

**CITY OF VERO BEACH, FLORIDA
SEPTEMBER 2, 2014 9:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

The invocation was given by Pastor Jim Gallagher of Calvary Chapel of Vero Beach followed by the Pledge of Allegiance to the flag.

1. CALL TO ORDER

A. Roll Call

Mayor Richard Winger, present; Vice Mayor Jay Kramer, present; Councilmember Pilar Turner, present; Councilmember Amelia Graves, present and Councilmember Craig Fletcher, present **Also Present:** James O'Connor, City Manager; Wayne Coment, City Attorney and Tammy Vock, City Clerk

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

Mr. Kramer made a motion to adopt the agenda as presented. Mayor Winger seconded the motion and it passed unanimously.

B. Proclamations

1) Hunger Action Month – September 2014

Mayor Winger read and presented the Proclamation.

C. Public Comment

Mayor Winger stated that the reason for Public Comment is for the public to relate their concerns or give information to the City Council. He said that Council usually does not respond on issues being discussed under Public Comment. The public is to direct all comments to the presiding officer, which would be the Mayor. The Council is not here to debate with anyone and all questions should be directed to the presiding officer. The public is invited to speak after any issue on the agenda, but only once. He knows that this is election season and there is to be no campaigning at the podium.

1) Master Plan Timeline to be presented by Mr. Himanshu Mehta, Managing Director for Indian River County Solid Waste

Mr. Vincent Burke, Indian River County Utilities Director gave a Power Point presentation (please see attached).

Mrs. Turner thanked Mr. Burke for his presentation this morning. She expressed the goal he is after will need a lot of public education to achieve. She asked Mr. Burke if the City of Vero Beach chose to be a part of his RFP, could they include as special provisions garbage pickup twice a week, as well as side yard pickup and return of garbage cans.

Mr. Burke said yes and he would like to meet with City staff to go over the requirements that the City would have.

Ms. Graves asked Mr. Burke what he was proposing about organics and combustibles.

Mr. Burke explained that right now they are researching what is available and what works and does not work.

Mrs. Turner asked Mr. Burke what was his timeline in preparing this RFP.

Mr. Burke stated that he hoped to have the RFP put on the streets by the end of this year and have something secured several months before their contract expires so that if it is the same franchise hauler there will be no interruption in service. However, if a new franchise hauler is chosen then notifications will be sent to their residents about the new program.

Mr. Mark Mucher, 617 Indian Lilac Road, asked Mr. Burke to give an update on the status of the Ethanol and Electric Production Plant located on Oslo Road.

Mr. Burke reported that the facility is back in operation. They had to shut it down to do some routine maintenance, but now they are up and running again.

Mayor Winger expressed that the City of Vero Beach provides a quality of service when it comes to garbage pickup.

2) Mr. Karl Zimmermann, Chairman of the Vero Beach Tree and Beautification Commission will be discussing City of Vero Beach Beautification Weekend

Mr. Karl Zimmermann, Chairman of the Vero Beach Tree and Beautification Commission, told Council that he was at their meeting this morning seeking their approval and support to establish an ongoing City of Vero Beach Beautification Weekend, which will be a City sponsored activity. The Tree and Beautification Commission selected the second week in February to hold this event. He said that the annual beautification event is not new to the City. A Vero Beautification Society was organized by Dr. W.H. Humiston in the early 1900's and it brought citizens and visitors together for an annual Beautification Day Celebration and this was a tradition that lasted for over 30 years. He said the Commission talked about different approaches in trying to get participation and felt that by having the event the whole weekend would give residents a chance to participate on Sunday if they cannot participate on Saturday. They are asking residents on this weekend to catch up maintenance of their yard and this also

will provide an opportunity for them to do additional plantings in their yard. He said the Commission will work on creating awareness about this project and getting people involved and motivated. He said they (Commission) are just in the starting stages of making plans for this project, but will keep the Council updated. He said they may look at asking the City to have a special yard pickup after that weekend, which might have some costs attached to it.

Mrs. Turner told Mr. Zimmermann that he has her support and thought that it was a great idea to start this project back up.

It was the consensus of Council that they were in full support of this project and offered their services.

Ms. Lori Easterwood, 1845 8th Avenue, and a member of the Board of Directors for the Vero Beach Chamber of Commerce, and a member of the Economic Development Committee, was at today's meeting representing the Vero Beach Chamber. She said one of the goals of the Vero Beach Chamber is to promote their beautiful City by the sea and one part of that goal is to promote their largest industry, which is tourism. The Vero Beach Chamber recognizes the important part that the beaches play. She said with the Vero Beach Chambers help, Humiston Beach was recently named one of the top five family Parks in the United States. The Vero Beach Chamber feels that one thing that helped them win that award was the City lifeguards. She expressed the Vero Beach Chamber supports the City's lifeguards. She knows everyone is aware of the important role that the lifeguards play in assuring the safety of their visitors. She pointed out that the Vero Beach Chamber feels making families safer helps employment to the area and tourism. She closed by saying that the Vero Beach Chamber supports the Vero Beach lifeguards and when and if there is any extra money in the budget and Council believes that fully protected beaches help drive our biggest source of revenue that this would be a high priority. The Vero Beach Chamber hoped Council would make fully protected beaches a reality and making restoring of Vero Beach lifeguards a top priority.

Mr. Charles Wilson, 2134 18th Avenue, commented that last week he attended the conflict resolution meeting between the City of Vero Beach, Indian River Shores and Indian River County. He said the meeting did not go well. In return for more meetings and delays there is promise to negotiate in good faith and the City of Vero Beach promised that they would try to lower electric rates and admitted that rates equal to or lower than FPL rates was not attainable as long as they were members of the FMPA. The City also promised to work towards a represented Utilities Authority and he was surprised that there is not a proposal for that on today's agenda. He pointed out the deadline for having this on the ballot for the November election has either passed or is fast approaching. He mentioned suggestions made by FMPA on a Utility Authority have been provided to the City through back channels. At the last Council meeting, Mayor Winger, Mr. Kramer, and Ms. Graves declined to give direction to the legal team on the lawsuit filed by Indian River Shores. At the conflict resolution meeting the City told customers that the sale of their utilities to FPL was on the back burner and no work was being done towards the sale. Last Friday the Indian River Shores Town Council met and

rejected the notion of any partial reductions. He said it looks like the meeting scheduled for September 6th is heading towards impasse. He recalled at their last Council meeting he provided Council with a proposal for a Path Forward to advance the sale of the utilities (backup material on file in the City Clerk's office). He felt that the City has failed to negotiate in good faith with their neighbors to prevent a lawsuit with Indian River Shores. He recalled at the last meeting when looking for a date to have a meeting the Mayor commented that himself and Mr. Kramer have jobs. Mr. Wilson said if they are too busy to set a date for a meeting then perhaps they should resign and elect people who do have time.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – August 19, 2014**
- 2. Article 32 – Salaries of the Collective Bargaining Agreement between City of Vero Beach and Coastal Florida Benevolent Association Lieutenant's Agreement – October 1, 2012 – September 30, 2015**
- 3. Agreement to Participate in the Florida Certified Local Government (CLG) Program**

Mrs. Turner pulled item 2D-3) off of the consent agenda.

There was no one from the public wishing to comment on the consent agenda.

Mr. Fletcher made a motion to adopt consent agenda items 2D-1) and 2D-2). Mr. Kramer seconded the motion and it passed unanimously.

Mrs. Turner explained that item 2D-3) is an agreement for the City to participate in the Florida Certified Local Government Program. She said that signing this agreement is essential for their historic preservation, grants, and programs. It was a process that they started three (3) years ago in restructuring the Historical Preservation Commission and required that only City residents sit on the Commission. She personally thanked Anna Brady, Deborah Daige, Debra Atwell, Vicky Gould, and all the people who have worked so hard in trying to get this Florida Certified Local Government Program completed in helping to preserve their historic areas.

Mrs. Turner made a motion to approve the agreement. Mr. Kramer seconded the motion and it passed unanimously.

3. PUBLIC HEARINGS

A) ORDINANCES

- 1. An Ordinance of the City of Vero Beach, Florida, amending Chapter 2 of the Code of the City of Vero Beach relating to City Council Meetings, Agendas, and Order of Business; Providing for Conflict and Severability; Providing**

for Codification; and Providing for an Effective Date. – Requested by the City Clerk & City Attorney

Mayor Winger read the Ordinance by title only.

Mr. Wayne Coment, City Attorney, reported that this would be the final public hearing on the Ordinance.

Mayor Winger opened the public hearing at 10:17 a.m.

Mr. Mark Mucher thanked Council for keeping Public Comment in the beginning of the agenda and rejecting pressures to put it at the end of the agenda.

Mayor Winger closed the public hearing at 10:18 a.m., with no one else wishing to be heard.

Mr. Fletcher made a motion to approve the Ordinance. Mr. Kramer seconded the motion and it passed 5-0 with Mr. Fletcher voting yes, Ms. Graves yes, Mrs. Turner yes, Mr. Kramer yes, and Mayor Winger yes.

B) RESOLUTIONS

- 1. A Resolution of the City Council of the City of Vero Beach, Florida, Encouraging the Education of Youth with respect to the Harmful Effects of Flavored Tobacco Products and the Enforcement of Laws restricting the Sale and Use of Flavored Tobacco Products; Providing for an Effective Date. – Requested by Mayor Richard Winger**

Mayor Winger read the Resolution by title only.

Mayor Winger opened and closed the public hearing at 10:19 a.m., with no one wishing to be heard.

Mr. Kramer made a motion to approve the Resolution. Mr. Fletcher seconded the motion and it passed 5-0 with Mr. Fletcher voting yes, Ms. Graves yes, Mrs. Turner yes, Mr. Kramer yes, and Mayor Winger yes.

4. FIRST READINGS BY TITLE FOR ORDINANCES AND RESOLUTIONS THAT REQUIRE A FUTURE PUBLIC HEARING

- A) An Ordinance of the City of Vero Beach, Florida, Repealing Article V, in Chapter 74, of the The Code of the City of Vero Beach, related to Traffic Signal Violation Enforcement by the Use of Traffic Signal Violation Enforcement by the Use of Traffic Signal Violation Detectors (Red Light Cameras); Providing for Conflict and Severability; and Providing for an Effective Date. – Requested by the City Attorney**

Mayor Winger read the Ordinance by title only.

Mr. Coment reported that this Ordinance repeals the City's previously adopted "Intersection Safety Enhancement Ordinance." The Ordinance was originally adopted to authorize the use of automated red-light cameras to enforce violations of red lights at various intersections in the City. The City Council subsequently declined to implement the Ordinance due to anticipated changes in State law at the time. The Florida Legislature did adopt the "Mark Wandall Traffic Safety Act" and amendments that preempted the City's Ordinance, requiring the City's Ordinance to be amended in order to comport with the new State law. However, the City Council declined to modify the Ordinance in light of deciding to not implement the enforcement program at that time. He would recommend that Council repeal the existing Ordinance due to being preempted and made obsolete by State law and court opinions.

Mayor Winger opened this up for public comments at 10:21 a.m., with no one wishing to be heard.

Mrs. Turner made a motion to move the Ordinance to a public hearing on September 16, 2014. Mr. Kramer seconded the motion and it passed 5-0 with Mr. Fletcher voting yes, Ms. Graves yes, Mrs. Turner yes, Mr. Kramer yes, Mayor Winger yes.

5. CITY CLERK'S MATTERS

None

6. CITY MANAGER'S MATTERS

A) Auditing Services Firm – Audit Committee Final Ranking & Recommendation

Mr. O'Connor reported that on May 20, 2014 the City Council established an Audit Committee for the purpose of selecting an auditor to conduct the City's annual financial audit beginning in October 2014. The Audit Committee reviewed and released a Request for Proposals (RFP) in June 2014, which established the factors to be used for auditor selection. RFP responses were received from six firms, the Audit Committee reviewed and scored these proposals, conducted oral interviews with the top four ranked firms, and arrived at a final ranking. It would be his recommendation that Council direct him or his designee to negotiate an auditing contract with Cherry Bekaert, the firm ranked number one by the Audit Committee, and then bring the contract back to City Council for approval.

Mrs. Turner asked why the contract would be for five (5) years as opposed to three (3) years.

Ms. Cindy Lawson, Finance Director, explained that the City, as well as FGOA recommends that the auditor firms be in place for five (5) years with three optional one year renewals, which would be up to Council.

Mrs. Turner thanked the Audit Committee for all the time they spent on reviewing these proposals in selecting this firm.

Mrs. Turner made a motion to approve the contract with Cherry Bekaert. Mayor Winger seconded the motion and it passed unanimously.

Mrs. Turner realized that they would be discussing the budget at their meeting tomorrow, but she noticed there was a revision of \$231,000 in capital for railroad maintenance.

Mr. O'Connor explained the City received a letter from East Coast Railroad and they are planning on doing some improvements to a couple of intersections and according to the lease agreement that the City has with East Coast Railroad they are responsible for paying for those improvements. He has been told that these improvements should be made sometime in 2015. He has talked to All Aboard Florida (AAF) and asked them if they have to do these improvements why can't they be done at the same time they have to meet all of these safety requirements and Rusty Roberts assured him that he would be in touch with East Coast Railroad and try to make that happen. If AAF is approved under the EIS and these improvements have to be made then the City would not be penalized.

Mrs. Turner asked if this was strictly for East Coast Railroad or was it part of AAF.

Mr. O'Connor explained that it is needed whether AAF gets approved or not. However, if AAF is going to make the improvements anyway there is no reason for East Coast Railway to do it.

Mr. Kramer clarified that if AAF is approved then there is a good possibility that the City would not have these expenses. Mr. O'Connor said that is correct because AAF would have to make those major improvements to those intersections anyway. Mr. Kramer asked if this type of scenario is also being done in Sebastian. Mr. O'Connor explained that East Coast Railroad picks out intersections where they are going to make improvements throughout their entire system and the City of Vero Beach just happened to be on that list. Mr. Kramer said perhaps if the City supported AAF this might go away. He said this is politics and these are the kind of games that people play. He was not real happy to see this come up.

7. CITY ATTORNEY'S MATTERS

A) Regulation of medical marijuana

Mr. Coment reported at their last Council meeting there was a brief discussion on medical marijuana and if Council wanted to take any action prior to the November ballot when there may be an amendment to the Constitution allowing medical marijuana. He

provided materials and a chart showing that some jurisdictions have taken action and adopted Ordinances. He contacted Indian River County who has said at this time they are not going to do anything so it would be up to the Council if they would like to take some action. He said should the amendment pass, the City would promulgate regulations. He said at this point as far as they could go would be to look at their zoning regulations and Mr. McGarry would need to look at what zoning districts would be most appropriate for these types of things.

Ms. Graves asked if their Ordinance was stronger than the State of Florida regulations, would their Ordinance be grandfathered in.

Mr. Coment said he would hope that would be the case.

Mrs. Turner referred to the chart in their backup material, which shows that about two-thirds of the cities are moving forward or discussing passing an Ordinance. She would like to see them move forward with an Ordinance specifying dispensary locations, hours of operation, no drive thru, etc. She suggested that the Planning and Zoning Board review it for additional conditions such as parking and prohibition of loitering. These are conditions that have to be put in place so in the event this referendum passes they have the opportunity to be grandfathered in. She felt it was better to be proactive and protect their community to the best extent that they can.

Ms. Graves asked the reason for not having a drive thru. She said the reason for allowing the marijuana is supposed to be targeting medical patients so why not give them the option of being able to have a drive thru to pick up their medicine.

Mr. Coment said he has not researched that.

Mr. Kramer wanted to see them come up with an Ordinance that is fairly strong.

Mr. Fletcher agreed with the comments made by Mr. Kramer.

Mr. Coment will work with Mr. McGarry in bringing back a draft Ordinance for Council to review.

Mrs. Turner asked for an update on the Indian River Shores mediation and on the Public Service Commission (PSC) action.

Mr. O'Connor commented that with the mediation the City had their first meeting with Indian River Shores and the County. In that meeting they all agreed that two primary items would be broke down. The first one being the rates and the City did say in all reality they did not think their rates could be as low as FPL based on their fuel sources. The second item was going to some type of Utility Authority, which their next scheduled meeting with these two entities would be devoted to.

Mrs. Turner wanted it made clear that the second meeting of having all of the Elected Officials (City, Indian River Shores and County Commission) meet is no longer occurring.

Mr. O'Connor explained that would be step two and if that does not work then mediation would take place.

Mrs. Turner understood that there was a transcript of the mediation meeting. She requested a copy of that transcript.

Mr. Coment stated that it is not a transcript, but just a recording. Mrs. Turner explained that a transcript was given to the Indian River Shores Council, so there must be one available. The Clerk said she would request a copy of the transcript.

Mrs. Turner asked for an update on the PSC.

Mr. Coment reported that all of the filings are done and the next anticipated action would be oral arguments before the PSC. Mr. Schef Wright (City's outside counsel) anticipates this will take place in October.

Mr. O'Connor informed Council that Mr. Wright will be at their next Council meeting to give them a current update as to where they are on these different matters.

Mrs. Turner clarified that the PSC request it is a declaratory judgment, not a lawsuit against the City.

Mr. Coment agreed it was an administrative action.

8. CITY COUNCIL MATTERS

A. Old Business

B. New Business

9. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Richard Winger's Matters

1. Correspondence

2. Committee Reports

3. Comments

None

B. Vice Mayor Jay Kramer's Matters

1. Correspondence

2. Committee Reports

3. Comments

Mr. Kramer thanked the lifeguards for holding the Race to the Wreck event where a lot of people in the community participated. He also mentioned what a great event the Aerial Antics was this year.

C. Councilmember Pilar Turner's Matters

- 1. Correspondence**
- 2. Committee Reports**
- 3. Comments**

Mrs. Turner attended an FMPA Board meeting where they increased the budget for Stanton I for fuel costs. She said for the City they still will be seeing the same megawatt charge that they are currently averaging. She noted that she inquired why the Stanton I and Stanton II do not have decommissioned funds established. These projects are over 25 years old. The Board approved a public comment policy requiring any large group to appoint a spokesman and be given five minutes. She said FMPA will be performing a study of their wholesale rates comparing them to FPL and will report at their September Board meeting why they are more expensive than FPL. She said FMPA continues to discuss gas hedging despite a history of over \$247 million dollars lost on gas hedges. The \$450 million dollars of the Taylor Swaps must be terminated by October 2015. The cost to FMPA could range between \$40 to \$100 million dollars with the City of Vero Beach's liability in the \$2 to \$4 million dollar range.

Mrs. Turner thanked Congressman Bill Posey for sending a letter requesting that the General Accounting Office review the loan application for AAF. She remains convinced that unless they stop the funding the "train" may keep coming.

Mrs. Turner reported on some upcoming events. She reminded the public about the Downtown Art Stroll and The Towers to Tunnel Run.

D. Councilmember Amelia Graves' Matters

- 1. Correspondence**
- 2. Committee Reports**
- 3. Comments**

Ms. Graves reminded the public that 13th Avenue across from the Post Office was being converted to allow two-way traffic. She also encouraged participation in the ALS bucket challenge that the Police Department has initiated.

E. Councilmember Craig Fletcher's Matters

- 1. Correspondence**
- 2. Committee Reports**
- 3. Comment**

10. ADJOURNMENT

Today's meeting adjourned at 10:42 a.m.

/tv