



**OFFICE OF INSPECTOR GENERAL
PALM BEACH COUNTY**

**CONTRACT OVERSIGHT OBSERVATION
(2012-O-0002)**

(REVISED MAY 11, 2012)

Sheryl G. Steckler
Inspector General

"Enhancing Public Trust in Government"

Date: May 10, 2012

To: Ronald Ferris, City Manager, Palm Beach Gardens

From: Sheryl G. Steckler, Inspector General

Subject: **Lack of Transparency Resulted in The Public and Interested Parties Being Misinformed**

On February 16, 2006, the City of Palm Beach Gardens (PBG) awarded a seven year contract with an option for one five year extension, to Waste Management, Inc. for Solid Waste and Recycling Collection Services. The service period commenced on April 1, 2006 and expires on March 31, 2013. At the March 1, 2012 City Council (Council) meeting, City staff recommended that the contract not be renewed, and that the services be competitively bid. Following Council discussion, wherein a Waste Management, Inc. representative agreed to extend the deadline for notification of the extension to May 3, 2012, staff was directed by Council to negotiate the terms of a five year contract extension with Waste Management, Inc. and agenda the item for Council consideration at the regularly scheduled May 3, 2012 Council meeting.

Negotiations were completed on March 29, 2012, and contrary to direction given at the March 1st meeting, the contract extension terms were presented to, discussed and voted on by the Council at their regularly scheduled April 5, 2012 meeting; which was one month earlier than what citizens and interested parties were told at the March 1st meeting. This item did not appear on the agenda prior to, or at the time of the April 5th meeting. The item was added during the Additions, Deletions and Modifications portion of the agenda at the start of the meeting and brought up for discussion and consideration as the final item of the night. During Council discussions, Councilman Russo stated that four qualified bidders notified "them" of their interest in bidding. Furthermore, a representative from Southern Waste Services, an interested competitor, was in attendance and voiced his concern about the pending award. Nonetheless, the Council voted 4-1 (Councilman Russo dissenting in favor of a competitive bid) to approve the negotiated option with Waste Management, Inc. for five more years through March 31, 2018.

The Florida Attorney General's Advisory Legal Opinion (AGO 2003-53) addresses situations where items are added to agendas during the meeting and action is taken. The Attorney General wrote a response to a question as to whether a City Commission can "add topics to the agenda of a regularly noticed meeting while that meeting is being conducted and take formal action on those matters". The Advisory Opinion stated, "Thus, while Florida courts have recognized that notice of public meetings is a mandatory requirement of the Government in the Sunshine Law, the preparation of an agenda that reflects every issue that may come before the governmental entity at a noticed meeting is not. Based on these considerations, it is my opinion that the City . . . is not prohibited by the Government in the Sunshine Law from following its procedural policy allowing the addition of topics to the agenda at a regularly noticed meeting of the council and taking formal action on any matter added to the agenda of such a meeting. However, this office would strongly recommend that the city commission postpone formal action on controversial matters coming before the board at a meeting where the public has not been given notice that such an issue will be discussed. The purpose of the notice requirement of the Sunshine Law is "to apprise the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to make an appearance if they wished"¹. In the spirit of the Sunshine Law, the city commission should be sensitive to the community's concerns that it be allowed advance notice and, therefore, meaningful participation on controversial issues coming before the commission."

Furthermore "[Florida court decisions] ... recognize that boards should not be allowed, through devious methods, to 'deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are to be made.'" Law and Information Services v. Riviera Beach, 670 So. 2d 1014 (4th DCA 1996), citing to Board of Public Instruction of Broward County v. Doran, 224 So 2d. 693 (Fla. 1969).

By publicly announcing, in March, that this matter was to be readdressed at Council's regularly scheduled May meeting, and then raising and deciding it without advance notice during its regularly scheduled April meeting, the Council arguably deprived the public of its right to be present and heard on this significant matter. In the interest of transparency and enhancement of the public's trust in government, PBG should provide timely and adequate notifications regarding controversial issues under consideration by Council.

¹ Rhea v. City of Gainesville, 574 So.2d 221, 222 (Fla. 1st DCA 1991), citing Attorney General's Opinion 73-120 (1973)