

**RESOLUTION NO. 2012 - 040**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, ADOPTED PURSUANT TO SECTION 164.1052, FLORIDA STATUTES, DECLARING THE INTENT OF THE TOWN COUNCIL TO INITIATE THE CONFLICT RESOLUTION PROCEDURES SET FORTH IN CHAPTER 164, FLORIDA STATUTES; FINDING THAT A CONFLICT EXISTS WITH THE CITY OF PEMBROKE PINES, ARISING FROM THE CITY'S FAILURE TO PROVIDE PUBLIC RECORDS TO THE TOWN IN ACCORDANCE WITH CHAPTER 119, F.S.; FINDING THAT THE CITY HAS INTENTIONALLY AND WILLFULLY FAILED TO PROVIDE ALL OF ITS PUBLIC RECORDS TO THE TOWN, INCLUDING BUT NOT LIMITED TO NUMBERS 13, 14, AND 15 OF THE TOWN'S MARCH 22, 2012, RECORDS REQUEST; DIRECTING THE INTERIM TOWN ADMINISTRATOR TO PREPARE AND TO FORWARD A CERTIFIED COPY OF THIS RESOLUTION AND THE REQUIRED CERTIFIED LETTER TO THE CITY OF PEMBROKE PINES AND TO OTHER GOVERNMENTAL UNITS PURSUANT TO SECTION 164.1052, FLORIDA STATUTES; AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO TAKE ALL STEPS NECESSARY TO EFFECTUATE THIS RESOLUTION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on March 22, 2012, the Town of Southwest Ranches issued a Chapter 119, F.S., public records request to the City of Pembroke Pines, a copy of this request has been attached hereto and has been incorporated herein by reference as Exhibit "A"; and

**WHEREAS**, the City has taken the unique and novel position that certain records should not be considered public despite the fact that they have been made or received in the connection of official business; and

**WHEREAS**, the Town is well aware that certain records exist as the Town, itself, has copies of some of the records that the City refuses to produce; and

**WHEREAS**, in its attempt not to produce these records, the City has claimed that it is not required to do from so as a result of *Butler v. City of Hallandale Beach*, 68 So.3d 278 (2011) (hereinafter "Butler"); and

**WHEREAS**, in Butler, the City of Hallandale Beach filed a Declaratory Action against Michael Butler claiming that the Mayor's private e-mail list on her private computer was not a public record; and

**WHEREAS**, while the Court agreed that the e-mail list was not a public record, The City of Pembroke Pines is now attempting to take this decision one step further by now claiming that all content and materials sent, published, or received on private electronic devices should similarly not be considered public records; and

**WHEREAS**, even in Butler the material that the Mayor had disseminated was produced, just not the Mayor's private e-mail list; and

**WHEREAS**, the Town has spoken to the state's Attorney General's Office at length concerning this matter, and fully believes that the City of Pembroke Pines is inappropriately withholding this information; and

**WHEREAS**, if Pines is correct in its position, all municipal business could be conducted solely via private electronic devices to prevent any document from becoming public, which would completely defeat the purpose of the public records law; and

**WHEREAS**, the Town believes that the materials that the City is refusing to produce are public records, and are necessary for the Town to legally protect itself in the wake of certain decisions and actions taken by the City of Pembroke Pines; and

**WHEREAS**, as a direct result of Pembroke Pine's intentional actions of withholding records, including but not limited to, those responsive to numbers 13, 14, and 15, of the Town's public records request, the Town has been financially impacted; and

**WHEREAS**, Chapter 164, Florida Statutes, entitled the "Florida Governmental Conflicts Resolution Act," ("Act") provides that governmental entities in dispute must attempt to negotiate their differences pursuant to the procedures outlined in the Act prior to commencing litigation regarding the conflict; and

**WHEREAS**, Section 164.1052, Florida Statutes, requires the governing body of the government entity initiating the conflict resolution procedures to adopt a resolution expressing its intent to initiate such procedure; and

**WHEREAS**, this Resolution seeks to comply with the statutory requirements.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Southwest Ranches, Florida:

**Section 1.** The above referenced "WHEREAS" clauses are true and correct and are incorporated herein by reference.

**Section 2.** The Town Council of the Town of Southwest Ranches, Florida, hereby expresses its intent to initiate the conflict resolution procedure pursuant to section 164.1052, Florida Statutes, with the City of Pembroke Pines concerning the City of Pembroke Pine's failure to tender public records in accordance with Chapter 199, F.S. Specifically, the Town finds that the City of Pembroke Pines has willfully and intentionally refused to tender all of its public records, including but not limited to those records related to numbers 13, 14, and 15 of the Town's March 22, 2011 records request.

**Section 3.** The Town Council of the Town of Southwest Ranches finds that it has a conflict with the City of Pembroke Pines. The issues in conflict include those delineated in Section 2, above.

**Section 4.** The Town Council of the Town of Southwest Ranches, Florida, hereby directs the Town Administrator through coordination with the Town Attorney, to forward a certified copy of this Resolution, as well as the required Conflict Resolution Letter, to the City Manager of the City of Pembroke Pines, within five (5) days, by certified mail, return receipt requested, pursuant to Section 164.1052(1), Florida Statutes. The Conflict Resolution Letter shall include all items required by Section 164.1052(1), Florida Statutes, including without limitation:

- a. Description of the conflict between Southwest Ranches and the City of Pembroke Pines;
- b. List of governmental entities with which the Town has a conflict;
- c. The Town's justification for initiating the conflict resolution procedures of this Act;
- d. Suggestions as to which individuals should be in attendance at the Conflict Assessment Meeting.

The Town Administrator is directed to also send a copy of the letter to any other state, county or other local governmental entity that may be affected by the City

of Pembroke Pine's actions or by a settlement arising out of the Conflict Assessment Meeting, or whose interests may be substantially affected by the resolution of the conflict, or any other governmental entity the Town Administrator seems appropriate.

**Section 5.** The appropriate Town officials are hereby authorized and directed to take all steps necessary to effectuate this Resolution.

**Section 6.** All Resolutions or parts of Resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

**Section 7. Severability.** If any word, phrase, clause, sentence or section of this Ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

**Section 8. Effective Date.** This Resolution shall be effective immediately upon its adoption.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 12<sup>th</sup> day of April 2012, on a motion by Vice Mayor McKay and seconded by Council Member Jablonski.

Nelson	<u>YES</u>
McKay	<u>YES</u>
Breitkreuz	<u>YES</u>
Fisikelli	<u>YES</u>
Jablonski	<u>YES</u>


Ayes	<u>5</u>
Nays	<u>0</u>
Absent	<u>0</u>
Abstaining	<u>0</u>

  
Jeff Nelson, Mayor

ATTEST:

  
Erika Gonzalez-Santamaria, CMC, Town Clerk

Approved as to Form and Correctness:

  
Keith Poliakoff, Town Attorney  
ACTIVE: 8794057\_1



Certification

I certify this to be a true and correct copy of the record.  
WITNESSETH my hand and official seal of the Town of Southwest Ranches, Florida this 16<sup>th</sup> day of April 2012  
Town Clerk

