

COUNCIL MINUTES AUGUST 19, 2009

Mayor Brimer convened a regular meeting of the City Council at 7:00 p.m. on Wednesday, August 19, 2009, in the Council Chamber. The following were present: Mayor Mark Brimer, Vice-Mayor Martha Kirby, Councilman Dominick Montanaro, Councilman Michael Chase, Councilman Jeffrey Fleis, City Manager Michael Crotty, City Attorney James Beadle, and City Clerk Barbara Montanaro.

Councilman Chase led a moment of silence and the Pledge of Allegiance.

PRESENTATION BY AMY KNEESSY, DISTRICT 3, BREVARD COUNTY SCHOOL BOARD

Ms. Kneessy was not able to attend.

CITIZEN COMMENTS

- Bill Higginson, 1175 Highway A1A, asked the Council to present to each Brevard County Commissioner a letter or resolution opposing any cut in the City's portion of the first responder funds. He expressed the urgency of retaining the level of service for emergency response.

City Manager Michael Crotty stated that the Space Coast League of Cities adopted a resolution supported by all cities in Brevard County requesting the Brevard County Board of County Commissioners to continue to distribute first responder funds to the cities. Fire Chief Dan Rocque has spearheaded the effort to convince the Commissioners keep the first responder money in the 09/10 budget. There are four Commissioners who are willing to explore the possibility. The District IV Commissioner is opposed.

ACTION: Councilman Fleis MOVED, SECOND Councilman Montanaro, to authorize the mayor to send a letter to each of the Brevard County Commissioners asking their support to fund the first responder money. **VOTE: ALL AYES. MOTION CARRIED.**

COUNCIL COMMENTS

VICE-MAYOR KIRBY reported that she attended the following meetings:

- Space Coast League of Cities and Intergovernmental Committee meeting, August 10;
- Florida League of Cities Conference August 13-15 where many of the upcoming legislative issues were discussed and she obtained information about potential grant opportunities;
- Keep Brevard Beautiful on August 18 where she found out about a program which may help remove Brazilian pepper and carrot wood trees from Samsons Island.

COUNCILMAN FLEIS reported that he attended the Space Coast League of Cities meeting and the Florida League of Cities Conference. At the Conference, Michael Powell, former Chair of FCC, talked about the technological savvy of today's youth. Councilman Fleis asked that a future Council Agenda include discussion of adding one or two students to the Library Board to help update Library technology.

City Manager Crotty said he will obtain guidelines for having a student serve on a board.

COUNCILMAN MONTANARO reported that he sat in on the Space Coast League of Cities Board meeting where they discussed with Eligere Strategies a plan to diminish the impact of "Taxpayers Bill of Rights" (TABOR) on small cities. They suggested changing the acronym to TCEA – Tallahassee Community Elimination Act. Councilman Montanaro recommended shortening it to CEA – Community Elimination Act. Although a bill has not been filed yet, SCLC will take the offensive to minimize any negative impact on cities.

Councilman Montanaro also attended the following sessions during Florida League of Cities Conference: Senate Bill 216 limiting communication by Council or staff regarding election issues; privatization of some toll roads; impacts of the proposed Hometown Democracy referendum on local government.

COUNCILMAN CHASE stated that Mr. Higginson beat him to the topic of sending a resounding "NO" to Brevard County Commissioners regarding elimination of the cities' portion of the first responders funds.

MAYOR BRIMER commented on the presentation made by Mark Herron, an ethics attorney, regarding restrictions on local government expressions about ballot issues (Senate Bill 216). Mayor Brimer has forwarded the papers from that session to Paul Gougelman, attorney for SCLC, to review and report to local cities about what they can and cannot do or say about an issue being proposed by the State Legislature.

CITY ATTORNEY REPORT

City Attorney James Beadle did not have a report.

CITY MANAGER REPORT

City Manager Crotty did not have a report.

ORDINANCE NO. 1019, AN ORDINANCE OF THE CITY OF SATELLITE BEACH, BREVARD COUNTY, FLORIDA CALLING A REFERENDUM ELECTION TO APPROVE PROPOSED AMENDMENTS TO THE CITY CHARTER PRIMARILY RELATED TO SUBSTANTIAL EDITING OF EXISTING PROVISIONS, THE TIME OF ELECTIONS, LENGTH OF TERMS AND CONTINUOUS SERVICE AND VACANCIES FOR CITY COUNCIL, AND THE NUMBER OF VOTES REQUIRED TO REMOVE MEMBER OF COUNCIL AND CITY MANAGER; ESTABLISHING A DATE FOR REFERENDUM; PROVIDING EFFECTIVE DATE (SECOND READING)

Ordinance No. 1019 was approved on first reading at the August 5, 2009, Council meeting. The copy of Ordinance No. 1019 included in the Agenda packet incorporated amendments made on first reading.

ACTION: Councilman Chase MOVED, SECOND Vice-Mayor Kirby, to read Ordinance No. 1019 by title only on second reading. VOTE: ALL AYES. MOTION CARRIED.

Mayor Brimer read Ordinance No. 1019 by title only on second reading.

City Clerk Montanaro stated that Lorraine Gott, Chair of the Charter Review Committee, has recommended two additional changes:

1. On Referendum 2, change “to reduce costs to the City associated with special elections and off-year elections” to “eliminate the costs to the City associated with off-year elections”
2. On Referendum 4, change “to create a new provision to specify” to “to create a new provision specifying”

In response to a question about the cost of a special election, the City Clerk stated that last’s year’s election cost less than \$1,500.00. This year is an off-year election and it will cost more than \$15,000.00.

ACTION: Councilman Fleis MOVED, SECOND Councilman Chase, to amend Ordinance No. 1019 Referendum Questions 2 and 4 as recommended above. VOTE: ALL AYES. MOTION CARRIED.

Mayor Brimer asked for public comments on Ordinance No. 1019 as amended. The following individual addressed Council:

- Joe Ferrante, 620 Rosada Street, asked if the referendum question on changing to four-year terms with elections on the presidential and gubernatorial cycle should indicate that this will begin in 2012.

City Attorney Beadle stated that is included in the Charter language and it was up to Council whether they thought it needed to be spelled out on the ballot question. No change was made.

ACTION: Councilman Chase MOVED, SECOND Vice-Mayor Kirby, to adopt Ordinance No. 1019 as amended. VOTE: ALL AYES. MOTION CARRIED.

Grant Writer Lorraine Gott will prepare a special two-sided page explaining the Charter Amendments for the election edition of the *Beachcaster*.

ORDINANCE NO. 1018, AN ORDINANCE OF THE CITY OF SATELLITE BEACH, BREVARD COUNTY, FLORIDA, AMENDING SECTION 52-5 (d) OF THE CITY CODE OF SATELLITE BEACH REGARDING DATE FOR PUBLIC HEARING AND DATE TO ADOPT STORMWATER BUDGET; PROVIDING AN EFFECTIVE DATE (SECOND READING)

Ordinance No. 1018 was approved on first reading on August 5, 2009. This ordinance establishes a new date for the adoption of the stormwater utility budget to coincide with the adoption of the fiscal year budget.

ACTION: Councilman Chase MOVED, SECOND Vice-Mayor Kirby, to read Ordinance

No. 1018 by title only on second reading. VOTE: ALL AYES. MOTION CARRIED.

Mayor Brimer read Ordinance No. 1018 by title and asked for public comments. There were no comments.

ACTION: Councilman Fleis MOVED, SECOND Councilman Chase, to adopt Ordinance No. 1018 on second reading.

COUNCIL CONVENED AS THE COMMUNITY REDEVELOPMENT AGENCY FOR THE FOLLOWING AGENDA ITEM:

DISCUSS/TAKE ACTION ON CHANGE ORDER FOR HIGHTOWER BEACH PARK

Public Works Director Allen Potter presented Change Order #2 for Hightower Beach Park to increase the construction contract amount to Joyal Construction by \$10,561.93, making the new contract amount \$676,488.29. This sum includes changes to bollard lighting, additional irrigation required for additional plantings along the dune, and additional electrical service and wiring associated with installation of the security cameras and the code blue emergency phone.

Vice-Mayor Kirby reported that the flag pole, sign, and framing of the certificate were paid for by funds from the Bob Bolin Memorial Fund.

Mayor Brimer asked for public comments. The following individual addressed Council:

- David R. Schechter, 635 Seville Court, stated that he had received a call asking why a flag is not flying there.

City Manager Crotty stated there could have been 250 condos built on the site with lights in each one, but the Department of Environmental Protection has not approved a light for the flag.

ACTION: Councilman Chase MOVED, SECOND Vice-Mayor Kirby, to approve the final change order (#2) in the amount of \$10,561.93. VOTE: ALL AYES. MOTION CARRIED.

DISCUSS/TAKE ACTION ON DESIGN CHANGE ORDER FOR CONTRACT WITH WATAUGA COMPANY FOR BEACH OUTFALLS AND BEACH ACCESS IMPROVEMENTS

Public Works Director Potter stated that the plans for the beach access improvement at Grant Avenue call for the use of a composite wood decking on the floor of the pavilion. There is a cost savings of \$9,000 to use the salt rock concrete finish similar to the one at DeSoto instead of the composite decking. Staff recommended using the salt rock concrete at all beach accesses to save money, to create uniformity, and for ease of maintenance.

In response to questions from Council, the Public Works Director stated that the concrete has fiber, not rebar, and does not need to be sealed. It has been in place at Pelican

Beach Park over two years and cleans up easily with pressure washing.

Mayor Brimer asked for public comments. There were no comments.

ACTION: Councilman Fleis MOVED, SECOND Councilman Chase, to authorize the change from composite decking to salt rock concrete at Grant Avenue and future beach outfalls and beach access improvements. VOTE: ALL AYES. MOTION CARRIED.

Vice-Mayor Kirby reported she learned at the Keep Brevard Beautiful meeting that FDOT approved a project in Merritt Island, which allowed pavers, instead of sod, between the sidewalk and road.

COUNCIL RECONVENED FOR THE FOLLOWING AGENDA ITEMS:

DISCUSS/TAKE ACTION ON FY 09/10 BUDGET PREPARATION

City Manager Crotty presented three options to fill the vacancies in the Public Works Department from PILOT funds as follows:

- Three temporary part time workers – 30 hours each (total of 90 hours) for \$67,472, without benefits.
- Two permanent part time workers – 30 hours each (total of 60 hours) for \$76,555, with partial benefits.
- Two full time workers – 40 hours each (total of 80) hours for \$97,158, with full benefits.

Although temporary part time positions have not had the greatest success, the cost of benefit packages forces the City to look at this option.

Council stated thirty hours is more attractive than a twenty-hour position for temporary part time. This will provide an opportunity to observe the work habits to determine if/when one or more of them should be moved to a permanent position. Also, the maintenance of new landscaping along South Patrick Drive will become the responsibility of Public Works.

Mayor Brimer asked for public comments. The following individual addressed Council:

- John Fergus, 135 Maple Drive, stated that not all three have to be hired immediately, thus saving more money. Also two full time people will feed two families; three part time people will feed three families.

ACTION: Councilman Flies MOVED, SECOND Councilman Chase, to direct that the final budget include \$67,472 to fund three temporary part time workers for Public Works and the balance to go into the reserves and/or contingency of the general fund. VOTE: ALL AYES. MOTION CARRIED.

APPOINTMENTS TO BOARDS

City Clerk Barbara Montanaro presented a list of board vacancies and noted that there are

no eligible volunteers at this time.

ACTION: Councilman Montanaro MOVED, SECOND Vice-Mayor Kirby, to reappoint Sandra VanDerscoff to a two-year term on the Recreation Board, said term ending September 1, 2011. VOTE: ALL AYES. MOTION CARRIED.

DETERMINE AGENDA ITEMS FOR NEXT REGULAR MEETING

Other than the one item suggested by Councilman Fleis, there is very little for the next agenda. However, Council will meet, as that will be the one regular meeting for September. The September 16 regular meeting has been canceled.

Vice-Mayor Kirby reminded those serving on Florida League of Cities Legislative Policy Committees that the first meeting will be Friday, September 4.

DISCUSS/TAKE ACTION ON APPROVAL OF AMENDMENT OF PARAGRAPH 3(g) OF PILOT AGREEMENT WITH HUNT PINNACLE RELATING TO STIPULATION RELEASING LAWSUIT

City Manager Crotty stated that the City Attorney and the attorney for Hunt Pinnacle have worked to modify Paragraph 3(g) in the PILOT Agreement and have proposed a modification which is reasonable

City Attorney Beadle stated Mr. Spoonhour, the attorney for the previous owner of Pelican Coast for the tax exemption issues, asked for clarification of Paragraph 3(g). Mr. Beadle prepared the stipulation and sent to Mr. Ainsa in El Paso, Texas, attorney for HP, for review. The recommended language for Paragraph 3(g) is as follows:

(g) Upon execution of this Agreement by the Parties, and Owner's payment to the City of the PILOT payments described in Section 3(b) above, the City will file a stipulation of dismissal of the Litigation. Each party shall bear its own costs and attorneys' fees regarding the Litigation. The dismissal of the Litigation shall not affect (i) any right of the City, in the event of a default by Owner under this Agreement, to file an action in the future to contest ~~any~~the exemption(s) from local ad valorem property taxes asserted by Owner, or granted by the Property Appraiser, ~~with respect to the Project for the tax year in which the default occurs as well as any subsequent years~~, and Owner waives any right to assert waiver, estoppel, laches or a similar defense against the City in the event of such litigation, or (ii) any right the Owner may have to apply for and seek such exemption. In construing this Section 3(g), it is the intent of the Parties that the City cannot contest any exemption(s) for those years in which the Annual PILOT was fully paid under this Agreement or in those years from the filing of the Litigation through and including the Effective Date of this Agreement.

City Manager Crotty summarized by saying this states that any tax issues in the past are behind us; we will look forward, not back, regarding taxes and payment in lieu of taxes.

Mayor Brimer asked for public comments. There were no comments.

ACTION: Councilman Montanaro MOVED, SECOND Councilman Chase, to approve the

amendments as outlined in Paragraph 3(g) above. VOTE: ALL AYES. MOTION CARRIED.

BUCCANEER BEACH CLUB SPECIAL REQUEST

Although the City likes to give public notice before addressing an issue in Council, City Manager Crotty stated Council can address additional items if necessary. He stated the elevator will be closed for repairs in each of the Buccaneer Beach Club buildings, one beginning September 1 and the second, October 1. Some residents are not able to climb the stairs. Residents there have requested special consideration to allow up to four recreational vehicles to park in the lot behind the tennis courts for a period not to exceed thirty days for each building.

Building Official John Stone presented a list of conditions as outlined in his August 19, 2009, memorandum, showing a drawing of location of the temporary housing and providing for sanitation, water, electricity (generators), cooking and other homemaking activities, and removal of all temporary facilities no later than November 15, 2009.

Council discussed the success of the Campers on Mission parking RVs at the Oceanside Community Church, stating allowing temporary parking of RVs was the right thing to do at that time and it is the right thing to do for residents of the Buccaneer Beach Club.

Mayor Brimer asked for public comments. There were no comments.

ACTION: Councilman Montanaro MOVED, SECOND Councilman Fleis, to accept the recommendation as outlined by Building Official John Stone and to approve up to four RVs as temporary living facilities for residents of the Buccaneer Beach Club during the repair of the elevators in each building. VOTE: ALL AYES. MOTION CARRIED.

ADOPTION OF MINUTES: AUGUST 5, 2009, REGULAR MEETING

ACTION: Councilman Montanaro MOVED, SECOND Councilman Fleis, to approve the minutes of the August 5, 2009, regular meeting. VOTE: ALL AYES. MOTION CARRIED.

Mayor Brimer adjourned the meeting at 8:00 p.m.

Barbara Montanaro, CMC
City Clerk