

**FINAL MINUTES  
CITY OF INDIAN ROCKS BEACH  
REGULAR CITY COMMISSION MEETING**

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The Indian Rocks Beach Regular City Commission Meeting was held on **TUESDAY, JUNE 11, 2019**, in the City Commission Chambers, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida.

Mayor-Commissioner Kennedy called the meeting to order at 7:00 p.m., followed by the Pledge of Allegiance and ten seconds of silence.

**PRESENT:**

Mayor-Commissioner Joanne Moston Kennedy, Vice Mayor-Commissioner Nick Palomba, Commissioner Diane Flagg, Commissioner Phillip J. Hanna, and Commissioner Ed Hoofnagle.

**OTHERS PRESENT:**

City Attorney Randy D. Mora, City Clerk Deanne B. O'Reilly, MMC, and Public Services Director Dean A. Scharmen.

**ABSENT:**

City Manager Brently Gregg Mims.

*(To provide continuity for research, items are listed in agenda order although not necessarily discussed in that order.)*

**1A. REPORTS OF THE PINELLAS COUNTY SHERIFF'S OFFICE:**

The Pinellas County Sheriff's Office (PCSO) presented the May 2019 Crime Analysis Report for the City of Indian Rocks Beach.

**2. PUBLIC COMMENTS.** None.

**3A. REPORT OF the City Attorney.**

**(1) ADA Website and Document Accessibility.**

This memorandum is intended to provide a summary concerning the legal issues governing the accessibility of the City's website and the content it hosts, pursuant to the Americans with Disabilities Act (the "ADA"). The memorandum also summarizes the City's direct efforts to make its website and content accessible.

**I. LEGAL BACKGROUND**

**A. LEGAL REQUIREMENTS AND TRENDS**

Local governments have legal responsibilities and exposure pursuant to Title II of the ADA.

The ADA covers three main types of discrimination, each of which is addressed in of the statute's three main subchapters: Title I prohibits discrimination in private employment; Title II prohibits discrimination by public entities (state or local governments); and Title III prohibits discrimination by a 'place of public accommodation,' which is a private entity that offers commercial services to the public.<sup>1</sup> Title II provides that no person with a qualified disability shall "be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."<sup>2</sup>

To state a claim under Title II, a plaintiff must establish: "that he is a 'qualified individual with a disability;' (2) that he was 'excluded from participation in or . . . denied the benefits of the services, programs, or activities of a public entity' or otherwise 'discriminated [against] by such entity;' (3) 'by reason of such disability.'"<sup>3</sup> Section 504 of the Rehabilitation Act has the same requirements as applied to programs or activities receiving federal financial assistance.<sup>4</sup>

More recently, there has been a flurry of awareness and litigation concerning the accessibility of public entities' websites and hosted content. By way of example, in 2017, there were at least 814 ADA Title III website accessibility lawsuits in federal court.<sup>5</sup> By 2018, that number ballooned to at least 2,258.<sup>6</sup> A private litigant who brings suit can recover injunctive relief, attorneys' fees and costs.

In Florida, private litigants have brought suit over the accessibility and hosted content of websites for counties, municipalities, special districts, and other divisions of government. In this region plaintiffs have sued Manatee County, Hillsborough County, Polk County, Pinellas County, Longboat Key, Clearwater, Largo, and Belleair.

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<sup>1</sup> *A.L. by & through D.L. v. Walt Disney Parks & Resorts US, Inc.*, 900 F.3d 1270, 1289 (11th Cir 2018)

<sup>2</sup> 42 U.S.C. § 12132

<sup>3</sup>  
*Shots v. Cates*, 256 F.3d 1077, 1079 (11th Cir. 2001)

<sup>4</sup> 29 U.S.C. § 794; *see also J.S., III by & through J.S. Jr. v. Houston Cty. Bd. of Educ.*, 877 F.3d 979, 985 (11th Cir. 2017)

<sup>5</sup> *See Seyfarth Shaw LLP, ADA Title III Website Accessibility Lawsuits in Federal Court* (2019)

<sup>6</sup> *Id.*

## **B. FEDERAL GUIDANCE, OR LACK THEREOF**

The general consensus is that there is a lack of guidance on Title claims in the website context. There is no statute, regulation or administrative order setting out in specific detail a uniform method for achieving accessibility compliance.

Even so, the Department of Justice has provided some insights, stating:

Although the language of the ADA does not explicitly mention the Internet, the Department has taken the position that Title II covers Internet Web site access. Public entities that choose to provide services through web-based applications (e.g., renewing library books or driver's licenses) or that communicate with their constituents or provide information through the Internet must ensure that individuals with disabilities have equal access to such services or information, unless doing so would result in an undue financial and administrative burden or a fundamental alteration in the nature of the programs, services, or activities being offered. . . . [A]n agency with an inaccessible Web site may also meet its obligations by providing an alternative accessible way for citizens to use the programs or services, such as a staffed telephone information line.<sup>7</sup>

Public entities must also "make reasonable modification in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity."<sup>8</sup> They must also "take appropriate steps to ensure that communication with applicable, participants, members of the public and companions with disabilities are as effective as communications with others."<sup>9</sup> As a result, entities are required to "furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities. . . . an equal opportunity to participate in, and enjoy the benefit of, a service, program, or activity of a public entity."<sup>10</sup>

Though public entities have a general responsibility to make their data accessible, there are no legislative or administrative guidelines with the force of law that govern these responsibilities. In this vacuum, the courts and private sector have turned to the World Wide Web Consortium ("W3C"), an international community that develops open standards with the aim of "lead[ing] the Web to its full potential."<sup>11</sup> The W3C has developed Web

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<sup>7</sup> 28 C.F.R. § Pt. 35, App. A.

<sup>8</sup> 28 C.F.R. § 35.130(b)(7)

<sup>9</sup> 28 C.F.R. § 35.160(a)(1)

<sup>10</sup> 28 C.F.R. § 35.160(b)(1)

<sup>11</sup> <http://www.w3.org/Consortium>

Content Accessibility Guidelines (the “WCAG”). The WCAG documents explain how to make web content more accessible to people with disabilities.<sup>12</sup> WCAG offers three compliance levels (A, AA, and AAA) in ascending order of comprehensiveness.

Some examples of WCAG recommendations to enhance compliance include optimizing Websites and PDFs for screen reader compatibility, improving color contrast and text resizing for those with low vision, including captions for audio content to assist the deaf and hard of hearing, and not using color alone to indicate content so as not to exclude the color blind.

## **II. CITY OF INDIAN ROCKS BEACH COMPLIANCE EFFORTS**

For the past several months City personnel have diligently been working to maximize the City’s compliance efforts without incurring an undue burden or fundamentally altering the City’s operations.

All noncompliant PDF’s have been removed from the website to mitigate a request for accommodation and potential lawsuits.

The website design has been modified to be compliant with ADA guidelines and accessibility issues (WCAG 2.1).

City personnel is currently remediating files such as the 2019 City Commission and Board/Commission Agendas and Minutes and other miscellaneous documents, so they comply with the new ADA guidelines.

## **III. STATUTORY REQUIREMENT FOR WEBSITE CONTENT**

### **Fla. Stat. §§ 166.241(3) & (5) Fiscal years, budgets, and budget amendments.-**

(3) The tentative budget must be posted on the municipality's official website at least 2 days before the budget hearing, held pursuant to s. 200.065 or other law, to consider such budget. The final adopted budget must be posted on the municipality's official website within 30 days after adoption.

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(5) If the governing body of a municipality amends the budget pursuant to paragraph (4c), the adopted amendment must be posted on the official website of the municipality within 5 days after adoption.

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### **Fla. Stat. §§ 218.32 Annual financial reports; local governmental entities.-**

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<sup>12</sup> <http://www.w3.org/WAI/standards-guidelines/wcag#intro>

(g) Each local governmental entity's website must provide a link to the department's website to view the entity's annual financial report submitted to the department pursuant to this section.

**Fla. Stat. § 668.6076 Public records status of e-mail addresses; agency website notice.-**

Any agency, as defined in s. 119.011, or legislative entity that operates a website and uses electronic mail shall post the following statement in a conspicuous location on its website: Under Florida law, e-mail addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

**Fla. Stat. §§ 166.021 Powers.-**

A contract between the governing body of a municipality or other entity engaged in economic development activities on behalf of the municipality and an economic agency's or entity's efforts on behalf of the municipality. By January 15, 2011, and annually thereafter, the municipality shall file a copy of the report with the Office of Economic and Demographic Research and post a copy of the report on the municipality's website.

A development agency must require the agency or entity receiving municipal funds to submit a report to the governing body of the municipality detailing how the municipal funds are spent and detailing the results of the economic development. *(Not applicable to Indian Rocks Beach)*

**Fla. Stat. §§ 175.061 (Firefighter Pension Board) Board of trustees; members; terms of office; meetings; legal entity; costs; attorney's fees.-**

For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter: (8a) The board of trustees shall: 1. Provide a detailed accounting report of its expenses for each fiscal year to the plan sponsor and the Department of Management Services and make the report available to each member of the plan and post the report on the board's website, if the board has a website. The report must include all administrative expenses that, for purposes of this subsection, are expenses relating to any legal counsel, actuary, plan administrator, and all other consultants, and all travel and other expenses paid to or on behalf of the members of the board of trustees or anyone else on behalf of the plan. *(Not applicable to Indian Rocks Beach)*

**Fla. Stat. §§ 185.05 (Police Officers Retirement Trust Fund) Board of trustees; members; terms of office; meetings; legal entity; costs; attorney's fees.-**

For any municipality, chapter plan, local law municipality, or local law plan under this chapter: (8a) The board of trustees shall: 1. Provide a detailed accounting report of its expenses for each fiscal year to the plan sponsor and the Department of Management Services and make the report available to each member of the plan and post the report on

the board's website, if the board has a website. The report must include all administrative expenses that, for purposes of this subsection, are expenses relating to any legal counsel, actuary, plan administrator, and all other consultants, and all travel and other expenses paid to or on behalf of the members of the board of trustees or anyone else on behalf of the plan. *(Not applicable to Indian Rocks Beach)*

**Fla. Stat. § 316.0083 Mark Wandall Traffic Safety Program; administration; report.-**

(1)a. For purposes of administering this section, the department, a county, or a municipality may authorize a traffic infraction enforcement officer under s. 316.640 to issue a traffic citation for a violation of s. 316.074(l) or s. 316.07 1)(c)1.

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c. Notwithstanding any other provision of law, a person who receives a notice of violation under this section may request a hearing within 60 days following the notification of violation or pay the penalty pursuant to the notice of violation, but a payment or fee may not be required before the hearing requested by the person. The notice of violation must be accompanied by, or direct the person to a website that provides, information on the person's right to request a hearing and on all court costs related thereto and a form to request a hearing. As used in this subparagraph, the term "person" includes a natural person, registered owner or co-owner of a motor vehicle, or person identified on an affidavit as having care, custody, or control of the motor vehicle at the time of the violation. *(Not applicable to Indian Rocks Beach)*

City Attorney Mora reviewed the above memorandum with the City Commission and addressed the concerns of the City Commission.

**3B. REPORT OF the City Manager.**

**(1) Capital Projects Update.**

Public Services Director Scharmen provided an update on the following Capital Projects:

- FY2019 Stormwater Drainage Project.
- FY2019 Streets Project.
- Museum Enhancement and Parking Expanding Project

**3C. REPORTS OF the City Commission.**

**COMMISSIONER FLAGG:**

- Reminded everyone that the Visioning Sessions kick off next Wednesday, June 19, 2019, from 5:00 to 7:00 p.m., in the Civic Auditorium, stating the public's input would be very valuable.

**COMMISSIONER HANNA:**

- Invited everyone to attend the Flag Day Ceremony on Friday, June 14, 2019, at noon, in the Civic Auditorium.

**VICE MAYOR-COMMISSIONER PALOMBA:**

- Stated there is a tremendous difference in the amount of standing water with the new drainage at 28<sup>th</sup> Avenue and he has received a lot positive feedback. He thanked the Public Services Department for their hard work.
- Stated the FY2020 Proposed Budget is out and encourages as much input from the public as possible.

**MAYOR-COMMISSIONER KENNEDY:**

- Announced the events and meetings of the City Commission and civic organizations.
- Stated *Bliss Victoria Magazine*, July/August 2019, Edition, has an article on the City's Plein Aire Cottage Artists.
- Stated the Florida League of Cities will be spotlighting the City of Indian Rocks Beach in their magazine, *Quality League of Cities*.

**4. ADDITIONS/DELETIONS.** None.

**5. CONSENT AGENDA:**

**A. APPROVAL of the May 14, 2019 Regular City Commission Meeting Minutes.**

**B. FINANCE AND BUDGET REVIEW COMMITTEE:**

- (1) **REAPPOINTING FRANK WATERS to the Finance and Budget Review Committee as a Regular Committee Member with a term expiring May 31, 2022.**
- (2) **APPOINTING JAMES ENGLISH to the Finance and Budget Review Committee as a regular committee member with a term expiring May 31, 2022, due to the expiration of term of Committee Member Rebecca Sacra.**

**C. PLANNING AND ZONING BOARD:**

- (1) **REAPPOINTING JOE MCCALL AND FREDERICK "RICK" MCFALL as regular board members to the Planning & Zoning Board with terms expiring May 31, 2021.**
- (2) **APPOINTING BETH SMITH as a regular board member to the Planning & Zoning Board with a term expiring May 31, 2021.**
- (3) **APPOINTING ADRIENNE DAUSES as first alternate board member to the Planning & Zoning Board with a term expiring May 31, 2021.**

City Attorney Mora read the Consent Agenda, consisting of Agenda Item Nos. 5A through 5C, by title only.

**MOTION MADE BY COMMISSIONER HOOFNAGLE, SECONDED BY COMMISSIONER FLAGG, TO APPROVE THE CONSENT AGENDA, CONSISTING OF AGENDA ITEM NOS. 5A THROUGH 5C. UNANIMOUS APPROVAL BY ACCLAMATION.**

**6. PUBLIC HEARINGS:** None.

7. **OTHER LEGISLATIVE MATTERS:** None.
8. **WORK SESSION ITEMS [DISCUSSION ONLY]:** None.
9. **OTHER BUSINESS.** None.
10. **ADJOURNMENT.**

***MOTION MADE BY VICE MAYOR-COMMISSIONER PALOMBA, SECONDED BY COMMISSIONER HOOFNAGLE, TO ADJOURN THE MEETING AT 7:38 P.M. UNANIMOUS APPROVAL BY ACCLAMATION.***

July 9, 2019  
Date Approved