ORDINANCE NO. 08-2007

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 2, ARTICLE I, OF THE CODE OF ORDINANCES OF THE TOWN OF LAKE PARK PERTAINING TO TOWN ADMINISTRATION, TO AMEND ARTICLE I, TO CREATE NEW SECTION 2-4 TO BE ENTITLED "PROVISIONS FOR PROCESSING PUBLIC RECORDS REQUESTS"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, both Article 1, Section 24(a) of the Florida Constitution, and Chapter 119, F.S., commonly known as the "Public Records Act" ("Act"), provide a public right of access to any public record which is made or received in connection with the official business of any public body, officer, or employee; and

WHEREAS, Town staff has recommended that Town Commission adopt a procedure for processing public records requests in order to ensure compliance with the requirements of the Act; and

WHEREAS, the Town Commission has reviewed the recommendations of Town staff, and has determined that creating Section 2-4, of Chapter 2, Article I, pertaining to the processing of public records requests pursuant to the requirements of the Act is necessary to further the public's health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN

OF LAKE PARK, FLORIDA:

Section 1. The whereas clauses are incorporated herein as true and correct and as the findings of the Town Commission.

Section 2. Chapter 2, Article I, Section 2-4 of the Code of Ordinances of the Town of Lake Park, Florida is hereby created to read as follows:

Sec. 2-4. Procedures for processing public records requests.

(1) *Definitions.*

For the purpose of this section the following terms are defined:

a. *Clerk*- the Town Clerk of the Town of Lake Park, Florida
b. *Confidential or Sensitive Records* – Records which are presently provided by law to be confidential or which are prohibited from being inspected by the public by either general or special law.
c. *Extensive Use of Resources* – When the nature or volume of the public records requested to be inspected, examined, or copied requires the use of the town information technology resources and/or labor time required of clerical or supervisory employees exceed one half hour, the particular use of such resources is considered extensive.
d. *Other recipient*- a town employee of the Town of Lake Park, Florida other than the Town Clerk..
e. *Public Record* – All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.
f. *Requestor*- a person or entity which requests the inspection and/or copies of public records of the town.

(2) *Public records requests to be submitted to town clerk.* All requests for the inspection and/or copying of town public records should be submitted to the town clerk ("clerk") on the town's public records request form. As soon as is reasonably practicable after receipt of a records request, the clerk or other recipient of the request shall acknowledge the receipt of the request, either orally or in writing to the requestor, and shall confirm with the requestor whether the request is for records inspection only, or inspection and/or copies of the records.

(3) *Public records request forms.* Whenever a request for public records of the town is made pursuant to Chapter 119, Fla. Stat. (the "The Public Records Act" or the "Act") and is received by the town, the requestor shall be asked to complete the town public records request form, and the requestor shall be provided with such form. If the requestor refuses to execute the form, the town

shall still process the request, but may require additional information regarding the request in the nature and/or scope of the request is unclear.

(4) *Provision of the request to the town attorney or his/her designee.* If the clerk or other recipient deems it necessary or appropriate, the request shall be provided to the town attorney or his/her designee for review to determine if the request is an appropriate public records request under the Act and Florida law interpreting the requirements of the Act, and if any of the requested records are exempt from disclosure under the Act. If necessary, the town attorney shall review the records to be produced to determine whether any of the records are exempt from disclosure and require the non-production and/or redaction of any exempt information in accordance the requirements of the Act.

Examples of inappropriate public records requests, include but are not limited to, the following:

(1) A request that is in the form of an interrogatory or question requiring the town to provide written or oral answers or information which may or may not be derived from the town's public records, instead of a request for the actual production of public records; or is
(2) A request that asks the town to confirm or deny a fact or other matter concerning town business or information contained in a public records of the town; or is
(3) A request that the town produce a town employee to answer questions relating to public records, or information contained in the town's public records, or information concerning town business, or is
(4) A request that requires the town to create a document in order to respond to a request; or is
(5) A request that ask the town to format or reformat town records into a formant that the records are not regularly maintained in by the town, and to provide the records in a different formant as requested by the requestor; or is
(6) A request for personal or private e-mail stored in the town's computer system or in a town owned computer; or is
(7) A request that is illegible, unclear, vague, or is insufficient to identify the records requested, or cannot otherwise be understood by the clerk; or is
(8) A request for records that are statutorily exempt from disclosure under the Florida Public Records Act, Chapter 119, Fla. Stat, as amended, or under any other state or federal statute, law, rule, or regulation, as amended from time to time; or is
(9) A request that otherwise is inappropriate as determined by a court of competent jurisdiction.

(5) Administrative and other costs.
(a) Personnel *and administrative charges.* A special service charge shall be imposed when the nature or volume of the records to be inspected requires the extensive use of information technology resources or extensive clerical and/or supervisory personnel, or both. For purposes of this section "extensive use" means at least fifteen (15) minutes or more is required to locate, review for exempt and confidential information, copy and refile the requested records. Such charges shall be actually

based upon the labor (the hourly salary of the employee performing the task) and the computer costs incurred by the town. The town may also charge for a town employee (at the hourly salary of the employee) to sit with the requestor during the course of the inspection to safeguard and protect the town's records from being stolen or destroyed. All fees and charges associated with processing public records requests shall be established by resolution of the Town Commission in accordance with the requirements of Chapter 119. State sales tax will not be charged for a public records request. When the costs allowed to be imposed by Section 119.07 (4), Fla. Stat., that municipalities and other agencies subject to the requirements of the Act are increased, the fees provided herein shall be increased accordingly. 119.07(4), Fla. Stat. U.S. postage, commercial shipping carriers, or other costs incurred in the delivery of public records shall be included in the actual costs charged to the requestor.

(6) *Production of records.*
Notice of production and copying costs. After the clerk or other recipient has determined the estimated costs necessary to process the request, including but not limited to, the estimated costs for any required information technology resources, administrative and personnel resources, attorney's fees, photocopying and reproduction, and other costs allowable to be recovered by the town, the clerk or other recipient shall notify the requestor of the estimated costs of the production of the records (including the estimated number of hours to retrieve and review the records and the hourly rate for that service) and the estimated cost of the photocopies of the records.

(7) *Prepayment of estimated costs required.* Before town staff begins undertaking the research, retrieval and copying (if requested) of the records, the estimated total cost must be paid in advance by money order or cashier's check made payable to the "Town of Lake Park" and delivered to the town clerk's office. A requestor may inspect records without obtaining copies of the records. but a charge for any administrative time and/or information technology resources incurred for the retrieval of the records, and for a custodian to be present during the review of the records will still be charged, and that estimated cost must be paid in advance of the records inspection. If the actual costs and extensive use fees cannot be immediately determined due to the nature of the request, the town shall give an estimated cost for producing the records, and inform the requestor that the actual cost may vary, but will not exceed the original estimate by more than an additional 25%. If the requestor accepts the cost estimate, then the town clerk may fill the public records request. Once the records are ready, the clerk or other recipient shall notify the requestor of the cost and furnish the public records upon receipt of payment.

(8) *Cost shortfall* If the estimated costs prepaid by the requestor result in a shortfall such that the amount paid by the requestor is below the actual costs incurred by the town, the town shall issue an invoice to the requestor by regular U.S. mail for the balance due, which must be paid by the requestor within ten (10) days of the issuance of the invoice by the town, failing which the unpaid balance shall constitute a lien of the town on the requestor's real and personal property, and which claim of lien may be recorded by the town in the public records of Palm Beach County.

(9) *Refund.* If the estimated costs prepaid by the requestor are in excess of the actual costs incurred

by the town, the town will issue the requestor a refund within at least thirty (30) days of the town's determination of the amount of the excess charges and send the refund to the requestor by regular mail to the address given to the town by the requestor, or at the address of the requestor as determined by the records of the Property Appraiser of Palm Beach County.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 4. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Codification. The sections of the Ordinance may be made a part of the Town Code of Laws and Ordinances and may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 6. Effective Date. This Ordinance shall take effect immediately upon adoption.

Upon First Reading this 20 day of June, 2007, the foregoing Ordinance 08-2007, was offered by Commissioner Balius who moved its approval. The motion was seconded by Commissioner Osterman, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR PAUL CASTRO	X	
VICE MAYOR ED DALY	X	
COMMISSIONER CHUCK BALIUS	X	
COMMISSIONER JEFF CAREY	X	
COMMISSIONER PATRICIA OSTERMAN	X	

Upon Second Reading this 18 day of July, 2007, the foregoing Ordinance 08-2007, was offered by Commissioner Carey who moved its adoption. The motion was seconded by Commissioner Balius, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR PAUL CASTRO	X	
VICE MAYOR ED DALY	X	
COMMISSIONER CHUCK BALIUS	X	
COMMISSIONER JEFF CAREY	X	
COMMISSIONER PATRICIA OSTERMAN	X	

The Mayor thereupon declared Ordinance No. 08-2007 duly passed and adopted this 18 day of July, 2007.

TOWN OF LAKE PARK, FLORIDA

BY: _____
Mayor Paul Castro

ATTEST:

_____
Vivian Mendez
Town Clerk

TOWN OF LAKE PARK SEAL FLORIDA

Approved as to form and legal sufficiency:

_____
Thomas J. Baird, Town Attorney