



155 F Road Loxahatchee Groves, FL 33470

TO: Town Council of Town of Loxahatchee Groves
FROM: Francine Ramaglia, Town Manager
DATE: May 7, 2024
SUBJECT: Discussion on Town Council's Participation on Government Committees

Background:

The Town Council has the opportunity to serve on a variety of government committees of other agencies.

Below please find the current list of councilmembers who are currently serving:

- Councilmember Danowski – PBC Impact Fee Committee
- Councilmember Shorr – IPARC Committee
- Vice Mayor Herzog – American Legion Auxiliary Unit, Loxahatchee Groves Landowners Association.
- Mayor Kane – Loxahatchee Groves Landowners Association

Recommendation:

Discuss the Town Council's participation and if a reporting status is recommended.

**TORCIVIA, DONLON,
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April 11, 2024

VIA ELECTRONIC MAIL ONLY

Ms. Francine Ramaglia, Town Manager
Town of Loxahatchee Groves
155 F Road
Loxahatchee Groves, FL 33470

RE: Reimbursement of Attorney's Fees

Dear Francine:

You have requested advice from our office regarding reimbursement to Council Members for attorney's fees related to defense of alleged ethics violations. There are several provisions that provide for the defense of public officials and reimbursement of costs and attorney's fees expended for such defense. This letter lays out each of those provisions and how they may be applied to such requests.

Section 2-54 of the Town's Code of Ordinances provides for indemnification of municipal officers for losses and expenses incurred in the defense of disputes, proceedings, or litigation against the official for actions taken by the official. The action of the official that is cause of the dispute, proceeding, or litigation must be based on the official's performance of or be in connection with the official's performance of official duties on behalf of the Town. Though the use of "dispute, proceeding, or litigation" is broader than the statutory use of "civil action", it appears that Section 2-54 of the Code is intended to implement statutory immunity obligations of the Town.

Section 111.07, Florida Statutes, requires the municipality to reimburse an official for court costs and reasonable attorney's fees for the defense of civil actions for damages or injury as a result of the official's actions or inactions in performance of the official's public duties and the official is the prevailing party in the action. The court in *Chavez v. City of Tampa*, 560 So. 2d 1214, 1215 (Fla. 2nd DCA 1990) held that alleged ethics violations are not "civil actions" and thus not covered under this statutory provision for reimbursement.

Common law in Florida also provides an opportunity for public officials who are wrongfully accused of violations of duty to recover private attorney's fees upon successfully defending accusation. In *Chavez*, the court discussed conditions for such reimbursement, stating that "[t]he conditions that must be satisfied for a public official to be compensated for legal defense expenditures are that the lawsuit arise from (1) the performance of the officer's *official duties* and (2) while serving a *public purpose*." emphasis included. (*Chavez* at 1218 citing *Lomelo v. City of Sunrise*, 423 So.2d 974, 976 (Fla. 4th DCA 1982)). The court held that while defense of ethics violations may be recoverable under common law, if the vote of the official that formed the basis of the alleged ethics violation included any private interest, it would not "serve a public purpose" and would not be eligible for reimbursement even if the commission on ethics found there was no ethical conflict of interest. *Chavez* at 1218. Common law reimbursement of attorney's fees is not awardable by the governing body of the municipality. Rather, such reimbursement must be awarded by the court. (*E. Cent. Reg'l Wastewater Facilities Operation Bd. v. City of W. Palm Beach*, 659 So. 2d 402, 404 (Fla. 4th DCA 1995) and *Webb v. School Bd. Of Escambia County*, 1 So. 3d 1189, 1191 (Fla. 1st DCA 2009)). It is also important to note that the time spent establishing the official's eligibility for reimbursement is not recoverable. *Leon County v. Stephen S. Dobson, III, P.A.*, 957 So. 2d 12, 12 (Fla. 1st DCA 2007).

For reimbursement, the official must be the prevailing party in the action. A dismissal of the claim does not automatically allow for reimbursement. The reason for the dismissal must be taken into account. The court in *Walter D. Padow, M.D., P.A. v. Knollwood Club Ass'n*, 839 So.2d 744, 745 (Fla. 4th DCA 2003), held that voluntary dismissal on the basis that a continuation of the action would be a waste of resources does not result in a prevailing party who is entitled to reimbursement of attorney's fees.

Chapter 2, Article V, Division 8, of the Palm Beach County Code of Ordinances sets forth the procedures and authority of the Palm Beach County Commission on Ethics for handling ethics complaints. All complaints are investigated for legal sufficiency and, if legally sufficient, a preliminary investigation is performed to determine probable cause to believe that a violation has been committed. If no probable cause is found, the Commission dismisses the complaint. Section 2-260.3 of the County Code provides the Commission with the authority to dismiss ethics complaints on the following grounds: (1) if the Commission or hearing officer determines the public interest would not be served by proceeding further; (2) if the Commission or hearing officer determines that the alleged violation was inadvertent, unintentional, or insubstantial. The Commission's public report or order must state with particularity the reasons for dismissal. Section 2-260.4 of the County Code provides for dismissal of frivolous or groundless complaints, including a provision that the complainant must pay attorney's fees.

The Commission's dismissal on the grounds that the public interest will not be served by proceeding further is akin to a voluntary dismissal on the grounds that the continuation of the action would be a waste of resources. The Commission's dismissal on the grounds that the alleged violation was inadvertent, unintentional, or insubstantial, is reminiscent of the findings in the *Chavez* case. In either instance, the courts have held that under such circumstances, the alleged violator is not eligible for reimbursement of attorney's fees.

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It is our understanding that the Town does not have a policy on reimbursement of attorney's fees. The Town could adopt a policy on reimbursement that allows for reimbursement of attorney's fees for alleged ethics violations any time the complaint is dismissed, regardless of the reason. Without such policy, it is our opinion that a Council Member seeking reimbursement for attorney's fees related to an alleged ethic violation must file such a claim with the court under the common law.

If you have any questions regarding the reimbursement of attorney's fees, please contact me.

Sincerely,



Glen J. Torcivia

RESOLUTION NO. 2024-__

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA ADOPTING A POLICY FOR REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS INCURRED BY TOWN OFFICIALS, ADVISORY BOARD MEMBERS AND EMPLOYEES IN SUCCESSFULLY DEFENDING ETHICS COMPLAINTS.

WHEREAS, from time to time municipal public officials, advisory board members and employees are required to retain the services of a private attorney to defend against complaints brought pursuant to the State Code of Ethics or the Palm Beach County Code of Ethics; and

WHEREAS, numerous municipalities and Palm Beach County have adopted policies authorizing reimbursement of attorneys' fees and costs incurred in successfully defending ethics complaints filed against public officials, advisory board members and employees; and

WHEREAS, the Town Council desires to adopt a reimbursement policy for its public officials, advisory board members and employees; and

WHEREAS, the Town Council has determined that such reimbursement policy serves a valid public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA that:

SECTION 1. The foregoing recitals are hereby affirmed and ratified.

SECTION 2. The Town Council hereby adopts the reimbursement policy attached to this resolution as Exhibit A.

SECTION 3. This Resolution shall become effective immediately upon adoption.

Councilmember _____ offered the foregoing Resolution. Councilmember _____ seconded the Motion, and upon being put to a vote, the vote was as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
ANITA KANE, MAYOR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MARGARET HERZOG, VICE MAYOR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ROBERT SHORR, COUNCIL MEMBER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LAURA DANOWSKI, COUNCIL MEMBER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PHILLIS MANIGLIA, COUNCIL MEMBER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES,
FLORIDA, THIS __ DAY OF _____ 2024.**

TOWN OF LOXAHATCHEE GROVES, FLORIDA

ATTEST:

Mayor Anita Kane

Town Clerk

Vice Mayor Margaret Herzog

APPROVED AS TO LEGAL FORM:

Councilmember Robert Shorr

Office of the Town Attorney

Councilmember Laura Danowski

Councilmember Phillis Maniglia

EXHIBIT A

REIMBURSEMENT POLICY FOR DEFENDING ETHICS COMPLAINTS

AUTHORITY

This Reimbursement Policy is authorized by Resolution No. 2024-__ POLICY

STATEMENT

It is the policy of the Town Council to have a method in place for processing requests for reimbursement of attorney's fees and costs expended in successfully defending ethics complaints. This policy applies to present and former Town public officials, employees, agents and board appointees.

PURPOSE

To establish a policy for reimbursement of present and former Town public officials, advisory board members, employees, and agents for reasonable attorneys' fees and costs incurred in successfully defending or prevailing in an action concerning the Florida Code of Ethics and the Palm Beach County Code of Ethics. This policy is intended to apply prospectively.

SECTION 1. DEFINITIONS

- A. **Reasonable Attorney's Fees** shall mean fees earned by an attorney or attorneys licensed to practice law in the State of Florida, based on the customary hourly rate charged in Palm Beach County Florida, for similar work performed by private non-appointed attorneys within the County.

- B. **Successfully Defend or Prevail** shall mean the dismissal any or all counts, charges, and/or allegations regardless of the reason; the finding of not guilty; a verdict in favor of the persons covered herein; or a letter of instruction issued in lieu of the finding of a violation. A failure to successfully defend or prevail against one or more counts, charges and/or allegations shall not affect the application of the policy to other counts, charges and/or allegations which were successfully defended or against which the officer or employee prevailed.

SECTION 2. REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS

Subject to Section 6, the Town Council shall reimburse present and former Town officials, public officers, employees and agents, including appointees to boards and committees, for the reasonable attorney's fees and costs incurred by them after successfully defending or prevailing in actions concerning the Florida Code of Ethics, chapter 112, part III, *Florida Statutes*, or the Palm Beach County Code of Ethics, as either may be amended from time to time provided that such actions arose out of and in connection with their official duties and serves a public purpose. The decision to make payment shall be subject to final approval by the Town Council and appropriate budget allocation.

SECTION 3. REQUEST FOR REIMBURSEMENT

Any person who believes that he or she is entitled to payment for reasonable attorney's fees and costs pursuant to the provisions of this policy shall first notify the Town through its Attorney in writing, within ten (10) days of retaining private counsel. Notification shall include the reason for retention of the private attorney and shall include a copy of the fee agreement or engagement letter. Thereafter, should fees and costs exceed \$10,000, such person shall immediately notify the Town Attorney in writing that the threshold has been exceeded and shall establish good cause therefore.

At the conclusion of the matter, the person requesting reimbursement shall file a written request for reimbursement of such fees or costs with the Town Attorney. This request shall set forth the following information:

- A. The name and current address of the person making the request;
- B. A description of the entity that conducted the investigation or proceeding;
- C. Case number or file number, if known or available;
- D. A description of each count, charge, or allegation made or investigated;
- E. The date(s) that the incidents are alleged to have occurred;
- F. The person's office or position of employment with the Town on the dates described in paragraph E above;
- G. The reasons why such person believes that the request meets the criteria set forth in this policy, and reasons why his or her fees and costs should be reimbursed by the Town;
- H. The name, address and telephone number of the attorney or attorneys who represented such person against the counts, charges or allegations described in paragraph D above;
- I. A copy of the fee arrangement or agreement between the person and his or her attorney, the amount of attorney's fees and costs paid for defense against the counts, charges, or allegations described in paragraph D above; and
- J. Such other information as the Town Council or the Town Attorney may reasonably require.

Commented [EL1]: Do they need to submit invoices and proof of payment?

SECTION 4. NOTICE

The Town Council shall be advised by the Town Attorney of receipt of a written request for reimbursement of attorney's fees and costs, as set forth in Section 3 above. The Town Attorney may request such additional relevant information from the applicant as deemed necessary to a full evaluation of the claim.

SECTION 5. INSURANCE

Prior to presenting any request for reimbursement of attorney's fees and costs, the Town Attorney shall determine whether coverage for such amounts is afforded by any policy of insurance carried by the Town. Only those sums not paid by any policy of insurance carried by the Town shall be presented to Council.

Commented [EL2]: Would the Town Attorney do this or request this information from Town staff? If Town staff, is there a particular position?

SECTION 6. DISCIPLINE AND TERMINATION PROCEEDINGS

This policy does not address or pertain to employee discipline or termination proceedings. In the event such discipline or termination proceedings occur concurrently with the issues or proceedings described above, such discipline or termination proceedings shall not affect the application of this policy to the above described non-discipline or non-termination issues or proceedings.

SECTION 7. RIGHT TO REPRESENTATION FOR OFFICIAL DUTIES

This policy is in addition to and is not intended to replace all common law rights of public officials and employees to legal representation at the public expense for litigation arising out of the performance of their official duties while serving a public purpose.

SECTION 8. APPLICABILITY TO PROCEEDINGS FILED PRIOR TO EFFECTIVE DATE

This policy shall apply to alleged ethics violations filed in any judicial or administrative tribunal on or after the date of adoption of this Policy.

TOWN OF LOXAHATCHEE GROVES

155 F Road Loxahatchee Groves, FL 33470



MEMORANDUM

TO: Town Council of the Town of Loxahatchee Groves

FROM: Francine Ramaglia, Town Manager

DATE: May 7, 2024

SUBJECT: Summary of Pending Development Matters and Potential Revisions to the ULDC

Background

The Town Council has requested a report summarizing pending and potential development projects within the Town. This report includes the requested summary, in addition to an update on the EAR-based amendments to the Comprehensive Plan, potential revisions to the Unified Land Development Code (ULDC), and tree mitigation.

EAR-Based Amendments to the Comprehensive Plan

The proposed EAR-based amendments to the comprehensive plan were submitted to the Florida Department of Commerce (FDC) and other required reviewing agencies on February 12, 2024. Although the Town received comments from several agencies, there were no objections to the proposed amendments. The following agencies submitted comments: FDC; Treasure Coast Regional Planning Council (TCRPC); South Florida Water Management District (SFWMD); Florida Department of Transportation (FDOT) District 4; and the Palm Beach County School District.

The second public hearing to consider adoption of the amendments must be held within 180 days of the Town's receipt of the FDC Objections, Recommendations and Comments (ORC) report dated April 12, 2024.

If requested by Town Council, staff will schedule a workshop to discuss the comments received from the reviewing agencies and the need for further amendments to the comprehensive plan prior to consideration at second reading.

Development Applications and Development Review

Pending Planning and Zoning Applications:

GTC Hotel and Town Commons (MUPD Amendment and Site Plan Approvals)
444/556 B Road (Comprehensive Plan Amendment)
13771 Okeechobee Blvd.(Residential Enterprise)
14056 Okeechobee Blvd. (Agricultural Use)
16169 Southern Blvd. (Future Land Use Amendment, Rezoning and Site Plan)
13538 Okeechobee Blvd. (Historical Legacy)
13961 Okeechobee Blvd. (Vested Rights)

Approved Projects:

Staff is in the process of compiling and mapping all of the projects approved by Palm Beach County (i.e. prior to 2010) and the Town along both the Okeechobee Boulevard and Southern Boulevard corridors. Once compiled, the results will be made available for review.

Tree Mitigation

Pending Applications:

13710 Okeechobee Blvd.
15864 44th Street North
1742 A Road
14563 North Road
16169 Southern Boulevard

Approved Permits, Waivers, and Exemptions:

12918 Marcella Blvd.
15211 Okeechobee Boulevard

Potential Revisions to the ULDC

Comprehensive Plan and Zoning:

ULDC amendments necessary to implement the comprehensive plan.
Clarification/revision of permitted uses in the AR zoning district.
Establishment of an Equestrian PUD.

Access, Easements, and Traffic Standards:

Revision of code sections related to ingress and egress easements.
Addition of code revisions related to abandonment and relocation of conservation easements.
Establishment of Townwide traffic standards.

Accessory Structures:

Accessory Dwelling Units.

Revision of code sections related to recreational vehicles.

Non-conformities and Historical Legacy:

Repeal of the historical legacy provision.

Revision of code sections related to legal non-conforming uses, structures, and lots.

Addition of code sections governing the recognition of unrecorded plats.

Landscaping and Vegetation:

Revision of code sections related to vegetation removal.

Revision of code sections related to landscaping.

Livestock and Livestock Waste:

Addition of code section related to livestock waste best management practices.

Revision of code sections related to the keeping of livestock.

Other:

Revision of code sections related to signs.

Ordinances to implement Agritourism Committee recommendations.

Revision of code sections related to special events and special uses.