

**SPECIAL CALL CITY COUNCIL MEETING  
TUESDAY, MAY 24, 2011 3:30 P.M.  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**A G E N D A**

**1. CALL TO ORDER**

- A) Roll Call
- B) Pledge of Allegiance

**2. PUBLIC COMMENT**

**3. ITEM TO BE DISCUSSED:**

- A) City Manager Employment Agreement with James O'Connor

**4. ADJOURNMENT**

Council Meetings will be televised on Channel 13 and replayed.

This is a Public Meeting. Should any interested party seek to appeal any decision made by Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings and that, for such purpose he may need to ensure that a record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs a special accommodation for this meeting may contact the City's Americans with Disabilities Act (ADA) Coordinator at 978-4920 at least 48 hours in advance of the meeting.

**SPECIAL CALL CITY COUNCIL MINUTES  
TUESDAY, MAY 24, 2011 3:30 P.M.  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**PRESENT:** Jay Kramer, Mayor; Pilar Turner, Vice Mayor; Craig Fletcher, Councilmember; Brian Heady, Councilmember and Tracy Carroll, Councilmember **Also Present:** Wayne Coment, Acting City Attorney; John Lee, Acting City Manager and Tammy Vock, City Clerk

**1. CALL TO ORDER**

**A) Roll Call**

Mayor Kramer called the meeting to order and the Clerk performed the roll call.

**B) Pledge of Allegiance**

Mayor Kramer led the Council and the audience in the Pledge of Allegiance to the flag.

**2. PUBLIC COMMENT**

Mr. Robert Walsh wished to speak on behalf of someone who deserves better than what the Council is proposing. He is an asset to the City and is honest and upright in his dealings with the people. Mr. Walsh said that his only knowledge of him is seeing him on television and never hearing anything unfavorable about him. He seems to be a decent straight talking competent intelligent person whose word is his bond. Mr. Walsh said at the Council's request he is serving as City Manager while continuing serving as the Public Work's Director. He then went over the duties of a City Manager. He said that the City is on course for selling to FPL and merging water and sewer services with Indian River County. This will remove power unit from the group, reduce employees to 250, eliminate the requirement for a strong utility background and restore 50% of the time to other services. Hiring a new City Manager because the City needs his expertise until they sell to FPL at a cost of over \$175,000 doesn't make sense to him. He said that after 20 years with the City, the Acting City Manager has an invisible benefit that no one else has. He knows the people, places and circumstances that he would be dealing with everyday and has been doing this for almost eight months. Mr. Walsh recommended to Council that they appoint Mr. Monte Falls (Interim City Manager) as City Manager. If they need a consultant then they should use the \$175,000 they would save by not hiring a new City Manager with talent not needed after the sale to FPL.

**3. ITEM TO BE DISCUSSED:**

**A) City Manager Employment Agreement with James O'Connor**

Mr. Wayne Coment, Acting City Attorney, went over his memorandum regarding Mr. James O'Connor's request (please see attached). He said that Mr. O'Connor indicated that he would

be agreeable if Council wants his ICMA retirement plan to be a matching amount where he would put in an amount and the City would match that amount. Mr. Coment felt that the language in Mr. O'Connor's current agreement was the simplest, which states "In addition to Employee's base salary and participation in Employer's retirement plan, Employer shall pay an amount equal to 3% of the Employee's base salary into a deferred compensation program (ICMA) up to the maximum amount allowed under law." He said if Council is agreeable to the three months living expense then they would need to put in the agreement the language the obligation to pay that living expense would end when he obtains permanent living quarters by way of purchase, lease, or rental or at the end of the three months. He said that he was a little troubled with Section 9, item 1(a), which he felt should be clarified by adding "except as provided for herein for termination with cause." to the end of the statement "The majority of the Employer's City Council votes to terminate Employee at a duly authored public meeting pursuant to the provisions of the City Charter." In other words if the termination is without cause then he would be entitled to severance.

Mr. Fletcher made a motion to adopt the requests of 3% for retirement and the three months for relocation. He noted that the three months living expense was originally for six months and the City cut it down into one month. He said that three months would be cutting in half the original request of six months, which sounded fair to him.

Mrs. Carroll asked what is the value of the three percent for retirement.

Mr. Coment answered about \$4,200.

Mrs. Carroll said in essence they are adding \$2,000 one time for temporary living expense and \$4,200 a year to his salary.

Mr. Coment said that is correct. He said it would actually be \$4,350 each year.

Mrs. Turner seconded the motion with the addition of "except as provided for herein for termination with cause" to Section 9, item 1(a).

Mayor Kramer said that he spoke with Mr. O'Connor yesterday who stated that he would be okay with no pay adjustment for two years.

Mr. Coment noted that Section 3 (c) states that in no case shall Employee receive any such adjustment (cost of living to Employees) sooner than two years, which was changed from one year. He said that Mr. O'Connor was in agreement with this.

Mr. Coment asked Council if they wanted to require Mr. O'Connor's contribution to ICMA.

Mr. Fletcher said it would be Mr. O'Connor's option.

Mr. Heady said at the last campaign for City Council there was a lot of discussion about financial analysis and that they shouldn't do anything without financial analysis. He said that Mrs. Turner insisted that when they do things that involves spending tax dollars that there should be some financial analysis. He said that the addition of Mr. O'Connor to the payroll is going to increase the burden on the taxpayers to the tune of about \$175,000. He said that he asked what benefit the taxpayers would get for that expenditure. There was no financial analysis and no explanation to the taxpayers on how this \$175,000 is going to benefit them. It seemed to him that this has been inconsistent and he did not understand why they want to be inconsistent in this case. He said that he heard when he started to voice his objection from Mr. Fletcher that they have three votes. Mr. Heady felt that the one who really has the right is the Mayor because he has the capacity to make sure that all citizens and Councilmembers have their say, which is the most important issue at every meeting. He told Mr. Fletcher that he felt it was incorrect to think that a Councilmember should not voice their objections. They heard from Mrs. Carroll that she asked the City Clerk what other cities are doing. He said that he made the comment that rather than be a follower that Vero Beach should be a leader. He said if they were to follow and if they look at their community, they see the Administrator at the County cut part of his salary package in half. Some Constitutional Officers have had reductions. What the City is doing is setting a new course because this governing authority in tough economic times wants to increase the cost to the taxpayers and wants to give Mr. O'Connor a package greater than, better than any City employee has ever had in this community. He felt that this was a terrible use of taxpayer dollars and a slap in face and an insult to the current employees. He said that Mrs. Carroll said the new City Manager would be the face of the City and in consideration of what the City offered and then him coming back asking for more to him (Mr. Heady) was a face of greed, a face of access and a face of disrespect for taxpayer's dollars. During the last election they heard a lot about fiscal responsibility and it seemed to him that this package was the height of irresponsibility. One of the things is an item on retirement benefits that this employee wants that may have a domino effect as if they give it to one employee all employees are going to ask for similar provisions. There is a Police Officer sitting in the back of the Chambers and he remembers a Council meeting they had with respect to an upcoming contract with the Police Officers on their salaries and there were comments about the furlough days that each Police Officer has to take and what they could do to eliminate them. The question was where would the money come from. He said that here is \$175,000 if they just don't do this (hire Mr. O'Connor) they could have that money for the Police Officers who serve this community. One of the items in the proposed contract is to pay temporary living expenses. Mr. Heady felt that Mr. O'Connor should be able to afford his own rent with a salary of \$145,000. He felt there were many people in this community who would be paying for this salary package who are having a tough time paying their rent and who do not have a salary of \$145,000. He said this City Council thinks that for a man who makes \$145,000 that they would pick up his rent in addition to his car allowance and vacation and sick days. One of the things he has heard over and over again in this community is that Council voted 4-1 to sell the biggest utility they have. He said yes, Mr. Fletcher he can count and the 4-1 vote is to sell the utilities and the utilities are half of this particular position's duties. It seemed to him that they need to sit back, take a breath and see if they do in fact sell the utilities. If they do sell the utilities then instead of looking for a \$150,000 a year employee they might only need to be

looking for a \$70,000 a year employee. He felt that the current road that they are on is in the fast lane in trying to sell the electric utility and that is half of the duties of the City Manager. He was told by former City Managers that they do this 50% of the time. He said that if they are going to eliminate 50% of the duties then it seemed to him that the City Manager would only have to do half the job and would only need half the pay. Yet, they want to guarantee this man (Mr. O'Connor) that he is going to get twice the pay for a fairly long term. No other Constitutional Officer has a contract for employment and they all work at the pleasure of the Council and this has been longstanding. This man wants to come into town and change that right away to benefit himself. Mr. Heady said that he hears that they were looking to find someone to be a benefit to the taxpayers and it is pretty clear that the only individual he (Mr. O'Connor) is looking out for is himself. He said that he understands that when he (Mr. O'Connor) is looking for an employment contract. As one citizen just pointed out, the better City Manager right now stepped into the position and didn't ask for anything like the terms of the contract they see before them. Now they have a couple requests for changes that really changes the intent of the Charter. He remembered the outrage when he suggested that he would look at a couple things that he heard "Mr. Heady don't you understand that would be a change to the Charter." Mr. Heady said that he did understand and he also knew that if they were going to make a change to the Charter they needed to have something in place prior to August so they could have the information to the Supervisor of Elections. What they want to do here with a stroke of a pen is do a run around the Charter and add provisions to the contract, which would make Charter revisions essentially meaningless. The hiring of the City Manager is important, but it is important when there is a need. One of the things that he did at a meeting or two ago was ask each Councilmember what the need is. He was told over and over again that individual Councilmembers had individual discussions with the current Interim City Manager privately in his office. This is a not a private position they are discussing. It is a public position and he feels that the public has a right to know and he, as a Councilmember, has a right to know if his colleagues (Councilmembers) have a reason why they need to replace the current City Manager. He asked that the Councilmembers tell the public what it is that this City Manager (Mr. Falls) is not doing. He said that when he asks the current City Manager to do something he does it. This is the end of May, they are staring at June with the budget hearings in July. The current City Manager is at the point where he is wrapping up the budget to be presented to Council. As they approach the finish line, this has the impact of stopping a horse and changing the jockey. This makes no sense to him. If they are going to do the fiscal responsible thing and are going to be concerned about the taxpayers that they are paid to serve, then they would respectfully reject the demands for more and accept his rejection to the offer that was made and step back, take a breath and put this off for at least two months until after they see the budget presented by the current City Manager.

Mayor Kramer said that in his discussions with Mr. Falls he did not see someone who was passionate about being a City Manager. He has had ample time to apply for the position. Mayor Kramer was sure that if Mr. Falls was asked then he would do the position, but he did not see the ambition to be City Manager just yet. Mayor Kramer felt that Mr. Falls could handle it and could do it. He has seen that Mr. Falls was very helpful with the candidates. He said that

if Mr. Falls wanted the job then he would not have gone this far through the process and probably accepted Mr. Falls as the City Manager.

Mr. Heady said that Mr. Falls has, at these meetings, said that he is very willing to continue in his current position. He has made it pretty clear that he didn't apply for the position and if Council was happy with him then they would continue having him do the job. Mr. Heady said the fact that Mr. Falls might not be passionate or might not be an ambitious individual to him, if he is doing the job, then why are they going to spend \$175,000 tax-dollars to replace someone who admittedly is doing the job and will continue to do the job.

Mr. Fletcher said that question is irrelevant because the decision has made for a new City Manager.

Mrs. Carroll agreed. She said that there have been times when one of her teenagers has not liked the decisions that she and their father made. They could argue, scream, cry, etc., and list all the reasons why her parents should not have made the decision. In this case, four of the five Councilmembers have made the decision. She acknowledged Mr. Heady's desire to have Mr. Falls however the other Councilmembers looked very carefully at the candidates and chose to go in a different direction. The decision was made, the vote was taken, and the offer has been made. She said let's move forward.

Mrs. Turner responded to comments made regarding Mr. O'Connor and depicting him of someone of greed. She said that he is looking at moving from his home in Virginia and coming to Vero Beach. He is not looking for anything extra. He is strictly looking for a lateral move and welcomes the opportunity to face the challenges that they have here in Vero Beach. They would be bringing someone in with 32 years of expertise, which would be a great benefit to the City. She did not see a conflict with the Charter with the contract presented. She did not think that they would be changing the Charter.

Mr. Coment said there was nothing in the contract that conflicts with the City Charter.

Mrs. Carroll asked if she was correct that there was nothing that the Council would do in terms of a contract with a Charter Officer that would affect the rest of the employees.

Mr. Robert Anderson, Human Resources Director, said the personnel rules apply to all employees including Charter Officers. He felt that the Council has the authority to amend that just like they have different contracts for different unions.

Mrs. Carroll asked is there a dollar amount that the City saved by waiting after Mr. Gabbard left to hire a new City Manager.

Mr. Anderson answered approximately \$100,000 (about seven months).

Mr. Fletcher called the question. Mrs. Turner seconded.

Mayor Kramer clarified that the motion was to approve the changes to the contract that was discussed earlier.

Mr. Coment went over the changes that will be made to the agreement, which was that the Mr. O'Connor could not receive a cost of living adjustment that other employees may receive for two years after employment, the City would be adding 3% to ICMA, and under termination that the exclusion to severance would be if he is terminated pursuant to the Charter but if it is with cause then he would not receive any severance, and three months temporary living expense in lieu of one month.

The motion to call the question passed 4-1 with Mr. Heady voting no.

Mr. Heady said that he understood Mrs. Turner's point that she did not consider greed because he (Mr. O'Connor) is looking to have what he has up North. Mr. Heady felt that there were a lot of people who move to southern states that realize that they don't get in southern states what they get up North. With respect to the comment on the request that he is requesting an increase in his pension, this is an increase that the City is used to paying. He felt that this may not be a legal requirement that they have to do for each employee the same thing they do for a Charter Officer, but clearly the employees are going to see this. One of the big challenges they face is the underfunding of the pension plan as it is now. Anything that increases the pension plan at this point was not something that he felt they should be doing. He said that she (Mrs. Turner) painted the face that she wants on it and he understands as they both are entitled to their opinions and he sees it as a face of greed. Regarding not changing the Charter, what you do is give someone an employee contract that requires that the City is going to have to pay him \$150,000 if they terminate him (Mr. O'Connor). If they look at the Charter, the Charter Officers work at the pleasure of the Council without a golden parachute. They may be able to get a lawyer to tell them that it is not a technical change to the Charter, but for all intensive purposes this is a change to the Charter. This golden parachute they are voting for means that one Charter Officer, if he is terminated, receives \$150,000 check and the other Charter Officers do not receive anything. Should Council hire Mr. O'Connor, then they should hire him under the terms and conditions of the Charter that serves the City and that the other Charter Officers work under. They should hire him under the Charter that serves this City and under how the other Charter Officers work under. He said that Mrs. Carroll's comment that they have already saved \$100,000 by not replacing the former City Manager with anyone other than the Interim City Manager they have is a good point. It seemed to him that if Council can find a way to save \$100,000 then what they should do is continue in that mode of operation and not change so that instead of saving money they are expending money. To him, it is an irresponsible waste of taxpayer dollars and it is not needed. They have a City Manager that is doing the job who has said in public meetings that he is willing to stay on. Mr. Heady said that not one Councilmember has had one bad thing to say about Mr. Falls' job performance. If that is the individual they have and they have saved \$100,000 since October, then let's continue the savings and continue with the man who is doing a good job and not add to the taxpayer's burden another \$175,000.

The motion passed 4-1 with Mr. Heady voting no.

Mr. Coment said that he would make the changes and give the document to Mr. O'Connor.

**4. ADJOURNMENT**

Mr. Fletcher made a motion to adjourn today's meeting at 4:08 p.m. Mrs. Carroll seconded the motion and it passed unanimously.

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