TOWN OF CINCO BAYOU
SPECIAL COUNCIL MEETING
FEBRUARY 6, 1990

SILENT PRAYER

PLEDGE OF ALLEGIANCE TO THE FLAG

ROLL CALL Present: Mayor Laginess
Councilman Broxson
Councilwoman Buchanan
Councilwoman Dumka
Councilman Gage
Councilman Skelly

Also Present: Attorney McInnis, Haskell Cartwright, Pete Smith, Secretary Dole, Michele Ford, Bruce Rolfsen

Public Hearing - Ordinance No. 136 - First reading of an ordinance establishing a Code Enforcement Board for the Town. Attorney McInnis read Ordinance No. 136 by title only. Councilman Gage made a motion to approve the first reading of Ordinance No. 136, seconded by Councilwoman Buchanan. The motion was unanimously approved on a roll call vote.

COUNCIL AS COMMITTEE MEETING

REGULAR BUSINESS

1. Minutes - January 2 and January 9, 1990 - Councilman Gage made a motion to accept the minutes of the January 2 and January 9, 1990, meetings (agenda item 1) and the January Financial report, (agenda item 2) and to place these agenda items on the Consent Agenda, seconded by Councilwoman Buchanan. The motion was unanimously approved.

2. Financial Report - January 1990. See item 1.

3. Environmental Waste Recycling - Mr Schnitzius was not present.

4. AMSEC Contract - Mayor Laginess advised the Council that AMSEC had inadvertently not included the new minimum wage increase in the new contract proposal. The increase will amount to $ 55.00 per month resulting in a monthly charge for patrol services of $1,150.00 effective April 1, 1990. Councilman Skelly made a motion to approve the AMSEC contract and to place this item on the Consent Agenda, seconded by Councilman Broxson. The motion was unanimously approved.

5. Proposed Bridge Authority - Mr. Patrick asked to have this item postponed until the next Council meeting.

6. Town Hall Phone System - Councilman Gage stated that three updated bids have been received for the phone system; CENTEL, $2,350.00; Independent Telephone Services, $1,979.20; Data & Electronics Services, Inc., $1,825.55. Councilman Gage asked to have this item tabled until next week's Council meeting to allow him to check the references of each bidder.

7. Old Town Hall Appraisal - Mr. Pete Smith, American Realty, presented an "Opinion of Value" for the old Town Hall building on Kelly Avenue indicating a total value of $77,000 for the building and the adjacent vacant lot. Attorney McInnis will review Ordinance No. 132 to determine if a certified appraisal is necessary to sell the property.

COUNCILMEMBERS REPORTS/COMMENTS

Councilwoman Buchanan asked if any decision had been made as to the use of the Town Hall. Mayor Laginess stated that it was only being used for civic type functions at the present time.

Councilwoman Dumka had these comments:

1. Asked that the Council consider having one meeting a month and to place this item on the agenda for next week.
2. Asked the Council to consider obtaining medical insurance for the Town's employees. The Council agreed to make this a priority item. Mayor Laginess will ask the Town Manager to obtain facts and figures.

Councilman Skelly had these comments:

1. Agreed with Councilwoman Dumka that the number of council meetings could be reduced and reinforced the need for medical insurance
2. Expressed concern about the status of the crosswalk at Yacht Club Drive and Eglin Parkway since there are children who must cross Eglin Parkway and asked that the Town Manager contact the Department of Transportation on this matter.

PUBLIC REQUESTS WILL BE HEARD AT THIS TIME - None

COMMITTEE REPORTS

1. Administrative Committee - None
2. Finance & Budget Committee - None
3. Comprehensive Plan Committee - None

CORRESPONDENCE

1. Letter, Supervisor of Elections - Councilman Gage commented that using the Town Hall as the polling place for another precinct fits in well with the purpose of the building.
2. Letter, Warner Cable - Rate Increase - No action.

TOWN MANAGER'S REPORT - None

MAYOR'S ANNOUNCEMENTS - None

There being no further business, the meeting was adjourned at 6:40 PM.

Mayor

ATTEST:

Town Manager/Clerk

NOTE: A mechanical recording has been made of the foregoing proceedings of which these minutes are a part and is on file in the office of the Town Manager/Clerk.

ORDINANCE NO. 136

AN ORDINANCE OF THE TOWN OF CINCO BAYOU, FLORIDA CREATING A CODE ENFORCEMENT BOARD; PROVIDING FOR INTENT; PROVIDING FOR ESTABLISHMENT; PROVIDING FOR ORGANIZATION; PROVIDING FOR JURISDICTION; PROVIDING ENFORCEMENT PROCEDURES; PROVIDING FOR CONDUCT OF HEARING; PROVIDING FOR POWERS OF THE CODE ENFORCEMENT BOARD; PROVIDING FOR NOTICES; PROVIDING FOR APPEALS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CINCO BAYOU, FLORIDA, AS FOLLOWS:

SECTION 1. AUTHORITY. The authority for the enactment of this ordinance is Section 162.03(1), Florida Statutes.

SECTION 2. INTENT AND JURISDICTION. It is the intent of this ordinance to promote, protect, and improve the health, safety, and welfare of the citizens of the Town by authorizing the creation of an administrative board with authority to impose administrative fines and other non-criminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in the Town, where a pending or repeated violation continues to exist. Except as otherwise provided by law, the code enforcement board has jurisdiction over violations of any Town ordinance or Code.

SECTION 3. DEFINITIONS. The following words, terms and phrases when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A. Code Inspector. Means any authorized agent or employee of the Town whose duty includes ensuring compliance with the codes and ordinances of Cinco Bayou, Florida.

B. Repeat Violation. Means a violation of a provision of a code or ordinance by a person whom the code enforcement board has previously found to have violated the same provision within five (5) years prior to the violation.

SECTION 4. ESTABLISHMENT. There is hereby created a Code Enforcement Board.

SECTION 5. ORGANIZATION.

(a) The code enforcement board shall be composed of five (5) members appointed by the Town Council.

(b) Members of the code enforcement board shall be residents of the Town. Any resident of the Town who is related within the immediate family to any member of the Cinco Bayou Town Council shall not be qualified to serve on the board. For the purposes of this ordinance, immediate family is defined as the parent(s), spouse or child(ren) of a member of the Town Council. Appointments shall be made in accordance with applicable law and ordinances on the basis of experience or interest in the subject matter jurisdiction of the code enforcement board. The membership of the code enforcement board shall, whenever possible, include an architect, a businessman, an engineer, a general contractor, a subcontractor, and a realtor.

(c) The initial appointments to the code enforcement board shall be for the following terms:

1. One (1) member shall be appointed for a term of one (1) year.

2. Two (2) members shall be appointed for a term of two (2) years each.

3. Two (2) members shall be appointed for a term of three (3) years each.

Thereafter, any appointment shall be for a term of three (3) years.

(d) A member may be reappointed upon approval of the Town Council.

(e) An appointment to fill any vacancy on the code enforcement board shall be for the remainder of the unexpired term of office. If any member fails to attend two (2) of three (3) successive meetings without cause and without prior approval of the Chairman, the code enforcement board shall declare the member's office vacant, and the Town Council shall promptly fill such vacancy.

(f) The members shall serve in accordance with ordinances of the Town and may be suspended and removed for cause by a majority vote of the Town Council.

(g) The members of the code enforcement board shall elect a Chairman, who shall be a voting member, from among the members of the board. The presence of three (3) or more members shall constitute a quorum. Members shall serve without compensation, but may be reimbursed for such travel, mileage and per diem expenses as may be authorized by the Town Council or as are otherwise provided by law.

(h) The Town Attorney shall either be counsel to the code enforcement board or shall represent the Town by presenting cases before the enforcement board, but in no case shall the Town Attorney serve in both capacities.

SECTION 6. <u>ENFORCEMENT PROCEDURE.</u>

(a) It shall the duty of the code inspector to initiate enforcement proceedings of the various codes and ordinances; however, no member of the code enforcement board shall have the power to initiate such enforcement proceedings.

(b) Except as provided in Subsection (c), if a violation of the code is found, the code inspector shall first notify the alleged violator and give him a reasonable time within which to correct the violation. Should the violation continue beyond that time specified for correction, the code inspector shall notify the code enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed as provided in s. 11 to the violator. At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in s. 11. If the violation is corrected and then reoccurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the code enforcement board, even if the violation has been corrected prior to the board hearing, and the notice shall so state.

(c) If a repeat violation is found, the code inspector shall notify the violator, but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify the code enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to s. 11. The case may be presented to the code enforcement board, even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state.

SECTION 7. CONDUCT OF HEARING.

(a) Upon request of the code inspector, or at such other times as may be necessary, the Chairman of the code enforcement board may call a hearing of the board; a hearing may also be called by written notice signed by at least two (2) members of the board. Minutes shall be kept of all hearings by the code enforcement board, and all hearings and proceedings shall be open to the public. The Town Council shall provide clerical and administrative personnel as may be reasonably required by the code enforcement board for the proper performance of its duties.

(b) Each case before the code enforcement board shall be presented by the Town Attorney or by a member of the administrative staff of the Town Council.

(c) The code enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and from such other witnesses as may be called by the respective parties. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(d) Irrelevant, immaterial and unduly repetitive evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonable prudent individuals in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the State of Florida.

(e) Any member of the board, or the attorney representing the board, may inquire of any witness before the board. The alleged violator, or his attorney, and the person presenting the case for the Town shall be permitted to inquire of any witness before the board and shall be permitted to present brief opening and closing statements.

(f) At the hearing, the burden of proof shall be upon the person presenting the case for the Town to show, by a preponderance of the evidence, that a violation exists.

(g) At the conclusion of the hearing, the code enforcement board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an Order affording the proper relief consistent with powers granted to the board by the Florida Statutes, and by this article. The findings shall be by motion approved by majority of those members present and voting; provided, however, that at least three (3) members of the board must vote in order for the action to be official. The order shall be recited orally at the hearing and shall be reduced to writing and mailed to the alleged violator within ten (10) days after the hearing. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by such date. A certified copy of such order may be recorded in the public records of the County and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator, and if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the code enforcement board shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

SECTION 8. POWERS OF CODE ENFORCEMENT BOARD. The code enforcement board shall have the following enumerated powers:

(a) Adopt rules for the conduct of its hearings.

(b) Subpoena alleged violators and witnesses to its hearings, which subpoenas shall be served by the Okaloosa County Sheriff's Department.

(c) Subpoena evidence to its hearings.

(d) Take testimony under oath.

(e) Issue orders having the force of law, commanding whatever steps are necessary to bring a violation into compliance.

(f) Establish and levy fines, pursuant to the provisions of s.9 herein.

SECTION 9. POWERS OF CODE INSPECTOR. The code inspector shall have all authority and powers granted by this ordinance and by state law, or authorized to be granted by state law.

SECTION 10. ADMINISTRATIVE FINES; LIENS.

(a) The code enforcement board, upon notification by sworn affidavit of the code inspector that an order of the code enforcement board has not been complied with by the set time or, upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the enforcement board for compliance or, in the case of a repeat violation, for each day the repeat violation continues past the date of notice to the violator of the repeat violation. If a finding of a violation or a repeat violation has been made as provided in this ordinance, a hearing shall not be necessary for the issuance of the order imposing the fine.

(b) A fine imposed pursuant to this section shall not exceed $250.00 per day for a first violation and shall not exceed $500.00 per day for a repeat violation. In determining the amount of the fine, if any, the code enforcement board shall consider the following factors;

(i) The gravity of the violation;

(ii) Any actions taken by the violator to correct the violation; and

(iii) Any previous violations committed by the violator.

The code enforcement board may reduce a fine imposed pursuant to this section.

(c) A certified copy of an order imposing a fine may be recorded in the public records of Okaloosa County, Florida and thereafter shall constitute a lien against the land upon which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the Circuit Court, such order may be enforced in the same manner as a court judgment, by the sheriffs of this state, including levy against the personal property, but such order shall not be deemed otherwise to be a court judgment, except for enforcement purposes. A fine imposed pursuant to this ordinance shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. After three (3) months from the filing of any such lien which remains unpaid, the enforcement board may authorize the Town Attorney to foreclose on the lien. No lien created pursuant to the provisions of this ordinance may be foreclosed on real property which is a homestead under Fla.Const.Art.X, Section 4.

SECTION 11. DURATION OF LIEN. No lien provided under the provisions of this ordinance shall continue for a period longer than twenty (20) years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of

competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The continuation of the lien affected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration, without notice, unless a notice of lis pendens is recorded.

SECTION 12. NOTICES.

(a) All notices required by this ordinance shall be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the Sheriff, code inspector, or other person designated by the Town Council; or by leaving the notice at the violator's usual place of residence with any person residing therein who is above fifteen (15) years of age and informing such person of the contents of the notice.

(b) In addition to providing notice as set forth in subsection (a), at the option of the code enforcement board, notice may also be served by publication or posting as follows:

(i) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in Okaloosa County, Florida. The newspaper shall meet such requirements as are prescribed under F.S.ch 50 for legal and official advertisements. Proof of publication shall be made as provided in F.S.ss.50.041 and 50.051.

(ii) If there is no newspaper of general circulation in the County, three (3) copies of such notice shall be posted for at least twenty-eight days in the three (3) different and conspicuous places in the County, one of which shall be at the front door of the County Courthouse Annex in Shalimar, Florida. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(iii) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under Subsection (a).

(c) Evidence that an attempt has been made to hand deliver or mail notice as provided in Subsection (a), together with proof of publication or posting as provided in Subsection (b), shall be sufficient to show that the notice requirements of this ordinance have been met, without regard to whether or not the alleged violator actually received such notice.

SECTION 13. APPEALS. An aggrieved party, including the Town Council, may appeal a final administrative order of the code enforcement board to the circuit court of the first judicial circuit in and for Okaloosa County, Florida. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the code enforcement board. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

SECTION 14. ORDINANCE SUPPLEMENTAL. It is the legislative intent of this ordinance to provide an additional or supplemental means of obtaining compliance with codes. Nothing contained in this ordinance shall prohibit the Town Council from enforcing its codes by any other means.

SECTION 15. SEVERABILITY. Each separate provision of this ordinance is deemed independent of all other provisions herein so that if any portion or provision of this ordinance is declared

invalid, all other provisions thereof shall remain valid and enforceable.

SECTION 16. EFFECTIVE DATE. This ordinance shall become effective upon its adoption by the Town Council and signature of the Mayor.

ADOPTED this 13th day of February, 1990.

BY: Charles R Laginess
Charles R. Laginess
MAYOR

ATTEST:

Albert S. Borchik, Jr.
Town Manager/Clerk

Patricia M. Hollarn

Okaloosa County Supervisor of Elections

RECEIVED 1/16/90 NBB cc

January 15, 1990

Town of Cinco Bayou
10 Yacht Club Drive
Ft Walton Bch FL 32548

Gentlemen:

This is to respectfully request the use of your new town hall for a polling place not only for your own Precinct #27, but also for nearby Precinct #28 (Garniers Beach area) across the bayou. I have visited your beautiful new facility and talked with both Judy and Al, and trust you will favorably consider my request.

Florida law permits multiple precincts using the same polling place and we already do it in municipal elections here in Okaloosa County. I will provide separate books and pollworkers, of course, and work out all details to your satisfaction.

Precinct #28 has been very difficult to serve properly,as they have no public facility within its boundaries. Using the empty stores in Mariner Plaza has caused great hardship on the pollworkers and been very costly also. Its registration is slightly higher than Precinct #27, but turnout difference is only about 100.

As you are aware, reapportionment and redistricting will occur in 1991, and I feel sure there will be many changes in our precinct boundaries as well. Therefore, this does not have to be a long-term commitment, should there be any problem.

I look forward to hearing from you soon.

Sincerely yours,

Pat Hollarn

Patricia M. Hollarn
Supervisor of Elections

County Courthouse, Crestview, Florida 32536-3581 • (904) 682-2711 • (904) 729-1400

RECEIVED 1/22/90

Warner Cable Communications Inc.

784 North Beal Parkway, P.O. Box 2827, Fort Walton Beach, Florida 32549
904/862-0175 Serving Ft. Walton Beach, Crestview and Niceville

January 19, 1990

Mr. Charles R. Laginess
Mayor
Town of Cinco Bayou
10 Yacht Club Drive
Fort Walton Beach, FL 32548

Dear Mayor Laginess:

I am writing to inform you as a town official about our plans to adjust rates for cable television services. The rate adjustment will take place on March 1, 1990. It has been nineteen (19) months since our last increase in August, 1988. Basic cable service and discounted packages will increase. Premium services, additional outlets, remote controls and TV Guide will not increase. To the vast majority of our customers, this will result in an approximate 6.7% increase in their bill (less than the rate of inflation during this period of time).

Under the terms and conditions of our franchise we are required to pay to the town a percentage of our revenues as a franchise fee. Effective with the March statements we will set forth on the customer's monthly statement separately that portion of the bill attributable to the franchise fee. The itemization of the franchise fee was specifically contemplated by the Cable Communications Policy Act in Section 622 (e) which states as follows:

- A cable operator may designate that portion of a subscriber's bill attributable to the franchise fee as a separate item on the bill.

We have decided to separate this fee as it varies dramatically by municipality. On government reservations there is no franchise fee. In our other municipalities the fee can range from $.47 to $2.90 for a single customer in one month. No other costs fluctuate this much between municipalities.

This itemization of the franchise fee is not an additional increase. Rather it is the identification of a cost currently contained in the monthly fee for cable service.

We appreciate the concerns and questions that you and other representatives have raised in the past with respect to the itemization of the franchise fee and rate increases. If questioned by your constituency, please feel free to inform them your municipality is charging the lowest franchise fee required from Warner Cable. While no one including Warner Cable welcomes a rate increase, all businesses find it necessary to increase rates or prices in order to continue to provide the same level of service and product. We must emphasize this increase is necessary to continue to provide the level of customer service and diversity of entertainment that our customers have come to expect.

For your information we have attached a copy of the notice which will appear in our customer's February statements. Please pay close attention to this letter as it represents the notice your constituency will receive.

As always, if you have any questions regarding cable television, please feel free to contact me.

Sincerely,

Harry F. Sheraw
General Manager

HFS/lm

Atch

cc: Mr. Albert S. Borchik, Town Clerk
Council Members

Dear Customer:

Effective March 1, 1990 the rates for cable television service will be changed. Please see the schedule on the back of this letter. This will be the first increase in cable television rates since August, 1988. To the vast majority of our customers this will result in an approximate 6.7% increase in their bill (less than the rate of inflation during this time period).

We are very proud to have held our increase to below the rate of inflation in spite of two major cost increases to us.

- Program costs increased a phenomenal 111.3% during this nineteen month period. This increase resulted partially from adding new programming, but mostly from existing programmers dramatically raising their rates to us.

- We saw an 85.5% increase in the fee paid to the Federal Copyright Royalty Tribunal. This is a fee paid to sports figures, artists, producers, musicians, etc., for retransmitting their products (baseball games, movies, concerts, etc.) over cable television.

Fortunately an increasing number of customers have been taking our services. The extra revenue from these customers has made it possible to hold our overall increase to a substantially lower level.

Please note there will be a change in the format of your monthly statement. For the first time we will be itemizing the franchise fee as a separate item. This fee is paid to your municipality as a permit fee for doing business in the municipality.

While no one including Warner Cable welcomes a rate increase, all businesses find it necessary to increase rates or prices in order to continue to provide the same level of service and product. We must emphasize this increase is necessary to continue to provide the level of customer service and diversity of entertainment you have come to expect.

Original document is skewed

Our level of service during 1989 was recognized as one of the best in the state of Florida. Among our many accomplishments are the following:

- An average rating of 7.3 on a scale of one to ten on overall satisfaction as rated by you the customer.
- Awards statewide for best customer service and best technical programs.
- A national award for best community service program.

We commit to you to maintain these high standards in 1990 and even continue to improve.

MONTHLY SERVICE RATES
EFFECTIVE MARCH 1, 1990

(DOES NOT INCLUDE 6.5% SALES TAX OR MUNICIPAL FRANCHISE TAX WHICH VARIES BY COMMUNITY FROM 3% TO 5%)

SERVICE	RATE ($)
STANDARD CABLE	
Primary Outlet	15.75
Additional Outlet	4.00 ea.*
PREMIUM SERVICES	
Cinemax	10.95*
Disney	9.95*
HBO	10.95*
Movie Channel	10.95*
Showtime	10.95*
Additional Outlet (Incl. Std.)	6.95 ea.*
DISCOUNT PACKAGES	
Two premiums and remote control	36.95
Three premiums, remote control, TV Guide	44.95
Four premiums, remote control, TV Guide	51.95
Five premiums, remote control, TV Guide	57.95
MISCELLANEOUS	
Remote Control	3.95*
TV Guide	2.40*

*No increase over previous rates charged.

RECEIVED 2/6/90

ERA CIBN COMMERCIAL/INDUSTRIAL BROKER NETWORK

AMERICAN REALTY OF OKALOOSA COUNTY, INC.

OPINION OF VALUE

DATE: February 6, 1990

PROPERTY ADDRESS: 35 Kelly Avenue
Ft. Walton Beach, Florida

TO: Cinco Bayou Town Council

It is my professional opinion that the above-referenced property (including the adjoining 50' lot) should have a market value of approximately $77,000.

Timothy P. Smith, Manager
Commercial Division

1270 N. EGLIN PARKWAY, P.O. BOX 875 • SHALIMAR, FL 32579 • 904-651-2454 • FAX 904-651-5691
135 E. JOHN SIMS PARKWAY • NICEVILLE, FL 32578 • 904-678-1196 • FAX 904-678-0091
938 S. FERDON BLVD. • CRESTVIEW, FL 32536 • 904-651-5717 • 904-682-4822

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