

**TOWN OF CINCO BAYOU
SPECIAL COUNCIL MEETING
JUNE 7, 1993**

Mayor Laginess called the Special Cinco Bayou Town Council Meeting to order at 5:02 PM.

SILENT PRAYER

PLEDGE OF ALLEGIANCE TO THE FLAG

ROLL CALL Present: Mayor Laginess
 Councilwoman Balsley
 Councilman Broxson
 Councilman Gage
 Councilman Kendrick

Absent: Councilman Skelly

Also Present: Attorney McInnis

PUBLIC HEARING

1. Ordinance No. 154 - First reading of Ordinance No. 154, an Ordinance amending Section 1, Ordinance No. 153. Attorney McInnis read Ordinance No 154 by title only. Councilman Gage made a motion to accept the first reading of Ordinance No 154, seconded by Councilman Kendrick. The motion was unanimously approved.

There being no further business, the meeting adjourned at 5:04 PM.

Mayor

ATTEST:

Town Manager/Clerk

MOORE, KESSLER & MOORE
ATTORNEYS AT LAW

RECEIVED
6/2/93
MSB

JAMES E. MOORE
SIEGFRIED F. KESSLER
BERT MOORE

BRET A. MOORE
BART O. MOORE

102 BAYSHORE DRIVE
P. O. BOX 746
NICEVILLE, FLORIDA 32588

(904) 678-1121
FAX (904) 678-8327

June 1, 1993

Albert S. Borchik, Jr.
Town Manager/Clerk
Town of Cinco Bayou
10 Yacht Club Drive
Ft. Walton Beach, FL 32548-4436

Dear Sir:

I have been contacted by Powell Sanitation regarding certain actions taken by Cinco Bayou to prevent Powell Sanitation from lawfully operating its business within the town of Cinco Bayou. There is a great deal of concern, after a review of your ordinance and your charter, regarding the legal authority you have to regulate, in the manner you have so chosen, industrial "roll-off" garbage.

It is my understanding that your police powers are limited to the health, safety and welfare of the citizens of Cinco Bayou. Cinco Bayou has defined industrial pick-up in Subsection D of Ordinance 153, Sec. 3 as follows: "Disposal of solid waste or trash accomplished by the use of roll-off containers requested by a customer or required for certain projects by the contractor."

Nowhere in this definition is any discussion of putrefication. No necessity is shown in your ordinance as to why that "roll-off" needs to be specifically dealt with from a health, safety and welfare standpoint.

Furthermore, it is a very unfair situation in that the municipality sets residential and commercial rates but not industrial rates, leaving the latter solely to be negotiated between the Contractor and the Customer. Given that the Contractor has been granted an exclusive franchise, the customer's ability to effectively negotiate is highly doubtful; in reality, the Contractor is in a position to present a take it or leave it deal which the Customer has no choice but to accept. By no stretch of the imagination does this set up meet the expressed purpose of regulation by the municipality to achieve a reasonable rate for the customer and a reasonable profit to the Contractor. Any "regulation" under the current ordinance is illusory.

Finally, the ordinance does not exclude individuals from their own removal nor is there any regulation of dump trucks which can haul the same material as industrial waste; only the roll-offs are regulated. Such treatment of the roll-offs seems to be an unfair and discriminatory restraint of trade.

Could you please provide some further justification and/or legal authority for your position? Be advised that Powell Sanitation considers restraint in trade to be of the utmost importance and has taken major efforts to prevent restraint of trade; actions in Federal Court in which attorney fees are to be paid by the city have even been considered. We look forward to your response.

Sincerely,


Bert Moore

BM/bls

The City of Destin



Post Office Box 399 Destin, Florida 32540 (904) 837-4242 FAX (904) 837-3267

May 27, 1993

The Honorable Charles R. Laginess
City of Cinco Bayou
284 Kidd Street
Ft. Walton Beach, FL 32548

Dear Mayor Laginess:

The City of Destin is pleased to host the summer meeting of the Okaloosa County League of Cities scheduled for Thursday, June 17, 1993.

The dinner meeting will be held at the Indian Bayou Country Club in Destin. There will be a cash bar from 6:00 p.m. to 7:00 p.m. with dinner at 7:00 p.m. The dinner will be stuffed shrimp with vegetable, tossed salad, coffee/tea and dessert for \$25.23.

Following the dinner will be a guest speaker, to be announced.

Please advise me, no later than June 9th, of the number attending from your municipality.

We look forward to seeing you.

Sincerely,

THE CITY OF DESTIN

Lee Garrett

Lee Garrett
City Clerk

PLEASE LET DEBBIE KNOW IF YOU PLAN TO ATTEND.

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Post-It™ brand fax transmittal memo 7671		# of pages	1
To	Mr. Borchik	From	Mary Tinsley
Co.	Cinco Bayou	Co.	City of Destin
Dept.	City Manager	Phone #	837 4242
Fax #	244 9188	Fax #	837 3267

TOTAL P.01