasing Director]

SYNOPSIS

Staff is seeking approval to dispose of surplus vehicles and equipment identified on the Schedule of Surplus Equipment and post them for auction on GovDeals.com.

RECOMMENDATION

It is recommended that the City Commission take the following action:

1. Authorize disposal of items identified in Schedule of Surplus Equipment 2011.
2. Authorize staff to post surplus vehicles and equipment on GovDeals.com.
3. Determine that any items not purchased at Public Auction be considered as having no commercial value and authorize the disposal of these items by sale as scrap or by disposal as deemed appropriate by the City Manager.

BACKGROUND

In accordance with Sec. 2-476 of the City Code, the City Commission may classify as surplus any of its property that is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function or purpose.

Authority for the disposal of surplus property for which the initial purchase price equals or exceeds \$750.00 must be recorded in the official minutes of the City Commission. Such authority needs to include approval of the method of disposal and the estimated value of the property. Authority for the disposal of

surplus property for which the initial purchase price does not equal or exceed \$750.00 is granted to the City Manager.

Property, the value of which the City estimates to be under five thousand dollars may be disposed of in the most efficient and cost-effective means as determined by the City Commission. In this case, the most practical way to dispose of surplus items is posting the vehicles and equipment on GovDeals.com for auction.

Equipment for which the initial purchase price equals or exceeds \$750.00 is listed on the schedule attached to this memo. This list will be made part of the official record.

FISCAL IMPACT

Proceeds from the public auction will be deposited into the general fund.

[End agenda memo]

Ms. Hodge reviewed Agenda Item 17.

Vice-Mayor Howell recused from voting on the basis of a conflict of interest regarding the donation of one of the vehicles to the Green and Gold Foundation, because she is a member of that Board.

Commissioner Rogers made a motion to approve:

1. Authorize disposal of items identified in Schedule of Surplus Equipment 2011.
2. Authorize staff to post surplus vehicles and equipment on GovDeals.com.
3. Determine that any items not purchased at Public Auction be considered as having no commercial value and authorize the disposal of these items by sale as scrap or by disposal as deemed appropriate by the City Manager.

The motion was seconded by Wojcik.

By Voice Vote:

Commissioner Rogers	"YES"
Commissioner Wojcik	"YES"
Commissioner Thornhill	"YES"
Mayor Carter	"YES"
Vice-Mayor Howell	"Recused"

The motion carried 4-0.

Agenda Item 18. Appointments – Depot Advisory Commission

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Clara VanBlargan, City Clerk]

SYNOPSIS

The appointment will fill a vacancy due to resignations, expirations of terms, newly established boards, etc.

RECOMMENDATION

It is recommended that the City Commission make the appointment as deemed appropriate.

BACKGROUND

Vacancies exist on various Boards, Commissions, and Committees due to resignations, expirations of terms, newly established boards, etc. The City Commission is asked to make the appointment as deemed appropriate.

Depot Advisory Commission – Members are appointed by the City Commission. The Depot Advisory Commission consists of ten (10) members. At least six (6) members must reside in the City, and no more than four (4) members may reside outside the City. (3-year term)

There is no interview process requirement for applicants applying for appointment to this board.

2 non-city resident vacancies: Terms expire 7/1/14

2 resident vacancies: 1 term expires 7/1/12
1 term expires 7/1/14

Applying for appointment: None

Applying for Re-appointment: Cynthia Robinson, non-resident

Current vacancies are due to the expiring terms of Mollie Cooper, Cynthia Robinson, and Deming Cowles, who has served three terms and is not eligible to serve four consecutive terms.

OTHER VACANCIES

Staff received no applications to fill the vacancies on the following boards, committees & commissions:

Airport Authority Board	Historic District Regulatory Board
Bicycle/Pedestrian Advisory Commission	Historic Preservation Board
Board of Zoning Adjustments & Appeals	Lakes Advisory Commission
Code Enforcement Board	Parks & Community Appearance Adv. Board
Drug & Prostitution-Related Nuisance Abatement Board	Recreation Commission

Board Applications are considered for appointment by the City Commission at various times of the year. Regulatory Boards require an interview process for all new applicants before being considered for appointment by the City Commission.

Applications are available from the City Clerk, Municipal Administration Bldg., 201 W. Central Avenue or can be obtained on the City's website at www.cityoflakewales.com.

FISCAL IMPACT

None. These are volunteer citizen boards.

OTHER OPTIONS

Do not appoint the applicants named above and seek other applicants; however, it may be difficult for the board to obtain a quorum until vacancies are filled.

[End agenda memo]

Ms. VanBlargan reviewed Agenda Item 18.

Commissioner Rogers made a motion to reappoint Cynthia Robinson to serve as a member on the Depot Advisory Commission with a term expiring 7/1/14. Commissioner Wojcik seconded the motion.

By Voice Vote:

Commissioner Rogers	"YES"
Commissioner Wojcik	"YES"
Commissioner Thornhill	"YES"
Mayor Carter	"YES"
Vice-Mayor Howell	"YES"

The motion carried 5-0.

Agenda Item 19. Appointment - Polk County Joint Zoning Board (JAZB)

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Clara VanBlargan, City Clerk]

SYNOPSIS

The Commission is asked to appoint a Lake Wales Airport Authority member to serve on the JAZB as an alternate member.

RECOMMENDATION

It is recommended that the City Commission appoint a Lake Wales Airport Authority member to the Polk County Joint Airport Zoning Board to serve as an alternate member to represent the City of Lake Wales. This individual will serve until a successor is appointed.

Applying for appointment: Robert Kelly "Bob," resident.

BACKGROUND

The Polk County Joint Airport Zoning Board (JAZB) is an inter-governmental legislative body created by six local cities, which includes Lake Wales, and the counties of Polk and Hillsborough. Its purpose is to adopt and administer airport zoning regulations applicable to the jurisdiction of these eight local governments.

A vacancy is due to the resignation of Frank Gioscia who continues to serve on the Lake Wales Airport Authority. Robert Kelly "Bob" wishes to be appointed to serve as an alternate member on the JAZB in the place of Mr. Gioscia.

OPTIONS

If the City Commission chooses not to appoint a member to serve on the JAZB, the City would lack representation.

FISCAL IMPACT

None

[End agenda memo]

Ms. VanBlargan reviewed Agenda Item 19.

Mayor Carter made a motion to appoint Robert Kelly to the Polk County Joint Airport Zoning Board. The motion was seconded by Rogers.

By Voice Vote:

Mayor Carter	"YES"
Commissioner Rogers	"YES"
Commissioner Wojcik	"YES"
Commissioner Thornhill	"YES"
Vice-Mayor Howell	"YES"

The motion carried 5-0.

Agenda Item 20. Discussion of Preliminary Financial Statements for May 31, 2011

SYNOPSIS

The preliminary financial statements report revenues received and expenditures made through the end of May 2011.

The unaudited financial statements for the City of Lake Wales for the Period Ending May 31, 2011 are presented to the City Commission for review. At the end of May 31, 2011 the City was 66.6% into the fiscal year. Seventeen of twenty-six payrolls (65.4%) have been expensed through May 31. Revenue and expenditure budgets have been adjusted to reflect changes through Budget Amendment #3.

Effective June 2, 2011, all department directors received notice of a freeze on spending and hiring from the City Manager. No purchases are to be made unless department operations cannot continue without the purchase. No vacant positions are to be filled unless department operations will cease to function or the safety of the public or other department employees will be placed in jeopardy. It is necessary to bring spending to a minimum for the remainder of this fiscal year.

Analysis of Cash & Investment Changes:

	GENERAL	SPECIAL REVENUE	UTILITY SYSTEM	TOTAL
Cash & investments YTD 2009-2010*	3,585,083	2,842,965	82,708	6,510,756
Cash & investments YTD 2010-2011*	3,348,229	1,685,233	225,877	5,259,339
CHANGE	-236,854	-1,157,732	+143,169	-1,251,417

General Fund cash and investments in comparison to prior year showed a reduction of \$236,854.

- Reduction in ad valorem tax receipts compared to prior year of \$249,048

Special Revenue Fund cash and investment in comparison to prior year showed a reduction of \$1,157,732. Essentially, \$1,131,322 (97.9%) of this reduction is due to the following items:

- Reductions in CRA ad valorem tax receipts compared to prior year of \$426,907.
- Reduction in CRA County Tax Increment receipts compared to prior year of \$339,846.
- A transfer from the CRA fund to the Utility Fund of \$332,984 in surplus 2008'09 revenues designated by the City Commission to be used on the C Street Project.
- Reduction in Library ad valorem tax receipts compared to prior year of \$31,605.

Pool/Tax Anticipation Account:

The City has not borrowed any money from the Pool/Tax Anticipation Investment Account. The balance at the end of FY 07/08 when the account was created and the current balance are as follows:

	9/30/2008	5/31/2011	Difference
Pool/Tax Anticipation Account	1,037,822	1,064,430	26,608

Revenue & Expenditures Summary:

General Fund (page F-4):

Some General Fund revenues appear to be slightly below budgetary target expectations. Expenditures appear reasonable compared to prior year and budgetary expectations.

Due to concerns relating to under-performance of some revenue sources (net negative effect equal to \$69,000) the following accounts will be watched over the next several months. (note: percentages shown below are comparisons to budget)

- Utility Service Tax of \$472,922 (57.4%) compared to prior year \$499,704 (52.7%) appears higher than expected. Estimated over performance compared to budgetary expectation is \$100,000.
- Communication Service Tax of \$388,272 (63.5%) compared to prior year \$392,594 (66.8%) appears lower than expected. Estimated under-performance compared to budgetary expectation is (\$30,000).
- Bldg Permit/Dev. Fees of \$180,912 (78.5%) compared to prior year \$254,272 (72.4%) appears lower than expected. Estimated under-performance compared to budgetary expectations is (\$49,000).
- Franchise Fees of \$427,755 (46%) compared to prior year \$611,036 (54.9%) appears lower than expected. Estimated under-performance compared to budgetary expectation is (\$90,000). This is mostly related to the Electric Franchise Fee.

Special Revenue Funds (page F-6):

Some Special Revenue Fund revenues appear to be slightly below budgetary target expectations. Expenditures appear reasonable compared to prior year and budgetary expectations.

Due to concerns relating to under-performance of some revenue sources (net negative effect equal to \$87,700) the following accounts will be watched over the next several months.

- CRA – Actual Ad Valorem Taxes revenues of \$649,629 compared to budgetary appropriations of \$718,799 are lower than expected. Estimated under-performance compared to budgetary expectation is \$69,170. A budget amendment reduction will be prepared for this revenue source.
- CRA – Actual County Tax Increment revenues of \$655,029 compared to budgetary appropriations of \$673,559 are lower than expected. Estimated under-performance compared to budgetary expectation is \$18,530. A budget amendment reduction will be prepared for this revenue source.
- Library - County PCLC & Books By Mail revenue of \$383,629 (76.0%) compared to prior year \$531,975 (100%) has been explained by Tina Peak, Library Director, as a timing difference relating to payment. The final Books By Mail payment of \$112,500 has been received in June 2011.

Debt Service Fund (page F - 7):

Revenue sources appear reasonable compared to budgetary expectations. Expenditures appear reasonable compared to budgetary expectations.

Capital Project Fund (page F - 8):

Revenue sources appear reasonable compared to budgetary expectations. Expenditures appear reasonable compared to budgetary expectations.

Airport Fund (page F - 9):

Revenue sources appear reasonable compared to budgetary expectations. Expenditures appear reasonable compared to budgetary expectations.

Utility System Funds (page F - 11):

Revenue sources appear reasonable compared to budgetary expectations. Expenditures appear reasonable compared to budgetary expectations.

Ms. Pendergrass reviewed Agenda Item 20.

CITY MANAGER'S REPORT

City Commission Tracking Report:

There were no additions to the tracking report.

City Manager Application Status Report:

Human Resource Director Sandra Davis gave an update on the status of the city manager search. There are twelve applicants left. Two were removed from consideration because they accepted positions elsewhere. Ms. Davis asked that she be allowed to remove applicants with criminal backgrounds. City Attorney Chuck Galloway explained that criminal records cannot be divulged to the Commissioners as the information must be guarded. Therefore, the Human Resource Director needs to have Commission approval to remove them without divulging the information as to why they have been removed.

Commissioner Wojcik made a motion to approve the removal of applicants with criminal backgrounds. The motion was seconded by Commissioner Rogers.

By Voice Vote:

Commissioner Wojcik	"YES"
Commissioner Rogers	"YES"
Commissioner Thornhill	"YES"
Mayor Carter	"YES"
Vice-Mayor Howell	"YES"

The motion carried 5-0.

It was the consensus of the Commission that they receive the remaining resumes so they can determine which candidates they wish to interview by phone.

COMMUNICATIONS AND PETITIONS

There were no public comments.

CITY COMMISSION COMMENTS

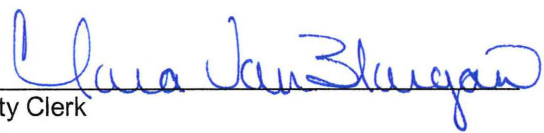
There were no City Commission Comments.

There being no further business, the meeting was adjourned at approximately 9:30 p.m.



Mayor/Commissioner

ATTEST:



City Clerk

Reg. 9-5-11

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

NAME—FIRST NAME—MIDDLE NAME Howell, Terrye Yvette		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Commission	
MAILING ADDRESS 611 Carver Drive Polk		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY	
CITY Lake Wales, FL	COUNTY	NAME OF POLITICAL SUBDIVISION:	
DATE ON WHICH VOTE OCCURRED 7-5-2011		MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which is to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

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APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Terrye Y. Howell, hereby disclose that on July 5, 20 11:

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

The vote to give the Green and Gold Foundation a car that was up for auction. I am a member of the Green and Gold Foundation Board.

7-11-2011
Date Filed

Terrye Y Howell
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OF CIVIL PENALTY NOT TO EXCEED \$10,000.