



**Town of Surfside
Town Commission Meeting
AGENDA**

SUPPLEMENTAL No. 1

January 15, 2013

7 p.m.

**Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154**

1. Opening

- A. Call to Order**
- B. Roll Call of Members**
- C. Pledge of Allegiance**
- D. Mayor and Commission Remarks – Mayor Daniel Dietch**
- E. Agenda and Order of Business Additions, deletions and linkages**
- F. Community Notes – Mayor Daniel Dietch**
- G. Present Commissioner Kligman with a Certificate of Completion from the Florida League of Cities for Completing the 2012 Advanced Institute for Elected Municipal Officials – Mayor Daniel Dietch Page 1-2**
- H. Special Presentation – Mayor, Vice Mayor and Town Commissioners \$1.00 Annual Salary – Roger M. Carlton, Town Manager**
- I. Special Presentation to Bill Evans Public Works Director – Roger M. Carlton, Town Manager**

2. Quasi-Judicial Hearings (None)

3. Consent Agenda (*Set for approximately 7:30 p.m.*)

All items on the consent agenda are considered routine or status reports by the Town Commission and will be approved by one motion. Any Commission member may request, during item 1E Agenda and Order of Business, that an item be removed from the Consent Agenda and discussed separately.

Recommended Motion: To approve all consent agenda items as presented below.

** Denotes agenda items as “must haves” which means there will be significant impacts if the item is not addressed tonight. If these items have not been heard by 10 p.m., the order of the agenda will be changed to allow them to be heard.*

- *A. Minutes - December 11, 2012 – Regular Commission Meeting Page 3-19**
- B. Budget to Actual Summary as of October 31, 2012 – Donald Nelson, Finance Director Page 20-21**
- *C. Town Manager’s Report (Points of Light) – Roger M. Carlton, Town Manager Page 22-39**
- *D. Town Attorney’s Report – Lynn M. Dannheisser, Town Attorney (Not Provided)
- Reconfirmation of the January 24, 2013 Quasi-Judicial Hearing to Consider the Chateau Project.**
- *E. Projects Progress Report – Calvin, Giordano and Associates, Inc. Page 40-42**
- F. Committee Reports – Roger M. Carlton, Town Manager *(Note: Vice Mayor Karukin has requested that Committee minutes appear on the Consent Agenda. The most recent approved minutes have been included)* Page 43-46
- November 5, 2012 Tourist Board Minutes**
- *G. Certification of Charter Amendments Election Results – November 6, 2012 – Sandra Novoa, Town Clerk Page 47-50**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA CERTIFYING AND DECLARING THE RESULTS OF THE TOWN OF SURFSIDE CHARTER AMENDMENTS ELECTION HELD ON NOVEMBER 6, 2012; AND PROVIDING FOR AN EFFECTIVE DATE.

- *H. Retroactive Approval of Expenditure of Forfeiture Funds to Replace Electronic Control Devices – Chief of Police David Allen Page 51-55**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, RETROACTIVELY PROVIDING FOR THE FISCAL YEAR 2012/2013 POLICE CONFISCATION FUND EXPENDITURE IN THE AMOUNT OF \$7,330.20 FROM THE FORFEITURE FUND TO PURCHASE SIX TASERS AND ACCESSORIES FOR THE POLICE DEPARTMENT; PROVIDING FOR AN EFFECTIVE DATE.

***I. Purchase of a Replacement Parking Enforcement Truck – Chief of Police David Allen Page 56-60**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AUTHORIZING THE PURCHASE OF A PARKING ENFORCEMENT TRUCK FROM THE MUNICIPAL PARKING FUND FOR \$18,042 BUDGETED UNDER MUNICIPAL PARKING FUND ACCOUNT #402-9500-545-6410 FOR FY 2012/2013; PROVIDING FOR AN EFFECTIVE DATE.

J. Amendment to the Miami Dade County Prisoner Processing Project Contract – Chief David Allen Page 61-103

A RESOLUTION OF THE TOWN COMMISSION FOR THE TOWN OF SURFSIDE (“TOWN”), FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE AMENDMENT #1 TO THE FY 2013 CONTRACT BETWEEN MIAMI-DADE COUNTY AND THE TOWN IN ORDER TO EXTEND THE MIAMI-DADE COUNTY ASSOCIATION OF CHIEFS OF POLICE (MDCACP) PRISONER PROCESSING PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

4. Ordinances

(Set for approximately 8:00 p.m.) (Note: Good and Welfare must begin at 8:15)

A. Second Readings (Ordinances and Public Hearing)

***1. Building Frontage Ordinance – Vice Mayor Michael Karukin Page 104-111**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING CHAPTER 90 ZONING; SECTION 90-51 MAXIMUM FRONTAGE OF BUILDINGS; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

***2. Amending to Chapter 90 Planning & Zoning to Merge Function of DRB into P&Z Board Functions – Lynn Dannheisser, Town Attorney Page 112-121**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 “ZONING” BY DISSOLVING THE DESIGN REVIEW BOARD AND CONSOLIDATING THE DESIGN REVIEW FUNCTION INTO THE EXISTING FUNCTIONS OF THE PLANNING AND ZONING BOARD, CHANGING MEMBERSHIP REQUIREMENTS FOR PLANNING & ZONING BOARD; AND PROVIDING FOR FILLING OF VACANCIES; INCLUDING A TRANSITIONAL PROVISION; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

3. Amendment to Lobbyist Registration and Adoption of Forms – Lynn Dannheisser, Town Attorney Page 122-132

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING SECTION 2-235 OF THE CODE OF THE TOWN OF SURFSIDE RELATING TO LOBBYIST REGISTRATION AND; PROVIDING FOR DEFINITIONS; PROVIDING FOR ANNUAL EXPIRATION AND RENEWAL FOR LOBBYIST REGISTRATIONS; REQUIRING REGISTRATION OF PRINCIPALS; REQUIRING DISCLOSURE OF ANNUAL LOBBYIST EXPENDITURE BY JANUARY 15TH OF EACH YEAR; PROVIDING FOR PENALTIES AND ENFORCEMENT; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

(Set for approximately 8:30 p.m.) (Note: Good and Welfare must begin at 8:15)

B. First Reading Ordinances

***1. Amendment to Short Term Rental Ordinance to Allow for Alternative Notice and Amendment to Paragraph References – Lynn Dannheisser, Town Attorney Page 133-137**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 “ZONING” AND SPECIFICALLY AMENDING SECTION 90-41.1 “SHORT TERM RENTAL OF SINGLE FAMILY DWELLINGS, TWO-FAMILY DWELLINGS, MULTI-FAMILY DWELLINGS AND TOWNHOUSES” OF THE TOWN OF SURFSIDE CODE OF ORDINANCES PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF

ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

5. Resolutions and Proclamations

(Set for approximately 8:45 p.m.) (Note: Depends upon length of Good and Welfare)

***A. Sensible Gun Law Resolution – Mayor Daniel Dietch Page 138-161**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA (“TOWN”) CALLING ON THE FEDERAL GOVERNMENT TO REDUCE GUN VIOLENCE IN AMERICA AND HELP PREVENT FUTURE MASS SHOOTINGS THROUGH PASSAGE OF: THE FIX GUN CHECKS ACT, WHICH WOULD REQUIRE A BACKGROUND CHECK FOR EVERY GUN SALE AND ENSURE THAT ALL CRIMINALS AND OTHER DANGEROUS PEOPLE WHO ARE PROHIBITED FROM BUYING A GUN ARE LISTED IN THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM; AS WELL AS LEGISLATION THAT WOULD KEEP MILITARY-STYLE WEAPONS AND HIGH-CAPACITY MAGAZINES OFF OUR STREETS, AND WOULD MAKE GUN TRAFFICKING A FEDERAL CRIME; PROVIDING FOR AN EFFECTIVE DATE.

***B. Business Improvement District Consultant Agreement – Duncan Tavares, TEDACS Director Page 162-270**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING WAIVING THE COMPETITIVE BID PROCESS AND AUTHORIZING THE BUSINESS IMPROVEMENT DISTRICT ORGANIZATIONAL PLAN AGREEMENT WITH REDEVELOPMENT MANAGEMENT ASSOCIATES, INC.; AUTHORIZING THE TOWN MANAGER TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE.

***C. Retroactively Approving Sidewalk Staining – Bill Evans, Public Works Director Page 271-275**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING AN AFTER THE FACT AWARD OF BID IN THE AMOUNT OF \$97,000 TO LYNX CONSTRUCTION LLC TO STAIN THE SIDEWALKS FROM 87TH STREET TO 96TH STREET ON BOTH EAST AND WEST SIDES OF COLLINS AVENUE FOR

CONTINUITY IN THE COLOR OF THE SIDEWALKS THROUGHOUT THE TOWN OF SURFSIDE; AND PROVIDING FOR AN EFFECTIVE DATE.

- *D. Resolution in Support of the League of Women Voters of Florida – Commissioner Joe Graubart Page 276-280**

A RESOLUTION OF THE TOWN OF SURFSIDE, FLORIDA PROCLAIMING SUPPORT OF THE LEAGUE OF WOMEN VOTERS OF FLORIDA REQUEST TO GOVERNOR RICK SCOTT AND THE FLORIDA LEGISLATURE FOR CREATION OF AN ELECTION REFORM TASK FORCE.

- *E. Amendment to Settlement Agreement Between the Town of Surfside and Indian Creek Village – Roger M. Carlton, Town Manager Page 281-333**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA (“TOWN”) APPROVING THE AMENDMENT TO THE SETTLEMENT AGREEMENT BETWEEN TOWN OF SURFSIDE AND INDIAN CREEK VILLAGE (“VILLAGE”), PROVIDING FOR AUTHORIZATION; PROVIDING FOR AN EFFECTIVE DATE.

- *F. FDOT Sidewalk Lease Agreement – Duncan Tavares, TEDACS Director Page 334-388**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA REQUESTING THAT THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) GRANT THE TOWN A PUBLIC PURPOSE LEASE ON A1A/HARDING AVENUE FROM 93RD STREET TO 96TH STREET, WHERE THE TOWN PROPOSES TO ISSUE PERMITS FOR SIDEWALK CAFES; AUTHORIZING TOWN OFFICIALS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE TERMS OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

- *G. Town Attorney – Mayor Daniel Dietch (TIME CERTAIN 9:00 P.M.) Page 389-407**

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, TERMINATING THE EMPLOYMENT OF TOWN ATTORNEY LYNN M. DANNHEISSER PURSUANT TO SECTION 9.A. OF HER EMPLOYMENT AGREEMENT WITH THE TOWN; AUTHORIZING THE MAYOR TO ENTER INTO A SEPERATION AGREEMENT BETWEEN TOWN ATTORNEY LYNN M. DANNHEISSER AND THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

6. Good and Welfare (Set for approximately 8:15 p.m.)

Public comments for subjects or items not on the agenda. Public comment on agenda items will be allowed when agenda item is discussed by the Commission.

7. Town Manager and Town Attorney Reports

Town Manager and Town Attorney Reports have been moved to the Consent Agenda – Item 3.

All items on the Consent Agenda are considered routine or status reports by the Town Commission and will be approved by one motion. Any Commission member may request, during item 1E Agenda and Order of Business, that an item be removed from the consent agenda and discussed separately.

8. Unfinished Business and New Business

9. Mayor, Commission and Staff Communications

- *A. Downtown Streetscape Master Plan – Duncan Tavares, TEDACS Director Page 408-421**
- *B. Red Light Camera Legislative Urging – Mayor Daniel Dietch Page 422**
- *C. Traffic Study (Please bring the Traffic Study book provided in December 2012) – Roger M. Carlton, Town Manager Page 423**
- *D. FPL Undergrounding Status Report –Update - Roger M. Carlton, Town Manager Page 424-534**
- E. Additional Deco Bike Rental Stations – Commissioner Joe Graubart Page 535-620**
- *F. Outdoor Exercise Equipment – Commissioner Joe Graubart Page 621**
- *G. Re-appointment of Commissioner Kligman as the Miami Dade County League of Cities (MDCLC) Liaison (VERBAL) – Roger M. Carlton, Town Manager**
- *H. FEMA Flood Insurance Program – Commissioner Joe Graubart Page 622-630**
- I. Agenda Items Deadlines for Commission – Commissioner Joe Graubart Page 631**
- *J. Florida Constitutional Amendment 11 – Provides for Additional Tax Exemption from County and Municipality Taxes for Certain Qualified Seniors – Roger M. Carlton, Town Manager Page 632-636**
- *K. Scholarship Program – Commissioner Marta Olchyk/Duncan Tavares, TEDACS Director Page 637-648**
- *L. Additive Alternates to Utility Project – Decorative Street Signs– Bill Evans, Public Works Director Page 649-655**
- *M. Adoption of Priorities for 2013 Florida Legislative Session – Fausto Gomez, Town Lobbyist – **Cover Memo and Back Up****
- *N. Bus Shelters – Commissioner Marta Olchyk Page 656-657**

10. Adjournment

Respectfully submitted,



Roger M. Carlton
Town Manager

THIS MEETING IS OPEN TO THE PUBLIC. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL PERSONS ARE DISABLED; WHO NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS MEETING BECAUSE OF THAT DISABILITY SHOULD CONTACT THE OFFICE OF THE TOWN CLERK AT 305-893-6511 EXT. 226 NO LATER THAN FOUR DAYS PRIOR TO SUCH PROCEEDING. HEARING IMPAIRED PERSONS MAY CONTACT THE TDD LINE AT 305-893-7936.

IN ACCORDANCE WITH THE PROVISIONS OF SECTION 286.0105, FLORIDA STATUTES, ANYONE WISHING TO APPEAL ANY DECISION MADE BY THE TOWN OF SURFSIDE COMMISSION, WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING OR HEARING, WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE WHICH RECORD SHALL INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

AGENDA ITEMS MAY BE VIEWED AT THE OFFICE OF THE TOWN CLERK, TOWN OF SURFSIDE TOWN HALL, 9293 HARDING AVENUE. ANYONE WISHING TO OBTAIN A COPY OF ANY AGENDA ITEM SHOULD CONTACT THE TOWN CLERK AT 305-861-4863. A COMPLETE AGENDA PACKET IS ALSO AVAILABLE ON THE TOWN WEBSITE AT www.townofsurfsidefl.gov

TWO OR MORE MEMBERS OF OTHER TOWN BOARDS MAY ATTEND THIS MEETING.

THESE MEETINGS MAY BE CONDUCTED BY MEANS OF OR IN CONJUNCTION WITH COMMUNICATIONS MEDIA TECHNOLOGY, SPECIFICALLY, A TELEPHONE CONFERENCE CALL. THE LOCATION 9293 HARDING AVENUE, SURFSIDE, FL 33154, WHICH IS OPEN TO THE PUBLIC, SHALL SERVE AS AN ACCESS POINT FOR SUCH COMMUNICATION.

**Please replace
Page 145 of the
agenda packet
with the
attached page**

– what drove the suspect to act? Our nation mourns, as all flags in the US are at half-staff, honoring the victims of this terrible tragedy. I have spoken to many of the parents and residents of Surfside and we all, myself included, seem to be heartbroken over unimaginable horrific act. Many can't help but see the similarities between our communities - we are also a small town, tight knit, family community. Many have asked me what we can do as a community. Some have suggested elected/town officials organize a prayer vigil or something alike. Your thoughts?

Attachment 4:

From: Michael Karukin

Sent: Sunday, December 23, 2012 10:23 AM

To: Roger Carlton

Subject: FW: Newtown, CT - Our Children, Our Community
our hearts and souls ache from this evil act of cowardess and insanity.

Attachment 5:

a) From: Joe Graubart

Sent: Monday, December 17, 2012 10:20 AM

To: Michelle Kligman; Roger Carlton

Cc: Elected Officials

Subject: Re: Newtown, CT - Our Children, Our Community

I spent the early morning today at rkbhhi k8 - you could see a sadness weariness in parents eyes
The three mayors / managers may want to do something - i am in support of this
A statement /resolution re assault weapons from the three communities may be in order as well?
Joe

Sent from my Verizon Wireless Droid

b) From: Joe Graubart

Sent: Tuesday, December 18, 2012 9:12 AM

To: Roger Carlton; Elected Officials

Cc: David Allen; Tim Milian; Lynn Dannheisser; Miriam Maer (gmhauke@gmail.com)

Subject: RE: Appropriate Recognition for the Events in Newtown, Connecticut.

Hello:

A resolution supporting a ban on assault rifles.

A letter of Condolence to the First Selectman (Their Version of Mayor) Newtown, CT. - Sandy Hook is a borough of The Town of Newtown.

If deemed appropriate, a letter from our Chief SPD to their Chief (along with 'patch') expressing the concerns of assault rifles, etc.

And, a desire of the Town of Surfside, Florida to express its sadness by contributing (money) to the memorial they eventually decide upon – planting trees, a fountain, etc.

A member of the Color Guard (SPD) and optionally/additionally an elected official, to attend/participate in any 'concluding' Memorial Service.

**Please insert
attachment
after Tab 9M**

2350 Coral Way, Suite 301
Miami, Florida 33145
(305) 860-0780 (Telephone)
(305) 860-0580 (Facsimile)
(305) 905-9801 (Mobile)

200 West College Avenue, Suite 204
Tallahassee, Florida 32301
(850) 222-9911 (Telephone)
(850) 807-2539 (Facsimile)

fgomez@gomezbarker.com

**Gomez Barker
Associates, Inc.**

Memorandum

To: Hon. Daniel Dietch, Mayor
Hon. Michael Karukin, Vice Mayor
Hon. Joe Graubart, Commissioner
Hon. Michelle Kligman, Commissioner
Hon. Marta Olchyk, Commissioner

From: Fausto B. Gomez

CC: Roger Carlton

Date: January 14, 2013

Re: Draft 2013 Legislative Priorities

We are about to begin the legislative year, in fact the Interim Committee Meetings in Tallahassee are scheduled for the week of January 15th, and thus below, for your consideration, are a series of items which could constitute the Town's legislative agenda. These items have been developed in consultation with your Manager and were vetted with State Representative Joe Gibbons, whose district now includes Surfside, during a recent meeting:

- **Economic Development –**
 1. Downtown Facade Improvement Program (\$100,000)
 2. Renovation of Beach Streets (\$1,500,000)
- **Parks - Land Acquisition for Recreational Use (\$500,000)**
- **Beach Renourishment -** Assure that appropriate legislative funding is allocated to Miami-Dade County through which resources for local beach restorations are distributed
- **Loan Forgiveness –** Seek opportunities for legislative relief of the State Revolving Loans for wastewater

- **Policy –**

1. Preserve the Red Light Camera Program
2. Advocate for the installation of pedestrian crosswalk countdowns with each new Red Light Camera
3. Require off-duty officers for construction work on state roads such as Collins and Harding Avenues which are the only means of north/south access on a barrier island
4. Support limitations on semi-automatic assault weapons and high capacity magazines
5. Monitor changes to local government pension programs for first responders

I apologize for not being present when these items are discussed, but I must be in Tallahassee for previously scheduled legislative Interim Committee Meetings. I take seriously my responsibility to effectively and consistently represent the interests of all our clients, including the Town of Surfside, and there are items on the legislative agenda that must be attended to. Under normal circumstances I would certainly appear in front of you.

Please do not hesitate to contact me if you have any questions or desire additional information. Thank you for allowing my associates and me to represent Surfside.

Additional Item: Please see the attached article: The Town Manager recommends that the legislative program include support for clarification that allows insurance tax premiums to be used for basic pensions rather than for supplemental benefits under certain circumstances.

Roger Carlton

From: Fausto Gomez <FGomez@gomezbarker.com>
Sent: Monday, January 14, 2013 11:51 AM
To: Roger Carlton
Subject: RE: Local Government Pension Reform

Please change to the body of the e-mail to the Town of Surfside.

From: Roger Carlton [<mailto:RCarlton@townofsurfsidefl.gov>]
Sent: Monday, January 14, 2013 11:49 AM
To: Fausto Gomez
Cc: Dawn Hunziker; Sandra Novoa
Subject: RE: Local Government Pension Reform

I just added this item to our Legislative Program for tomorrow night. I will include your e-mail in the package.

From: Fausto Gomez [<mailto:FGomez@gomezbarker.com>]
Sent: Monday, January 14, 2013 11:26 AM
To: Daniel Dietch; Michael Karukin; Michelle Kligman; Marta Olchyk; Joe Graubart
Cc: Roger Carlton
Subject: Local Government Pension Reform

Mayor and Commissioners:

I just want to let you know that my firm is covering the following issue which is of import to North Bay Village. It will be addressed this week in committee but will be session-long effort and we will keep you appraised.

The Senate Governmental Oversight and Accountability Committee is proposing to make changes in the way local police and firefighter pensions are funded. Local governments are complaining about the rules in Tallahassee have lead to retirement funds, in many cases, being badly underfunded. There's no draft legislation yet, but the committee will workshop concepts this Wednesday. The panel's chairman, Sen. Jeremy Ring, Margate, said last week that he expects the legislation to resemble an earlier effort to deal with the problem. The measure would let cities use additional money from a tax on insurance premiums and also consider shifting new plans to defined contribution plans more like 401 (k) plans used in the private sector.

Fausto Gomez

NOTE: Florida Public Records Law provides that most written communications to or from Municipal employees regarding town business are public records, available to the public and media upon request. Therefore, this e-mail message may be subject to public disclosure.

FROM THE COURTS

Battle looms on police, firefighter pension funding

by **Brandon Larrabee**
The News Service of Florida

Lawmakers are again working to overhaul how local police and firefighter pensions are bankrolled, allowing cities to use more money from a tax on insurance premiums to back up retirement systems that are in some cases badly underfunded.

The new push comes even after the state agency that oversees the law has overturned its longstanding reading of the statute to move it closer to what cities would like.

Local governments have long pushed for the state to reverse a law requiring the growth in premium taxes over the last 15 years to be used to pay for benefits for police and firefighters beyond those provided in 1999. Many of those pensions need to be reinforced with new premium tax money, they say.

"It just gives us more flexibility to stabilize those plans that have an unfunded liability," said John Thomas, director of communications and political initiatives with the Florida League of Cities.

But reopening the issue after efforts to strike an agreement two years ago is likely to cause a new battle between law-enforcement unions and cities.

"It's a third-rail sort of issue," said Senate Government Oversight and Accountability Chairman Jeremy Ring, D-Margate.

One of the state's key police unions said a deal was close to approval in 2011 before it fell apart.

They say any change to the premium tax language needs to acknowledge the differences between cities with well-funded plans and those that are troubled.

"Not every city is sick," said Matt Puckett, executive director of the Police Benevolent Association.

Ring is working to craft a bill along the same lines as a plan that emerged when lawmakers tried to tackle the issue in 2011. That would allow cities to use some of the funding to shore up their unfunded pension liabilities, then move the rest of the funds into a 401(k)-style "share" plan.

At the same time, the extra benefits language would go away. Ring hopes to have a copy of the legislation available for his committee to workshop next week. But compromise could still prove elusive.

"I think [Ring] very smartly made the choice that he's not going to try to do this, let's all get together and sing kumbaya and try to come up with an agreement," Puckett said.

Gov. Rick Scott indicated in an interview last week with the News Service of Florida that he would support efforts to allow cities to use premium tax dollars more freely.

"I think we ought to give the local

communities as much flexibility to deal with their pension plans - because they have significant pension-plan issues — as we can," Scott said.

Cities won a victory on that front with a reinterpretation of state law by the Florida Division of Retirement last summer would allow local governments more freedom in how they use those premium taxes.

"The Naples Letter," as some local-government advocates and attorneys are calling it, was in response to a request from the city of Naples, which was looking to overhaul its pension plan. After state officials told Naples the changes would disqualify it from collecting its share of insurance premium taxes from the state, Mayor John Sorey III wrote a letter to Scott asking him to have the division reconsider.

State officials had previously said the law required states to use the tax revenues above those collected in 1997 to be used for "extra benefits," or those beyond the minimum benefits required by state law and any other benefits offered by the city as of March 12, 1999. That meant any extra money couldn't be used to cover the other expenses of the plan, even if the minimum benefits were proving too costly.

"However, upon receiving your letter and reviewing the law again, this interpretation appears inaccurate," wrote Keith Brinkman, chief of the Bureau of

Local Retirement Systems, to Sorey.

Under the new interpretation, cities would still be required to provide extra benefits if premium tax revenues were left over after paying for the legally required benefits. But that caveat might not mean much, according to a memorandum issued by the Florida League of Cities on Aug. 17.

"Very few, if any, cities would be required to provide 'extra benefits' under this interpretation," Craig Conn, legislative counsel for the league, wrote to Executive Director Michael Sittig.

A memo from a pair of attorneys at Lewis Longman & Walker, a Florida law firm which has a practice dealing with public pensions, came to a similar conclusion. A copy of the memo is available on the firm's website.

"The Naples letter appears to open the door to pension reform for many Florida cities, without the threat of loss of all future premium taxes," wrote Jim Linn and Glenn Thomas.

But supporters say changing the law is important regardless of the Naples letter. The new interpretation of the law could be undone by a future administration.

"It would be important to have that clarified by law so there will be no issues down the road," Thomas said.

Court challenges are also possible, though Puckett said his group doesn't plan to file a lawsuit.