

ORDINANCE NO. 2010-4

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, AMENDING CHAPTER 7, FIRE PREVENTION AND PROTECTION, CREATING SECTION 7-51(8) OF THE CODE, PROVIDING FOR IMMUNITY FROM CIVIL LIABILITY PURSUANT TO FLORIDA STATUTES 768.1325; PROVIDING FOR CODIFICATION, PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town adopted Ordinance No. 2008-27 establishing a Community Automated External Defibrillator Program (AED); and

WHEREAS, it was the intent of the Town that adoption of the Ordinance would not in anyway modify the immunity from civil liabilities established by Florida Statute 768.1325; and

WHEREAS, the Town wishes to amend the Code to specifically adopt the immunity from civil liability provisions as set forth in Florida Statute 768.1325.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2: That the Town of Davie Code of Ordinance, Section 7-51 is amended by hereby creating Subsection 7-51(8) to read as follows:

* * *

Section #7-51: Community Automated External Defibrillator Program

(1) Definition of Automatic External Defibrillator (AED) Device:

A defibrillator device that is:

- A. Is commercially available in accordance with the Federal Food, Drug, and Cosmetic Act,
- B. Is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed, and
- C. Upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.

(2) Intent:

It is the intent of the Town and the purpose of this Chapter:

- A. To promote the public health, safety, and general welfare by requiring the installation of Automated External Defibrillator devices within certain buildings in the Town.
- B. To provide for the annual verification inspection of each AED device within the Town

(3) Automated External Defibrillator Devices (AED) Required:

Automated External Defibrillator devices shall be installed in the following buildings located within the geographical boundaries of the Town of Davie: As defined in NFPA 101, Life Safety Code.

- A. Assembly Occupancy;
 - 1. Fitness centers, gymnasiums, and indoor recreational centers in excess of 1,500 square feet;
 - 2. Theaters, restaurants, drinking establishments, with a maximum capacity of 100 or greater.
- B. Business Occupancy;
 - 1. Office buildings with a square footage greater than 20,000 sq ft.
- C. Mercantile Occupancy
 - 1. Commercial and retail spaces with a square footage greater than 35,000 sq ft.
- D. Residential Occupancy;
 - 1. All hotels and motels.
- E. Healthcare;
 - 1. Assisted Living Facilities as defined by Section 400.402, Florida Statute as amended from time to time.
 - 2. All Dental offices in accordance with Florida Administrative Code 64B5-17.015.
- F. Multi story occupancies listed above shall place an AED on every other floor beginning on the first floor. The AED shall be placed near the elevator(s) beginning in the first floor lobby. (first floor, third floor, fifth floor, etc).

(4) Installation and Operation:

- A. The Town shall verify all AED devices for operation prior to being placed in service or available for use, and on an annual basis.**
- B. AED devices shall be:**
 - 1. Placed in an easily accessible position (e.g., placed at a height so shorter individuals can reach and remove, unobstructed etc.)**
 - 2. Conspicuously located in plain view of the primary public entrance with unobstructed access.**
 - 3. Readily accessible and immediately available when needed for on-site employees and the general public, including disabled persons.**
 - 4. Placed near the elevator(s) in the first floor lobby, if the building contains an elevator.**
 - 5. It is recommended that the AED be housed in a cabinet with a clear window in the door, an audible alarm signaling the opening of a door, permanently affixed to a wall, and whose top is no more than forty-eight inches above the floor to prevent tapering, theft or damage.**
 - 6. It is recommended that the AED be located below a sign having a minimum area of seventy square inches and containing the letters "AED" and the universally recognizable symbol, which should be placed no more than sixty inches, on center, above the floor.**
- C. AED devices shall contain adult pads and pediatric pads.**
- D. The AED devices shall be used in accordance with the manufacturer's guidelines.**
- E. It shall be the responsibility of the occupant to:**
 - 1. Install AED devices;**
 - 2. Provide all necessary training for appropriate use; and**
 - 3. Maintain AED devices in accordance with manufacturer's recommended maintenance requirements and as required herein.**
- F. If an AED device is removed for repair, a replacement shall be provided by the occupant or AED device manufacturer.**

(6) Penalties

It shall constitute a violation of the Town Code, punishable as provided in Town of Davie Code of Ordinance Section 16-1, to intentionally or willfully:

- A. Render an AED device inoperative except during such time as the AED device is being serviced, tested, repaired, or recharged, except pursuant to court order;**
- B. Obliterate the serial number on an AED device for purposes of falsifying service records;**

C. Improperly service, recharge, repair, test, or inspect an AED device;

(7) Requirements and Procedures:

The following shall be the requirements and procedures for use, training, and data collection of the AED program:

- A. The implementation of an AED shall occur only after a written notification is made to the Fire Chief or designee by the individual, entity, organization, or company acquiring an AED. The written notification must contain the facility or business name, street address, specific location of the AED, the number of employees at the facility or business, the total number of persons trained or to be trained in the use of the AED's, the name of manufacturer, and model number of each AED.
- B. It is recommended prior to implementation of an AED, the individual, organization or company obtain and send to the Town of Davie Fire Rescue Department proof of standardized training for all intended users of the AED. The training should consist of a class provided by a nationally-recognized organization, or locally-approved by the Town of Davie Fire Rescue Department, including, but not limited to, the American Heart Association, the American Red Cross, Emergency Care and Safety Institute and the National Safety Council, and shall follow a standardized curriculum. The standardized curriculum shall include, at a minimum: 1) signs and symptoms of sudden cardiac arrest; 2) cardiopulmonary resuscitation; and 3) proper use, maintenance, and inspection of AED's.
- C. Recertification of users, maintenance, and inspection of the AED is the responsibility of the occupant and shall be done on a periodic basis, as prescribed by the manufacturer and/or certifying agency. Recertification of users should consist of a class, which will review the techniques for using the AED and follow a standardized curriculum. Recertification training shall be provided as in Paragraph C above. Maintenance of the AED device shall be in accordance with the manufacturer's recommendations.
- D. Any person who uses an AED is required to contact the Town of Davie Fire Rescue Department by calling 9-1-1 immediately prior to, or immediately upon use of the AED (F.S. 401.2915).
- E. The Town of Davie Fire Rescue Department shall conduct a quality assurance review after use of an AED that includes gathering clinical data and information from the person that used the AED and from the AED itself.

- F. The owner and user of the AED will not withhold consent for a quality assurance review by the Town of Davie Fire Rescue Department after the use of an AED or to the retrieval of clinical data from the device itself.
- G. The Town of Davie Fire Rescue Department shall verify the presence of the AED device, and may inspect any maintenance records and documentation of training to ensure compliance with the Community Automated External Defibrillator Program.
- H. The Town of Davie is not liable for any damages experienced by the AED, or any person or entity arising as a result of: (a) Business's use or misuse of the equipment or supplies. (b) Business's failure to provide services pertaining to the equipment or supplies; or (c) any defects in the equipment or supplies.

(8) Immunity from Civil Liability Provisions:

The provisions of Florida Statute 768.1325, and specifically the immunity from civil liability for any harm resulting from the use or attempted use of an Automated External Defibrillator (AED) device as found in Section 768.1325(3) as may be amended from time to time are hereby adopted and incorporated into Town of Davie Ordinance No. 2008-27 and Section 7.51 of the Code for all purposes.

Applicability

The occupant of any existing building required to have an Automated External Defibrillator device shall comply with this section within 6 months (180 days) of the effective date of this Ordinance. After the effective date of this ordinance, the occupant of any new building constructed will be required to have an Automated External Defibrillator device installed before receiving a certificate of occupancy.

SECTION 3: Conflicts.

All Ordinances or parts of Ordinances, and Resolutions or parts of Resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4: Codification.

It is the intention of the Town Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Davie,

Florida, and that the Sections of this Ordinance may be renumbered or re-lettered and the word "Ordinance" may be changed to "Section", "Article" or such other word or phrase in order to accomplish such intention.

SECTION 5: Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or Application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 6: Effective Date.

This Ordinance shall become effective immediately upon its passage and adoption.

PASSED, FIRST READING THIS 20th DAY OF January, 2010.

PASSED, SECOND READING THIS 3rd DAY OF February, 2010.

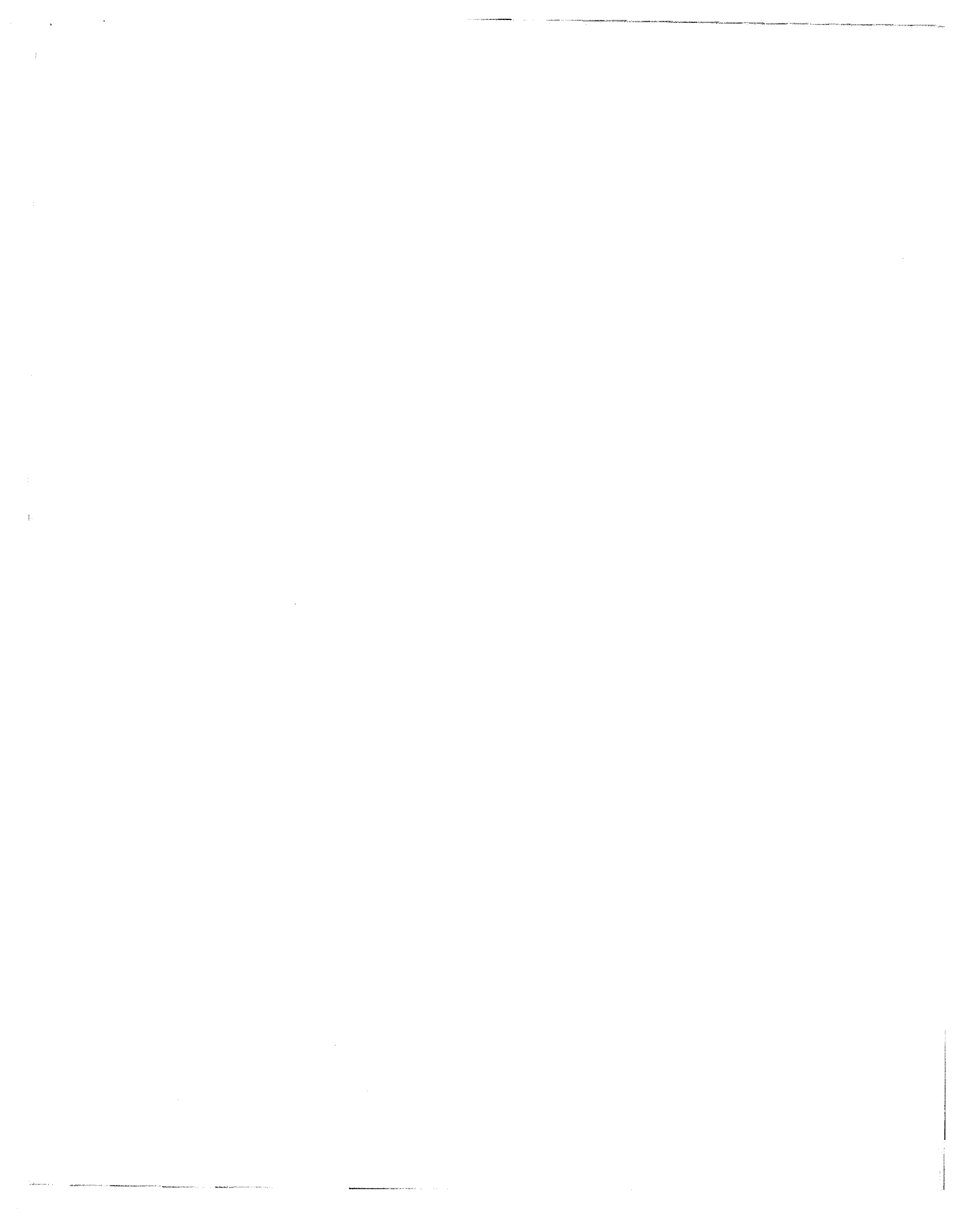

MAYOR/COUNCILMEMBER

ATTEST:


TOWN CLERK

I hereby certify that I have approved this ordinance as to form.


TOWN ATTORNEY



Select Year: 2007

The 2007 Florida Statutes

Title XLV
TORTS

Chapter 768
NEGLIGENCE

[View Entire Chapter](#)

768.1325 Cardiac Arrest Survival Act; immunity from civil liability.--

(1) This section may be cited as the "Cardiac Arrest Survival Act."

(2) As used in this section:

(a) "Perceived medical emergency" means circumstances in which the behavior of an individual leads a reasonable person to believe that the individual is experiencing a life-threatening medical condition that requires an immediate medical response regarding the heart or other cardiopulmonary functioning of the individual.

(b) "Automated external defibrillator device" means a lifesaving defibrillator device that:

1. is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act.
2. is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed.
3. Upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.

(c) "Harm" means damage or loss of any and all types, including, but not limited to, physical, nonphysical, economic, noneconomic, actual, compensatory, consequential, incidental, and punitive damages or losses.

(3) Notwithstanding any other provision of law to the contrary, and except as provided in subsection (4), any person who uses or attempts to use an automated external defibrillator device on a victim of a perceived medical emergency, without objection of the victim of the perceived medical emergency, is immune from civil liability for any harm resulting from the use or attempted use of such device. In addition, any person who acquired the device, including, but not limited to, a community association organized under chapter 617, chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723, is immune from such liability, if the harm was not due to the failure of such acquirer of the device to:

(a) Notify the local emergency medical services medical director of the most recent placement of the device within a reasonable period of time after the device was placed;

- (b) Properly maintain and test the device; or
- (c) Provide appropriate training in the use of the device to an employee or agent of the acquirer when the employee or agent was the person who used the device on the victim, except that such requirement of training does not apply if:
 - 1. The employee or agent was not an employee or agent who would have been reasonably expected to use the device; or
 - 2. The period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm, or between the acquisition of the device and the occurrence of the harm in any case in which the device was acquired after engagement of the employee or agent, was not a reasonably sufficient period in which to provide the training.
- (4) Immunity under subsection (3) does not apply to a person if:
 - (a) The harm involved was caused by that person's willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;
 - (b) The person is a licensed or certified health professional who used the automated external defibrillator device while acting within the scope of the license or certification of the professional and within the scope of the employment or agency of the professional;
 - (c) The person is a hospital, clinic, or other entity whose primary purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent;
 - (d) The person is an acquirer of the device who leased the device to a health care entity, or who otherwise provided the device to such entity for compensation without selling the device to the entity, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent; or
 - (e) The person is the manufacturer of the device.
- (5) This section does not establish any cause of action. This section does not require that an automated external defibrillator device be placed at any building or other location or require an acquirer to make available on its premises one or more employees or agents trained in the use of the device.
- (6) An insurer may not require an acquirer of an automated external defibrillator device which is a community association organized under chapter 617, chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723 to purchase medical malpractice liability coverage as a condition of issuing any other coverage carried by the association, and an insurer may not exclude damages resulting from the use of an automated external defibrillator device from coverage under a general liability policy issued to

an association.

History.--s. 1, ch. 2001-76; s. 3, ch. 2004-345; s. 3, ch. 2004-353; s. 3, ch. 2006-206.

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**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers
FROM/PHONE: Joseph Montopoli, Fire Chief/EMC 954-797-1213
PREPARED BY: Julie Downey, Assistant Chief EMS 954-797-1189
SUBJECT: Ordinance

AFFECTED DISTRICT: All

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: CODE AMENDMENT - AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, AMENDING CHAPTER 7, FIRE PREVENTION AND PROTECTION, CREATING SECTION 7-51(8) OF THE CODE, PROVIDING FOR IMMUNITY FROM CIVIL LIABILITY PURSUANT TO FLORIDA STATUTES 768.1325; PROVIDING FOR CODIFICATION, PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. {Approved on First Reading on January 6, 2010 subject to Mr. Rayson reviewing and bringing back at the next Council meeting. . The vote is as follows: Mayor Paul - yes; Vice Mayor Crowley - yes; Councilmember Caletka - yes; Councilmember Luis - yes; Councilmember Starkey - yes.}

REPORT IN BRIEF: The Town established a Community Automated External Defibrillator Program (AED) for regulating the health, safety and general welfare of the Town of Davie residents. The Town wishes to amend the Code to specifically adopt the immunity from civil liability provisions as set forth in Florida Statute 768.1325; in which Florida Legislature has determined that notwithstanding any other provision of law to the contrary any person who uses or attempts to use an AED device on a victim of a perceived medical emergency, without objection from the use or attempted use of such device is immune from such liability.

PREVIOUS ACTIONS: O-2008-27, Chapter 7, Fire Prevention and Protection

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

If yes, expected cost: \$

What account name and number will funds be appropriated from:

Additional Comments:

RECOMMENDATION(S): Motion to approve ordinance

Attachment(s): Ordinance, Florida Statue 768.1325