



BROWARD OFFICE OF THE INSPECTOR GENERAL

MEMORANDUM

To: Honorable Geoffrey Jacobs, Mayor,
and Commissioners, Town of Pembroke Park

From: John W. Scott, Inspector General 

Date: April 7, 2022

Subject: **OIG Closing Memorandum Re: *Town of Pembroke Park's Adherence to Florida's Open Meetings and Public Records Laws, Ref. OIG 18-023-M***

INTRODUCTION

The Broward Office of the Inspector General (OIG) closes its investigation into whether officials of the Town of Pembroke Park failed to abide by Florida's open meetings laws (known as the Sunshine Law), public records laws, and laws governing municipal ordinances and resolutions.

The OIG's investigation substantiated the original allegation that the town failed to provide sufficient notice for its public meetings, including town commission meetings, as the town failed to meet Florida and Broward County's legal standards for reasonable notice of those meetings. The Florida Attorney General has issued guidelines for local governments to follow to comply with the Sunshine Law that include issuing notice no later than seven days prior to a regular meeting and no later than 48 hours prior to a special or emergency meeting. In November 2018, the county's voters passed a charter amendment that further required all local governments in the county to post their meeting notices, agendas, and backup documents on the internet no later than 48 hours prior to public meetings subject to the Sunshine Law. This change should have stopped the town's ability to use quiet and late physical posting of notices within town hall to mask its failure to provide timely notice under the Sunshine Law, but we found that, for at least several months after the law changed, the town's practice of last-minute, physical-only posting continued.

We also learned that the town failed to promptly record all meetings subject to the Sunshine Law through minutes and to maintain other vital town records to evidence the legal passage of ordinances and resolutions.

The town's unusual commission form of government exacerbated the situation, as it made the clerk-commissioner in charge of the town clerk's office in theory while the deputy town clerk

was in charge of it in fact. Moreover, the town code did not and continues not to provide for the function of custodian of the town's records or the function of clerk for meetings of the town's commission and boards by either the clerk-commissioner or the deputy town clerk.

During our investigation, following town officials' discovery of the extreme disarray of town records, the commission and the deputy town clerk entered into a mutual release and separation agreement effective December 31, 2019. The town also contracted an individual as an interim deputy town clerk whom it later hired as town clerk. The new town clerk's actions have effected remedies for nearly all of the deficiencies we observed.¹

As we were winding down this investigation in 2020, we learned of an additional concern related to the Sunshine Law, an alleged private communication between two sitting members of the commission about upcoming action regarding one of their colleagues who was then serving in the roles of police-commissioner and clerk-commissioner. After probing the circumstances, in November 2021, we issued a final report in OIG 20-010-M, finding that Former Vice Mayor Howard Clark knowingly and then-Commissioner Reynold Dieuville unknowingly violated the Sunshine Law as alleged.

We now memorialize our findings and subsequent town activity and improvements in this matter.

INVESTIGATION

In the course of its investigation, the OIG reviewed numerous documents, including town resolutions and ordinances; commission meeting notices, agendas, and minutes; commission meeting video recordings; an employee separation agreement; grant contracts, agreements, procurement records, and reports; the town's website; and other records. The OIG also interviewed approximately ten current and former town employees, officials, and others with information relevant to the investigation, attended commission meetings, and toured the clerk's office space within town hall.

The Town's Commission Form of Government

According to the National League of Cities, the commission form of government is the oldest structure of municipal government in the United States and typically has: (1) elected commissioners to a small governing body; (2) each commissioner assigned to oversee a single function of the municipality, such as police, public works, or finance; (3) one commissioner assigned to serve as mayor and preside over meetings; and (4) a governing body that both makes laws and executes them.² The Florida League of Cities reported in 2020 that four municipalities in the state had this form of government, covering just 0.1 percent of Florida's population.³ CGR⁴ reported that an

¹ Considering the nature and source of the failures outlined below, this office has not determined that a report in this matter would assist the county or any municipality in preventing similar future misconduct. Broward County Charter Sec. 10.01 D.

² Retrieved from <https://www.nlc.org/resource/forms-of-municipal-government/> on February 24, 2022.

³ Retrieved from https://www.floridaleagueofcities.com/docs/default-source/research-institute-reports/2020citycouncilsizeformgovtanalysis.pdf?sfvrsn=3009d6d5_0 on February 24, 2022.

⁴ Formerly the Center for Governmental Research. Retrieved from <https://www.cgr.org/cmsb/uploads/cgr100years.pdf> (p. 10) on February 24, 2022.

advantage to this structure of government is that decisions can be made without the processes that typically delay other structures but that disadvantages often include ineffective overall leadership, departmental insularity, departmental rivalry, difficulty in efforts to reorganize, and the election of politicians who must administer but lack professional administrative skills.⁵

Pembroke Park's municipal charter specifies that the town commission is composed of a mayor-commissioner, vice-mayor commissioner, clerk-commissioner, and two other commissioners.⁶ The charter further provides that, at the first regular meeting following every election, the commissioners appoint the mayor-, vice-mayor-, and clerk-commissioners from among themselves. The town charter also provides for the creation of the executive department, to be headed by the mayor; the department of taxes, to be headed by the [commissioner-] clerk; the department of finance, to be headed by the vice-mayor; and the department of health and zoning and the department of public works and water, each to be headed by one of the other commissioners as fixed by resolution.⁷

According to the former town attorney, when the town was first formed, the charter designed the position of clerk-commissioner, but over time, the town hired a deputy town clerk to do most of the clerk duties, and the clerk-commissioner designation transitioned to a "figurehead."

But, as described below, neither the charter nor the code established the position of deputy town clerk or town clerk,⁸ although the codified duties of the administrative services director included one municipal clerk function, the preparation of agendas for meetings of the governing body.⁹

The former town attorney reported to the OIG that he had repeatedly advised the commission to change the charter to provide for a different form of government, and he had invited experts from the Florida League of Cities to speak to the commission on the disadvantages of the commission form of government. After politely listening to them, he said, the commission dismissed the idea.

The Municipal Clerk Function Generally, the Town's Clerk-Commissioner, and the Dual Role of Deputy Town Clerk and Administrative Services Director

To understand the function of the town's clerk-commissioner, it is necessary to understand the function of a municipal clerk. Recognizing that different municipalities have varying needs, the Florida Association of City Clerks generally describes the duties and responsibilities of municipal clerks to include:

- preparing minutes for meetings of the governing body and, as appropriate, other municipal boards and committees;
- preparing and distributing meeting agendas;

⁵ Retrieved from <http://archive.cgr.org/onebataviacharter/docs/ModelsofCityGovernment.pdf> on February 24, 2022.

⁶ Pembroke Park (Town) Charter Section 9.

⁷ Town Charter Sec. 15.

⁸ The former town attorney stated there was a resolution that delineated the deputy town clerk's duties, but he was unable to produce it. Following his first OIG interview, on May 16, 2019, he provided the OIG with an unsigned copy of a resolution numbered 18-04-01, which authorized the deputy town clerk to attest to documents on the town's behalf, effective April 11, 2018, but it did not delineate any other duties for the deputy town clerk.

⁹ Town Code Sec. 2-99.

- giving notice for all meetings subject to the Sunshine Law and arranging to publish legal notices as necessary;
- serving as the municipality’s custodian of records, “including ordinances, resolutions, contracts and agreements”;
- establishing and following procedures for the maintenance and destruction of municipal records as legally provided;
- publishing, maintaining, and distributing the code of ordinances;
- serving as the qualifying official for elections and coordinating with the county supervisor of elections; and
- responding to public requests and other internal and external requests for records and information.¹⁰

The town code was and remains replete with duties for the clerk-commissioner, but none addressed the functions of providing notice of meetings, recording minutes, or maintaining or producing official records. For example, the clerk-commissioner was to make available and accept application forms and fees to request a special commission meeting;¹¹ to make available and accept forms to make a discrimination complaint and set the matter for a hearing;¹² to receive notice of nonresidential commercial and multifamily residential complex leases;¹³ with the mayor, to give written approval for the disbursement of fire public safety facilities trust funds;¹⁴ to make available and accept forms for applications to fill excavation sites;¹⁵ to make available and accept forms for applications to dredge;¹⁶ to accept and forward copies of code enforcement orders;¹⁷ numerous and extensive duties to administer elections;¹⁸ to accept notices of appeal for the revocation of permits for the collection of solid waste and reverse the revocation decision or set the matter for hearing before the commission;¹⁹ to designate and authorize recycling collection points and fix the amount of deposit for recycling containers;²⁰ to establish the enforcement program for recycling;²¹ with the mayor, to execute agreements with the state to extend retirement pension benefits;²² to serve as custodian of the funds withheld from employees and officials for retirement pensions, to report on that withholding, and to maintain personnel records for the retirement pension administration;²³ to provide copies of applications for sign and zoning variances to the town attorney;²⁴ to ascertain the addresses of property owners to whom the town must provide notice of necessary construction or

¹⁰ Retrieved from https://www.floridaclerks.org/index.asp?SEC=71722C32-CBF0-486F-84A2-34B131D6A56C&Type=B_BASIC#:~:text=Maintains%20custody%20of%20municipal%20records,in%20accordance%20with%20state%20law on February 24, 2022.

¹¹ Town Code Secs. 2-36 and 2-37.

¹² Town Code Secs. 2-179 and 2-180.

¹³ Town Code Secs. 5-2 and 5-3.

¹⁴ Town Code Sec. 5-42.

¹⁵ Town Code Sec. 5-68 and 5-70.

¹⁶ Town Code Sec. 5-88.

¹⁷ Town Code Sec. 7-10.

¹⁸ Town Code Chapter 8.

¹⁹ Town Code Sec. 11-72.

²⁰ Town Code Sec. 11-98.

²¹ Town Code Sec. 11-101.

²² Town Code Sec. 19-63.

²³ Town Code Sec. 19-68.

²⁴ Town Code Secs. 21-76 and 28-53.

repair of sidewalks;²⁵ to receive taxes collected by utilities providers and file legal actions as necessary to recover such collected taxes;²⁶ to transfer funds between town accounts for investment of municipal funds;²⁷ to make available and accept forms for applications for special permits to park in tow-away zones;²⁸ to accept notices of intent to begin construction to pave subdivision streets and, with the chief building official, provide paving specifications on request;²⁹ and to accept license application fees for mobile home parks.³⁰

The code referenced the deputy town clerk four times, but these, too, did not reference notice, minutes, or official records. Those duties were to contact commissioners regarding their availability for a special commission meeting;³¹ to accept and open sealed bids in procurements through competitive bidding;³² to serve as the town's coordinator for discrimination complaints;³³ and to accept, investigate, and act on written zoning complaints.³⁴

According to the former deputy town clerk, her clerk functions included communicating with commissioners, preparing agendas based on commissioner requests, preparing meeting packages, setting up meetings, and keeping track of resolutions and ordinances. At the beginning of her tenure as deputy town clerk in 2007, the town manager, assistant town manager, and commissioners supervised her, but later just the commissioners did, although no one formally evaluated her performance after 2017.

In June 2018, at a time when the deputy town clerk had a large, growing, nine-month backlog of unprepared and unapproved meeting minutes as described in the section below titled, "The Town Did Not Promptly Produce Minutes of Its Public Meetings," the commission also designated the deputy town clerk to be the town's first administrative services director, and she held both positions until her departure from the town at the end of 2019. As administrative services director, by code, the town commission appointed her, and the town manager supervised her. The code specified additional and burdensome duties for the administrative services director, such as assisting the town commission and town manager, exercising general oversight of the operations of the administrative division, helping to develop the town's strategic plan, directly supervising departmental heads and staff, coordinating and supervising department heads to ensure efficiency, attending all meetings of the town commission, preparing all commission meeting agendas, directing and coordinating special projects, and overseeing the annual budget process.³⁵

In April 2019, the deputy town clerk told the OIG that as administrative services director, she handled issues that arose day to day within the finance, HR, code enforcement, and IT departments. Staff confirmed that the former deputy town clerk oversaw all city staff and executed the HR

²⁵ Town Code Sec. 22-44.

²⁶ Town Code Sec. 24-34.

²⁷ Town Code Sec. 24-102(b).

²⁸ Town Code Sec. 25-64.

²⁹ Town Code Sec. 28-4.

³⁰ Town Code Sec. 28-276.

³¹ Town Code Sec. 2-40.

³² Town Code Sec. 2-127.

³³ Town Code Sec. 2-176.

³⁴ Town Code Sec. 28-22.

³⁵ Town Code Sec. 2-99.

functions, including approving all payroll transactions, hiring and terminating employees, and setting salary rates.

In the town, as a practical matter, the deputy town clerk and not the clerk-commissioner acted as the clerk—and more. And, except to countersign town checks,³⁶ we did not observe that the clerk-commissioner executed any of the numerous clerk-commissioner duties specified in the town code. The former town attorney said he had advised the commission to move to amend the charter to provide for a single, stand-alone town clerk; however, the commission had not wanted to do so.

Our investigation determined that, while the commission rejected advice to change the town's form of government, it also failed to keep to that form.

The Town Did Not Meet in the Sunshine

Florida law regarding open government meetings, commonly known as the Sunshine law, requires public boards (1) to provide “reasonable notice” of upcoming meetings at which two or more members of a decision-making body will discuss board business, (2) make those meetings open to the public, and (3) promptly record minutes of those meetings.³⁷

1. The Town Did Not Provide Reasonable Notice of Its Public Meetings

The state law providing for open meetings does not define “reasonable notice,” although Florida Attorney General opinions and case law identify multiple factors to consider in determining whether a meeting notice gave members of the public and press a reasonable opportunity to attend if they desired, which is the touchstone for determining the reasonableness of a public meeting notice.³⁸ The factors center on the purpose for the notice, the “character” of the event being noticed, and the kind of rights that may be affected by the meeting's substance. In any event, the Florida Attorney General has opined that notice should be no less than seven days for a non-emergency or non-special meeting and no less than 24 to 72 hours for an emergency or special meeting.³⁹ Notice is required even though a meeting may be “of general knowledge,”⁴⁰ of relatively little importance,⁴¹ or lacking a quorum.⁴²

In the election of November 6, 2018, the voters of Broward County passed an amendment to the Broward County Charter that further requires a Broward municipality to post notices, agendas, and available backup materials on its entity's website at least 48 hours prior to any non-emergency meeting that is subject to the Sunshine Law.

³⁶ Town Charter Sec. 18; Town Code Sec. 24-102(a).

³⁷ Fla. Const. Art. I, Sec. 24; Fla. Stat. Sec. 286.011.

³⁸ *Rhea v. City of Gainesville*, 574 So. 2d 221, 222 (Fla. 1st DCA 1991). Florida Attorney General Opinions (AGOs) 04-44, 80-78, and 73-170.

³⁹ Office of the Attorney General, [*Government-in-the-Sunshine Manual*](#) 43 (First Amendment Foundation, Volume 43 2021) (citing *Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985)).

⁴⁰ *TSI Southeast, Inc. v. Royals*, 58 So. 2d 309, 310 (Fla. 1st DCA 1991).

⁴¹ [*Baynard v. City of Chiefland*](#), No. 38-2002-CA-000789 (Fla. 8th Cir. Ct. July 8, 2003).

⁴² AGO 90-56.

The evidence adduced from the OIG investigation was that, on at least three occasions, the town posted meeting notices on a bulletin board in town hall less than 24 hours in advance, despite the state law requirement to provide “reasonable notice” of upcoming public meetings and even after the November 2018 Broward County charter requirement to post the notice, agenda, and backup materials online at least 48 hours in advance of the meeting time.

On September 5, 2018, prior to a commission workshop meeting, two of the town’s five commissioners⁴³ attended a meeting with lobbyists and town engineers regarding the procurement of a financial software program, a matter that was coming before the commission. The assistant to the town manager, the deputy town clerk, a third commissioner, and the town attorney were informed about the meeting less than 24 hours before it happened, and the OIG found no evidence that it was ever noticed.

Although a meeting with a Florida House Representative had been noticed for September 27, 2018, the same two of the town’s five elected officials met with the representative and town engineer, the deputy town clerk, and another staff member a day early, on September 26, 2018, depriving the public the opportunity to attend. The interim town manager at the time told the OIG in an interview that, on September 26, 2018, the deputy town clerk scrambled to cancel the meeting that had been scheduled for the next day and to notice the meeting for that day. The deputy clerk also asked one of the attending commissioners not to join the meeting,⁴⁴ to which he replied that he was a resident of the town and could attend if he wanted to—and did. The day after the meeting, the deputy town clerk sent a text to attendees with a video still, claiming the photo showed her timely posting the notice. But we determined that she posted the meeting notice on September 26.

On March 13, 2019, after the county charter’s requirement to post notices, agendas, and meeting backup online went into effect, OIG special agents went to town hall to attend the commission’s workshop and regular meetings. They observed that the town had noticed the workshop meeting by posting a three-page agenda in the glass wall case at town hall, but the town did not notice the meeting or provide the agenda and meeting backup materials on the town website as required by county charter. The town’s online calendar listed the workshop meeting for the week prior, on March 6, 2019, but the workshop was moved to March 13, 2019, without the town listing the postponement on the online calendar. Not only did the website fail to make the notice, agenda, and backup materials available to the public, the town’s hard copy notice and online calendar also failed to meet the state’s legal requirement to notice the public that a verbatim record might be needed for appellate review.⁴⁵

On November 7, 2018, the OIG requested the town produce documents including its meeting agendas and notices for all town business meetings from 2017 to present, but we received no documentation of when any meeting agendas or notices were issued or posted. In an interview in April 2019, the deputy town clerk told the OIG that she did not keep a record of meeting notices;

⁴³ Neither of these commissioners currently serve on the town commission.

⁴⁴ It was the attendance of a second member of the governing body that subjected the meeting to the Sunshine law, which only applies to meetings of two or more members of the same decision-making body. Office of the Attorney General, [*Government-in-the-Sunshine Manual*](#) 1 (First Amendment Foundation, Volume 43, 2021).

⁴⁵ Fla. Stat. Sec. 286.0105.

thus, she could not provide any evidence of what she posted or when. She confirmed that the town had not been posting the required materials on the internet, stating that she alerted the public of upcoming meetings by physically posting notices on the bulletin board in the lobby of town hall at least 48 hours in advance, which she claimed complied with the current rule. Admitting responsibility for the task, she explained that she did not post the notices on the town website because she needed to submit information to a third-party contractor in order to get information on the internet.

In an interview in May 2019, the town attorney told the OIG that the commission had recently adopted an ordinance making the administrative services director and town manager responsible for preparing agendas,⁴⁶ but we noted that the ordinance did not address the responsibility to timely notice meetings. The town attorney stated that the town had a website with a calendar where it posted meeting notices, but he did not know if anyone kept the calendar up to date. He said it was the posting of the agendas at town hall that served as the required notice and that these generally came out two days before the meetings and came “pretty close” to meeting the 48-hour posting requirement.

The deputy town clerk and the town attorney were mistaken in their statements that the posting of agendas in town hall approximately 48 hours in advance of regular and workshop meetings of the town commission met the requirements of law. According to the Florida Attorney General’s guidance, the town should have noticed its non-emergency, non-special meetings at least seven days in advance, and according to the Broward Charter also should have made agendas and meeting backup documentation available online at least 48 hours in advance.

Practical effects of this failure included that officials were able to schedule, cancel, and reschedule meetings at the last minute without consequence, depriving other officials and staff, the town attorney, the public, prospective vendors, and the press of the ability to attend and participate on issues of their concern. We also observed where there was difficulty coordinating presentations before the commission, such as the external audit firm’s presentation of the 2017 comprehensive annual financial report (CAFR), which the interim town manager tried unsuccessfully to arrange for four meetings in a row because of inconsistent and changing meeting dates and agendas. The interim town manager told the OIG that he also had trouble getting his own concerns before the commission in a timely manner. In another example of how last-minute notice affected the town’s ability to properly function, a representative of the company that the town used to draft summary minutes, Prototype, Inc., said her company stopped attending meetings because the town kept canceling and changing the meetings.

2. The Town Did Not Promptly Produce Minutes of Its Public Meetings

The Sunshine law requires public boards and commissions to promptly record minutes for their meetings, including workshop meetings,⁴⁷ and to make the minutes available for public inspection.⁴⁸ While the law does not define “promptly” for these purposes, the Florida Attorney

⁴⁶ Town Code Sec. 2-99.

⁴⁷ See *Lozman v. City of Riviera Beach*, No. 502007CA007552XXXXMBAN (Fla. 15th Cir. Ct. June 9, 2009), *per curiam affirmed*, 46 So. 3d 573 (Fla. 4th DCA 2010); AGOs 08-65 and 74-62.

⁴⁸ Fla. Stat. Sec. 286.011(2).

General has opined that the term “should be construed in its plain and ordinary sense,” citing to a Webster’s Dictionary definition that it means “done, performed, delivered, etc., at once or without delay.”⁴⁹ The minutes become a public record and must be made available for inspection and copying even though the board or commission has yet to approve them.⁵⁰ Minutes need neither be detailed nor capture all discussions but must include a record of all votes cast and may consist of a brief summary or series of brief notes about what occurred at the meeting.⁵¹ Making and maintaining an audio recording of the meeting does not satisfy the legal requirement to promptly record minutes and make them available for public inspection, but making a written, verbatim transcript does.⁵²

The OIG’s investigation determined that, between at least August 2017 and September 2018, the town failed to record any minutes for its commission meetings, and its commission continued not to adopt outstanding drafted minutes until December 2019.

In October 2018, the interim town manager told OIG agents that the town had not prepared, presented, or approved commission meeting minutes since May 2017. After the town commission hired him, he asked the deputy town clerk why not, and she replied that the former town manager had told her not to do them.⁵³ The interim town manager then directed her to get them done. He told the OIG that the rule regarding the preparation of minutes was that they should be prepared promptly upon conclusion of a public meeting, which normally meant by the date of the next meeting, and he expressed concern about town business that had been approved and adopted but not recorded since May 2017, as it was a legal requirement to do them timely.

On November 7, 2018, the OIG requested the town produce documents including its meeting minutes from 2017 to present. The deputy town clerk responded by email on November 21, 2018, that items including the meeting minutes were “in progress.” On November 29, 2018, she sent the commission a “block” of draft minutes with a memo requesting they be approved, and the following day, she emailed the OIG that the town had outsourced the preparation of minutes and that “upon completion of each set of minutes I will forward a copy to your office . . . ”

On December 3, 2018, the auditing firm Grau & Associates issued the town its 2017 CAFR for the fiscal year ending September 30, 2017. The CAFR reported that the town had ceased recording minutes after May 2017. The minutes that the town did provide to the auditor were disorganized and confusing, and contained incorrect dates, mistakes, and unclear information. The auditor reported that the town had contracted a private outside agency to assist the clerk in preparing all past minutes back to May 2017 and going forward starting in September 2018.

The OIG ascertained that the town engaged Prototype in August 2018 to prepare approximately 60 summary meeting minutes from digital audio files, agenda documents, and lists of attendees and to attend and prepare minutes for future meetings. The president of Prototype informed the

⁴⁹ *Inf. Op. to Board of Trustees*, January 27, 2009 (citing Webster’s New Universal Unabridged Dictionary (2003)).

⁵⁰ See *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010); AGO 91-26.

⁵¹ See *State v. Adams*, No. 91-175-CC (Fla. Sumter Co. Ct. July 15, 1992); AGO 82-47.

⁵² AGO 75-45; AGO 08-65; 86-93; *Inf. Op. to Fulwider*, June 14, 1993.

⁵³ The former town manager retired in January 2018.

OIG that her company received and used meeting recordings and documents from the deputy town clerk. Once Prototype completed draft summary minutes, the president forwarded the draft in Word, an editable format, to the deputy town clerk. Prototype invoiced the town between August 21, 2018, and April 24, 2019, for preparing 69 sets of minutes for regular, workshop, and special commission meetings and other board meetings that occurred between August 29, 2017, and March 13, 2019, for a total of \$8,623.75. Included in this cost were bills for attending as well as transcribing minutes for six meetings between September 5, 2018, and November 5, 2018. As previously noted, Prototype's president told the OIG that her company stopped attending meetings because the town kept canceling and changing them.

In May 2019, nine days after the town attorney interviewed with the OIG, he issued a memorandum to the commission explaining the basic requirements of the Sunshine Law, writing that the town was not complying with the necessity to promptly record minutes and make them available for public inspection. The attorney further urged that there were no circumstances that could excuse their delay, that it was imperative for the town to allocate necessary resources to rectify the shortcoming, and that "action minutes"⁵⁴ would be legally sufficient. The attorney concluded the memo by expressing that it was "of the utmost urgency" that the town commission act "as soon as possible" to set down a special meeting for the purpose of approving the minutes that had been prepared to date and that remaining outstanding minutes be prepared and delivered for approval "immediately."

When the attorney raised the issue at a commission workshop on June 5, 2019, the mayor expressed dissatisfaction with Prototype, which the town had stopped using.⁵⁵ A commissioner we spoke with said he observed that commission members and the mayor often "bickered" on the dais about what should be in the minutes, and each one wanted something different and expressed how the minutes were not accurate.

At the following meeting, the town attorney again raised the matter and suggested the town contact a temporary agency to provide an individual to help transcribe and complete the outstanding meeting minutes. Thereafter, the town engaged SNI Companies Corp. for the purpose, and town staff provided SNI with Prototype minutes, meeting agendas, and other information from which to work. The SNI temporary worker assigned to the project reported on July 25, 2019, that SNI had completed 26 meeting minutes for 2018 and two for 2019.

In late July 2019 the town hired a new employee to work on the minutes. In addition, a long-time staff member, the administration department assistant, assisted in the transition by preparing

⁵⁴ The attorney wrote that "a brief summary or series of brief notes or memoranda reflecting the events of the meeting" was all that was required. He explained that "[a]ction minutes' record any 'action' or votes that were taken at the meeting," and would "allow citizens to easily see what happened at the meeting in a short time frame."

⁵⁵ As reported above, the last meeting for which Prototype prepared minutes was that of March 13, 2019. The president of Prototype reported in June 2019 that it had stopped receiving work from the town and that it was difficult to communicate with the former deputy clerk. The president said she assumed that the minutes were not a priority. She had not received any information that the town was displeased with Prototype's work; to the contrary, she had only received indications that the former deputy clerk and the town were appreciative. The OIG's review of Prototype's email correspondence with the former deputy clerk did not reveal any expression or suggestion of dissatisfaction with the vendor.

and submitting to the deputy town clerk a catalog of minutes that Prototype and the SNI temporary worker had completed.

On August 22, 2019, the town attorney wrote an urgent message to the commission members, town manager, assistant town manager, and deputy town clerk, citing his May 17, 2019, memorandum on the subject of approving and publishing town minutes. After stating that he had been informed that some of the minutes had been prepared and presented for approval, he wrote, “I cannot stress enough that it is essential that the minutes be prepared, approved, and made available to the public in order for the Town to be in compliance with state law.” The attorney included a copy of his May 17, 2019, memorandum and sample action minutes.

Following the discovery of the condition of the deputy clerk’s office on October 1, 2019, as detailed below in the section titled, “The Town Did Not Maintain Its Public Records,” the town suspended the deputy town clerk and commissioned LagomHR, Inc., to, among other things, conduct a fact-finding investigation. On October 23, 2019, LagomHR’s representative, in the company of the assistant town manager, interviewed the deputy town clerk. The deputy town clerk said that the commission had instructed her about one year earlier to find someone to do the minutes and that she had been “struggling” to complete them. She stated that Prototype’s work was “not satisfactory” according to the mayor and commission, adding that, at the time, the official backlog of meeting minutes went back to September 2017, and that 35 percent of the meeting minutes were completed but not adopted by the commission. She said the commissioners had different reasons for not adopting the prepared minutes, some saying that they were not accurate.

Without minutes, the town was unable to support any official action that it took at its public meetings, such as the passage of ordinances, and we have residual concerns about the lack of proof for several would-be official acts, as described in the below section titled, “Subsequent Activity and Improvements.” In addition, among other effects, this failure of an elemental municipal function delayed the town’s 2017 CAFR until December 3, 2018, as the auditor had refused to certify it in the absence of two years of meeting minutes.

The Town Did Not Maintain Its Public Records

The town did not maintain and produce upon request official and other public records that Florida requires of local governments.⁵⁶ With regard to resolutions and ordinances, the town did not pass them properly, did not maintain them properly, or both.

Florida has specific procedures for municipalities to follow for the proper passage of resolutions and ordinances. Specifically, in order to pass a proposed ordinance into law, the governing body of the municipality must: (1) read it by title or in full at two different meetings on two different dates; (2) notice the public with the date, time, place, and other details of the meeting in a

⁵⁶ As to the town’s failure to submit new ordinances for publication for over two years, neither state nor town legal authority required the town to publish ordinances upon passage in order to become enforceable law. Fla. Stat. Sec. 166.041(4) (“[a]ll ordinances or resolutions passed by the governing body shall become effective 10 days after passage or as otherwise provided therein”); Town Charter Sec. 21 (“procedure for adoption of an ordinance . . . shall be the same as the procedure set forth in Chapter 166, Florida Statutes”).

newspaper of general circulation in the municipality at least ten days before the meeting at which the vote to adopt the ordinance will take place; and (3) advise that interested parties may appear and be heard regarding it.⁵⁷ Critically, upon a resolution or ordinance’s passage, the state law also requires the town to record it in a book kept for that purpose, signed by the presiding officer and the clerk.⁵⁸

The state’s public records laws also require that “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.”⁵⁹

The OIG had difficulty in obtaining copies of resolutions and ordinances from the town as well as meeting minutes, as we described in the above section titled, “The Town Did Not Promptly Produce Minutes,” that the law required the town to keep. It was the minutes that should have memorialized the necessary first and second readings and dates of adoption that the ordinances claimed on their face. Despite our records request of November 7, 2018, by February 25, 2019, the town had not produced minutes that evidenced first and second readings and votes to adopt the following ordinances, about which we identified issues of concern:

OIG Table 1: 2017 and 2018 Town Ordinances Provided in Response to OIG Records Request Dated November 7, 2018

SUBJECT MATTER		ISSUES OF CONCERN
17-10-01	Retirement benefits	No minutes
17-10-02	Assembly hall, banquet halls, etc.	No quorum, agenda, or minutes
17-10-03	Height restrictions	No quorum, agenda, or minutes
18-01-01	Procurement	No record of meeting for second reading
18-03-01	Zoning and medical marijuana	No minutes for either reading
18-03-02	Wireless facilities on rights of way	No minutes for either reading
18-03-03	Employee ethics	No record of first reading No minutes for second reading
18-04-02	Beauty shops, salons, and spas	No minutes for either reading
18-04-03	Baths and massage parlors	No minutes for either reading
18-06-01	Administrative services director	No minutes for either reading
18-06-02	Public services director	No minutes for either reading
18-08-01	Town commission interactions	No minutes for either reading
18-10-01	Maintenance of exteriors	Item not on agenda and no minutes for first reading No record of meeting for second reading date
18-10-02	Health and sanitation	Not on agenda and no minutes for first reading date
18-10-03	Reimbursement, indemnification for officials	Wrong records provided

⁵⁷ Fla. Stat. Sec. 166.041.

⁵⁸ The former deputy clerk stated that, around the end of 2017 or beginning of 2018, she requested and received signing authority on town resolutions and ordinances, and the town attorney provided the OIG with an unexecuted copy of Resolution 18-04-01, which purported to give the deputy town clerk the authority to attest to documents on the town’s behalf.

⁵⁹ Fla. Stat. Sec. 119.07(1)(a).

The OIG interviewed the deputy town clerk and the town attorney separately in May 2019. They told us that the town attorney drafted resolutions and ordinances following the meetings at which the commission voted to adopt them. The town attorney assigned a number to the drafts based on the year, month, and sequential number for the month. He worked from the agendas and notes he took at the meetings and submitted the drafts to the deputy town clerk. She reviewed and signed them, and the mayor signed them. The town attorney stated that the responsibility for ensuring that information and dates within the resolutions and ordinances started with him; what he sent the town should have been correct. If it were not correct, he expected the deputy town clerk to return the document for correction, but he could not recall any occasion when she informed him of any problem with a reading date. The town attorney did not keep executed copies but maintained a record of the unsigned drafts he transmitted to the deputy town clerk. The deputy town clerk told us that the town maintained signed and sealed resolutions and ordinances in a legal-sized black book kept in a vault in town hall.

In April 2019, the deputy town clerk said that she had submitted to the OIG all the resolutions and ordinances that were passed after September 8, 2016. She claimed that, shortly after the commission adopted the ordinances, she listened to audio recordings of meetings or reviewed her notes to confirm the first and second reading dates for the ordinances she provided to the OIG. Upon hearing the OIG's various concerns regarding the proposed ordinances as listed in OIG Table 1 above, she variously stated that she gave her notes to staff and Prototype to use while transcribing the minutes, that she would double-check for any corrections, that it could be her fault that she did not provide records to confirm the first and second readings, that it was the town attorney but not she who drafted the ordinances, and, finally, that the only thing she did not verify before executing the ordinances were the passed and adopted dates. She said, "I do not check the dates . . . I did not."

The town attorney informed us that he was originally made aware of the disorganization of town records and slow production in response to records requests during the first OIG investigation, when the OIG was unable to get documents.⁶⁰ He was usually copied on public records requests that the town received, but he did not know how the town tracked public records requests or pulled records. As for records the OIG requested in this matter, the town attorney said he knew the town's response was "extremely slow." He said he tried to track the town's progress on the OIG's request but did not get "positive answers."

At the town commission meeting of June 12, 2019, just over one month after the town attorney's interview with the OIG, he proposed, as an "emergency item," a resolution to allocate additional staff to assist with public records requests, including OIG's request for additional documents. The town designated a staff member to process public records requests and to obtain assistance as needed to ensure complete and timely responses that were legally compliant. The resolution passed, four to zero.

⁶⁰ See "Misconduct and Gross Mismanagement in the Town of Pembroke Park's Procurement of Professional Engineering Services," OIG 14-032, February 2, 2018, Broward Office of the Inspector General, footnote 1 on p. 1, which explained, "We limited our scope to procurement processes in part due to our difficulty in obtaining town records, which in many cases made our assessment of the town's processes difficult or impossible."

On October 1, 2019, the clerk-commissioner, town manager, and assistant town manager forced open the door to the town records and clerk's office, which was until then exclusively controlled by the deputy town clerk, and found her workspace and town records to be in extreme disarray. The following day, the town attorney submitted a memorandum to the commission and town manager on how to place the deputy town clerk on administrative leave while the town manager and staff investigated the manner in which she performed her duties. Specifically, the town attorney wrote, "The Town Manager stated that she is concerned that [the deputy town clerk] has not performed her assigned duties and has not maintained Town public records in compliance with state law, including possible destruction of certain Town documents."

In the following week, on October 9, 2019, OIG special agents observed and took photographs of the deputy town clerk's work area. Among the agents' observations was that the date stamp on her desk was set to the date of June 8, 2018.

Pursuant to a fact-finding investigation commissioned by the town from LagomHR, Inc., to determine what happened with the town's records as evidenced by the recent discovery of the condition of the deputy town clerk's office, on October 23, 2019, the deputy town clerk agreed to answer questions of a LagomHR representative. In her statement, the deputy town clerk stated that only the mayor had requested her keys to the town archives room, and it had only been one day since the mayor had made her request when the public works maintenance team drilled into the room. According to LagomHR's report of the interview, when shown October 9, 2019, photographs of her workspace and town archives room, she stated,

All documents kept piling on and piling on. I did not have a chance to go through these documents. I have not worked in that office for 6 months to 1 year. The office got to that bad in 2017. I did not notify anyone that the office was in that condition because I thought I could go in with an assistant to get everything organized. . . . It is not acceptable and I take full responsibility for the condition of those rooms. I tried to get a handle on it and I could not. We have been, especially the Clerk's office, under investigation and so much stress since 2017. We have had issues with the Town Manager. There was never time, and there are meetings upon meetings.

At the regular commission meeting of December 11, 2019, the town commission voted to release the deputy town clerk upon payment of leave she had accrued, and she resigned effective December 31, 2019 pursuant to a separation agreement and mutual release.

Subsequent Activity, Including Improvements

In November 2019, the town implemented iCompass, a meeting and agenda management software that enabled the town to create and publish agendas and minutes and allow public access to agendas, minutes, records, and meeting recordings online.⁶¹

⁶¹ Retrieved on March 8, 2022, from <https://open.icompassstech.com/icompass-demo?mrasn=584644.724301.Qzfis74K&xtref=www.icompassstech.com>.

The commission contracted an interim deputy town clerk in November 2019, whom it hired approximately one year later to be the town clerk.

On December 4, 2019, as interim deputy town clerk, she issued a report based on observations she made during her first week on the job. In the report, she identified short-term goals that included posting public notices for all meetings of a given month at the beginning of that month, the orderly submission of agenda items, providing for more time between workshop and regular meetings—specifically for ordinances and resolutions, controlling agenda changes, 60 days to produce and approve minutes, and two readings for ordinances with the second reading advertised 10 days prior. Long-term goals included codifying existing ordinances; logging resolutions; cleaning and organizing storage areas; disposal of documents per the state retention schedule; and an ordinance outlining meeting protocol, clerk duties, and records management.

On January 13, 2021, the town clerk updated the commission again, reporting that her office's operations included the functions of disseminating meeting agenda items and documents; preparing minutes for town commission meetings; codifying ordinances; serving as official records custodian; managing public records requests; and processing and maintaining ordinances, resolutions, and public notices, among other municipal clerk functions. She wrote that the clerk's office was staffed with four full-time employees including herself. Finally, she reported that she was "happy to report that we now have accurate and fully executed" resolutions, ordinances, and minutes from 2017, 2018, and 2019.

The OIG conducted an interview of the town clerk on February 11, 2021, at which time she gave an account of her efforts in several areas under the municipal clerk function, including these three:

1. Reasonable Notice

There is more control over the submission of agenda items and changes to them. Staff and commissioners have stopped bringing forward new business at meetings, for example, reading resolutions from the dais without any notice. Now, if a resolution or information is not posted 48 hours in advance, that item must wait to be included in the next meeting. Special or emergency meetings were scheduled and posted with at least 48 hours—with agendas and backup information. For non-special or emergency meetings, she preferred to provide at least ten days of notice or an agenda and generally posted the meeting agenda five days prior, fully uploaded to the website and at two locations within town hall and at the parks department. When she received additional items after the agenda and backup has been posted, she uploaded those items as soon as possible to make them available to the public.

2. Prompt Production of Minutes

The interim town clerk worked with the employee hired in July 2019 to work to catch up on the meeting minutes. Over several months, as they completed a batch of meeting minutes, they

presented them to the commission for final review and approval. In this way, they marshaled outstanding meeting minutes through adoption.⁶²

By February 2021, she reported to the OIG that the town had caught up on all outstanding minutes and that all meeting minutes were current within two weeks and generally presented for adoption at the next meeting. At the time, she reported that she was working on making them available on the town's website.

3. Maintenance of Public Records

By February 2021, she kept final, signed, and executed resolutions, ordinances, and minutes in her office, stored in binders and scanned to Laserfiche. She also reported to the OIG that the mayor refused to sign the past resolutions because she was unsure they had been approved, and the commission decided to have the town attorney go through them and sign them to certify they were accurate. While the mayor ultimately did not sign them; the vice mayor did.⁶³ She stated that all resolutions and ordinances from 2017, 2018, and 2019 were signed and executed as final.⁶⁴

The town had approved a public records policy in the month prior to the town clerk's interview that implemented resolution 2020-101 to create and maintain a records management manual. The new policy detailed the required procedures for handling public records requests so that they were tracked and timely completed. She also conducted staff training on the process in January 2021, and she provided a training PowerPoint presentation to the OIG. She said she was also working on purging unnecessary records per the state records retention schedule.

Following her interview, on February 21, 2021, the OIG requested the town to provide all commission meeting minutes and all completed and executed ordinances from January 1, 2017, forward. We compared the town's responses to our November 7, 2018, and February 21, 2021, requests for minutes and ordinances.

The initial request in November 2018 resulted in the OIG receiving documents of 86 commission meetings for 2017 and 2018, including workshops, regular, and special meetings. For those meetings, the town provided 79 agendas and 36 minutes, only some of which overlapped; the former deputy town clerk characterized the agendas as "placeholders" for minutes that were in the process of transcription and would be provided in the future. The follow-up request in February 2021 resulted in the OIG receiving 76 minutes for 2017 and 2018, plus 66 minutes for 2019 forward.

⁶² To update the commission, the town clerk wrote a memorandum dated May 22, 2020, titled, "Town Clerk Document Update." In this memorandum, she reported that she worked with the aforementioned staff member to compile 39 minutes for 2017, 59 minutes for 2018, and 41 minutes for 2019.

⁶³ In addition to the clerk, state law required the presiding officer of the governing body to sign ordinances. Fla. Stat. Sec. 166.041(5).

⁶⁴ To update the commission, the town clerk wrote a memorandum dated May 22, 2020, titled, "Town Clerk Document Update." In this memorandum, she reported that she compiled 93 resolutions and 7 ordinances for 2017, 50 resolutions and 12 ordinances for 2018, and 127 resolutions and 9 ordinances for 2019.

The prior request in February 2021 also resulted in the OIG receiving copies of 15 ordinances, all of which had issues of concern as specified in OIG Table 1, above. The follow-up request in February 2021 resulted in the OIG receiving additional records from which we determined that, all but three of the 15 ordinances originally provided had remaining concerns, as reflected below in OIG Table 2.

OIG Table 2: 2017 to 2018 Town Ordinances Provided in Response to OIG Records Request Dated February 21, 2021

NUMBER	SUBJECT MATTER	ISSUES OF CONCERN
17-10-01	Retirement benefits	(Resolved)
17-10-02	Assembly hall, banquet halls, etc.	No quorum for date of first reading No record of first reading
17-10-03	Height restrictions	No quorum for date of first reading No record of first reading
18-01-01	Procurement	Incorrect date of first reading
18-03-01	Zoning and medical marijuana	No record of first reading
18-03-02	Wireless facilities on rights of way	(Resolved)
18-03-03	Employee ethics	No record of first reading
18-04-02	Beauty shops, salons, and spas	No record of meeting for date of second reading No record of second reading
18-04-03	Baths and massage parlors	No record of meeting for date of second reading No record of second reading
18-06-01	Administrative services director	No record of meeting for date of first reading No record of first reading
18-06-02	Public services director	No record of meeting for date of first reading No record of first reading
18-08-01	Town commission interactions	(Resolved)
18-10-01	Maintenance of exteriors	No record of first reading Incorrect date of second reading
18-10-02	Health and sanitation	No record of first reading Incorrect date of second reading
18-10-03	Reimbursement, indemnification for officials	No evidence of this ordinance

In addition, the town provided records for 20 ordinances since 2018. Of those, we observed that only one, 19-04-01, lacked support for passage; specifically, it was missing a record of a meeting on the second reading date and a record of a second meeting at any time.

The town clerk told us in February 2021 that she was in the process of making additional improvements, and we confirmed that she has effected them. We observed that the town's online calendar of meetings continued to be maintained and was current as of March 2022.⁶⁵ This page included public search features for information regarding regular commission meetings, charter

⁶⁵ <https://tppfl.civicweb.net/Portal/MeetingTypeList.aspx>.

review committee meetings, public notices, RFP documents and procurement review committee meetings, budget hearing meetings, pension board meetings, planning and zoning meetings, workshop commission meetings, special commission meetings, code enforcement special magistrate hearings, citizen advisory board meetings, and emergency commission meetings.

Also as of March 2022, there remained a functioning, online search portal for the town's archive of meeting agendas and minutes, as the town clerk stated in February 2021 that she was working on.⁶⁶

CONCLUSION

Although the OIG has residual concerns about the lack of proof for several ordinances, we are satisfied that the town has now reversed its course on meeting notices, meeting minutes, and public records. The deputy town clerk, the town attorney, the interim town manager, the former town manager, and three commissioners whose actions are described in this memorandum no longer serve as employees or officials of the town. The new administration, with special recognition to the town clerk, has effected positive changes that address the issues raised during the investigation. We are satisfied that the ongoing and systemic issues we observed regarding timely and reasonable meeting notices, the prompt production of meeting minutes, and the proper maintenance and production of official records have been resolved.

cc: J.C. Jimenez, Town Manager
Melissa P. Anderson, Town Attorney

⁶⁶ <https://portal.laserfiche.com/Portal/Welcome.aspx?repo=r-3d6cc82c>.