

**CITY OF VERO BEACH, FLORIDA  
TUESDAY, FEBRUARY 4, 2014 9:30 A.M.  
REGULAR CITY COUNCIL MINUTES  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

The invocation was given by Rabbi Michael Birnholz of the Temple Beth Shalom 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. Mr. Fletcher seconded the motion and it passed unanimously.

**B. Proclamations**

**1) Native American Weekend – February 14-16, 2014**

Mrs. Turner read and presented the proclamation.

**2) A Day of Congenital Diaphragmatic Hernia Awareness – April 19, 2014**

Ms. Graves read the proclamation.

**C. Public Comment**

**1) Mr. Frank Mannino to speak on behalf of the Children's Cancer Research Group.**

Mrs. Missy Edward gave a slide presentation explaining the St. Baldrick's Foundation. She said that the St. Baldrick's Foundation is a volunteer-driven charity dedicated to raising money for childhood cancer research. She asked Council for their support and told them that last year a lot of the local Elected Officials shaved their heads and she asked this Council if they would like to join in this year. She said if they are interested in shaving their heads to let her know and then invited everyone to the annual fundraiser on February 22<sup>nd</sup> at Captain Hiram's.

**2) Mrs. Rebecca Rickey, Heritage Center, to talk about *A Heritage Celebration: If these Walls Could Talk*.**

Mrs. Rebecca Rickey, Heritage Center, talked about the event occurring at the Heritage Center on March 13<sup>th</sup> entitled "If these walls could talk." She said this year they are focusing on local history and architecture. The buildings being featured in the City of Vero Beach are the Florida Theater and Farmers Bank. She invited everyone to attend this event. She also took the time to thank several City of Vero Beach staff members who do a lot for the Heritage Center on a daily basis.

**3) Mr. Brian Heady to speak on Trains, Electric, and Public Comment.**

Mr. Brian Heady commented that the one thing he loves about Mrs. Turner is that she asks for financial analysis. He recalled the Council has agreed to join other communities in seeking tax dollars for quiet zones when the High Speed Railroad comes through their community and this has been done without any financial analysis. As a member of the High Speed Rail Commission, he asked the Representative from All Aboard Railroad to provide him with his company's financial analysis and was in short told that it was none of their business. They are a private corporation and they have no need to disclose any financial information to the City. This whole idea with these bullet trains going from Miami to Orlando is a two billion dollar project. When you take communities down the coast and go to the State asking for their financial support, you are asking for tax dollars. Mr. Heady said that we have no idea if this company has the ability to perform the way they say they are going to. He asked the City Council to reconsider their vote in sending this Resolution asking for funding to the State. He had some concerns dealing with a company who will not provide any sort of financial analysis. He said it would serve the communities well if the entities that requested State funding would rethink their request. He brought up the questions that he still had regarding the members appointed to the High Speed Rail Commission. He has been told by the City Manager that Mr. Roberts does not qualify to be a member on the Commission because he does not live in Indian River County. He suggested that Council bring back what they did wrong and revote. He again brought up the Resolution that Council adopted requesting funding from the State for the railroad and said that they have taken a path that they should not have taken. He also felt that the High Speed Rail Commission should have a voice in the environmental impact that is going on. He said rather than City taxpayers having to dig into their pockets, maybe the railroad would have to pay for some of the things. He is just a member of the Commission and has no authority telling the Representative from All Aboard Florida that he needs to provide the City with financial information.

Mr. Heady spoke on the electric. He noted that the Public Service Commission (PSC) complaint has been on hold. He said if the City went forward and joined in with the complainants and went before the PSC and told them that Indian River County, as well as Indian River Shores, wants out of their utilities territory then it would bifurcate the territory. He explained this would mean that Indian River County and Indian River Shores would have their own territories and could buy their utilities from whomever they

wished to and this would not be a partial sale. The City would wind up with a lot of money because of the value, no utility contracts would be broken, and this would resolve the issue with Indian River County and Indian River Shores. It makes sense and doesn't cost the City more money on attorneys and consultants.

Mr. Heady brought up Public Comment and said that for over 20 years, Mr. Frank Zorc was quite a controversial figure in this City. He spoke at just about all of the Council meetings and former Councils' have moved Public Comment from the beginning of the meeting to the end of the meeting to try to get Mr. Zorc to stop speaking and it became quite controversial. The problem with Public Comment is when there is a Mayor who doesn't want to allow the public to speak. He doesn't remember a time when Mr. Kramer or Mrs. Turner were Mayor that they didn't allow the public to speak. The current Mayor has been in that position for three months and has a major problem with Public Comment, because he doesn't want to hear what people are saying. The Mayor's answer to stop him (Mr. Heady) from speaking at the last Council meeting was to turn off the microphone. He said if the citizens of this community spend too much time talking under Public Comment, then the officials need to stop doing things that the citizens don't want them to do.

**4) Mr. Joseph Guffanti to talk about FEC/Mayor's Matters.**

Mr. Joseph Guffanti commented that Mr. Frank Zorc is a warm wonderful human being and what happened to him is that the City violated his rights. Mr. Guffanti said that he was not opposed to trains running through the City. He had some concerns with spending three million dollars to make the City a quiet zone. However, it is not a question of money, but a question of life and death. He said between 2006 and 2012 there were 260 people killed from railroad accidents. These are pedestrians and not vehicle accidents. He understands that the Police Chief spoke to the High Speed Rail Commission at one of their meetings and reported the incidents that have occurred in this City. He noted that half of the people who died in these railroad accidents were lying, sleeping, or standing, on the tracks. We need the whistles blown by the trains to alert people that there is a train coming. He did not know when these accidents took place, if it was during the day or evening. He addressed the High Speed Rail Commission yesterday and thinks they understood his concerns. He noted that the City doesn't have the money to put in these quiet zones. They were told by the City Manager yesterday that in order to do this the money would have to come out of the Public Works Department's budget where they are four (4) years behind in some road repairs. He agreed with Mr. Heady that they should know what these people are about. It is a private company and he would like to know what their finances are and if they are going to go through with the project. He told Council before they make their decision about keeping trains quiet they should consider the consequences. Their fix that is going to cost the City three million dollars is to put two (2) additional gates on the railroad tracks.

Mr. Guffanti mentioned that Mayor's Matters was not what he put on the agenda. It should have been Mayor's Actions.

Mr. Bill Fish, 2236 Buena Vista Boulevard, commented some years ago when he was on Council there was a meeting held between the City, County, and Indian River Shores to discuss various contracts in existence and this was not mentioned in the article that appeared in today's newspaper where they talked about the County hiring a lobbyist to help with the utility issues. He said that it was a lot more complicated than having a lobbyist go up to Tallahassee and talk to their legislation about this. He recalled that the last time he appeared before Council, he asked them not to set up their Commissions by having each Councilmember have an appointee. He then read the definition of a "stooge," out of the dictionary. He said that when Council has individual appointees, they can meet with their appointees and then there could be a hidden agenda, which he considers back door politics.

Mr. Ralph Goldman asked Council if there would be an opportunity to speak about the dog leash Ordinance before Council votes on it. Mayor Winger told Mr. Goldman that he could speak on it when it comes up on the agenda.

Mr. Ken Daige thanked Council for passing the Resolution to ask the State for help in funding a quiet zone. He said that the railroad is regulated by the Federal government and the railroad can do what they want. The High Speed Rail Commission found out at yesterday's meeting, that the high speed rail trains would be coming through Vero Beach at a speed of 110 mph. The community is concerned with the sounds of horns blowing when the trains come through the City that fast and how it will affect their businesses. They have been told by Mr. Roberts that they are under some time constraints. He is working on some questions that he will be sending to Mr. Roberts this morning and hopes to receive answers to them in a timely manner. One of his questions is if the City can even have quiet zones. He mentioned that with quiet zones the bells would still sound and the gates would still come down. The railroad company plans to install a second railroad track, which raises concerns for people who have businesses near the tracks. He reminded Council that they were responsible for the health, safety, and welfare, of their citizenry. He said the company responsible for this project is a private company who is very financially sound. They have been doing studies for a number of years to make sure that putting this railroad in would be feasible to the company and it looks to him that they will be proceeding with making it happen. He will be asking the company what they plan on doing with the second track that they install and if there is any financial information that legally they are allowed to look at. He said that Mr. Roberts continues to attend their meetings and answer the questions from the Commission that he can answer. Once the Commission has finished with their research and findings they will make a recommendation and send it to City Council.

Mayor Winger commented on an article that appeared in the Wall Street Journal that he provided to the Commission. He watched the High Speed Rail Commission meeting yesterday and has some concerns with the fencing and how expansive that it would be. He said especially in the areas of US Highway 1, and the old Diesel Plant. He asked Mr. Daige to also look into the fencing.

Mr. Daige commented that he has received some calls from people asking what kind of fencing will be used and what the fencing is going to look like. He will try to get some answers to those questions. He also wants the company to show them what a quiet zone will look like.

Mrs. Turner asked what is the status of the Environmental Impact Study.

Mr. Daige said that was another question he was asking Mr. Roberts. He would like the Commission to be able to take a look at the study and have some input.

Mayor Winger asked when Mrs. Kim Delaney from the Treasure Coast Regional Planning Council would be coming to their meeting. He was told that she is scheduled to attend their next meeting.

Ms. Graves suggested that they have a liaison to attend the City of Sebastian's meetings when this matter is discussed.

Mrs. Turner suggested that the minutes from the High Speed Rail Commission be sent to the City of Sebastian.

Mr. Kramer was concerned with the lack of numbers and felt that there probably were some studies done from different entities up and down the coast on this matter.

Mr. Jim O'Connor, City Manager, reported that Winter Park has allocated some money for studies and is doing an initial review for a project occurring in that area (not the same company). He said the question came up yesterday as to where the three million dollar figure came from. He said that number evolved from the information that the City has received on the project. He said since that time, he has read some documentation that many crossings could already be quiet zone qualified. He agreed with using the Treasure Coast Regional Planning Council as their resource to gain information.

Mayor Winger will also mention it at the Treasure Coast Council of Local Governments meeting that he will be attending tomorrow.

Ms. Graves added that most of the municipalities involved with the Treasure Coast Regional League of Cities were planning to pass a similar Resolution to the one that this City Council recently passed asking for State funding.

It was the consensus of Council that Mr. Daige prepares a memo to go to the City of Sebastian and include the minutes of the High Speed Rail Commission with the letter.

Mr. Daige commented that the Commission is working hard on getting answers to the questions that they have so they can make their decision. He reiterated that the railroad company has put a time frame into place. If the City decides to put in quiet zones then it would behoove them because of costs to use the same engineering company that will be used by the railroad company. He said that if they decide to put the quiet zones off until

after the project is completed, that railroad companies don't like people coming in and working on their pavement. He believed that if the City is interested in quiet zones then this is the time to get involved.

#### **D. Adoption of Consent Agenda**

- 1. Regular City Council Minutes – January 21, 2014**
- 2. Records Management Handbook**
- 3. Municipal Elections Handbook**

Mrs. Turner pulled item 2D-2) "Records Management Handbook," off of the consent agenda.

Mr. Fletcher made a motion to adopt 2D-1) and 2D-3). Mr. Kramer seconded the motion and it passed unanimously.

Mrs. Turner asked Mrs. Vock when the handbook was first done, why the need for the change and why it was in the handbook that the Teamsters fee for copies is waived up to ten copies.

Mrs. Tammy Vock, City Clerk, explained that the City has had a Records Management Handbook for the last ten years. They are updating the Handbook because of changes in the State Statutes and the amount they are allowed to charge for copies and the labor charge allowed to be charged for an extensive public records request. She noted that back in 2009, the Teamsters negotiated in their contract that certain limited exemptions apply to Teamster members and the copy fee is waived up to ten copies and the Clerk's office must be informed of this at the time copies are being made.

Mrs. Turner made a motion to approve item 2D-2). Mr. Fletcher seconded the motion and it passed unanimously.

#### **3. PUBLIC HEARINGS**

None

Council took a break at 10:50 a.m.

\*Please note Mr. Fletcher excused himself from the remainder of the meeting.

#### **4. RESOLUTIONS**

- A) A Resolution of the City Council of the City of Vero Beach, Florida, Authorizing Leashed Dogs in Certain City Parks; Providing for Regulation and Enforcement; Providing for an Effective Date. – Requested by the City Council**

Mayor Winger read the Resolution by title only.

Mr. O'Connor reported that the Resolution has been amended to not include Troy Moody Park and Young Park as areas where people can take their dogs on a leash.

Ms. Graves noted that there are people that are already taking their dogs to Parks and now they can do it legally.

Mrs. Turner questioned why dogs are being excluded from being allowed to go into restrooms at the Parks. She thought that it would be safer than having the dog tied up and left outside.

Mr. O'Connor explained that the main reason was because of confined space. He said that there could be some accidents if a dog was to get out of control and also the dog could make a mess and the owner may not clean it up.

Ms. Graves added because of hygiene reasons it would not be a good idea to allow dogs in the restrooms.

Mayor Winger opened the public hearing at 10:54 a.m.

Mr. Mark Mucher commented that he has had the occasion to see dogs all over the City and some of them are not on a leash. He asked how is this going to be enforced.

Mr. O'Connor said that it would be very similar to how they are handling the problem now.

Mr. Mucher did not see much enforcement going on now. He asked if the Police Department was informed to watch out for these kinds of things.

Mr. O'Connor answered yes. He said it was his understanding that Police Officers have stopped people from allowing them to go into the Parks with their dogs.

Mr. Ralph Goldman brought up the dog park located near the Marina and asked if they were going to discuss making that area a dog park.

Mr. O'Connor explained to Mr. Goldman that staff is in the process of negotiating a lease for the dog park area and that will be coming to Council for their consideration.

Mr. Goldman asked if people not in favor of having this dog park area would have a chance to address the issue.

Mr. O'Connor commented that there have been several meetings held on this matter.

Mr. Goldman asked if he heard correctly that the land will be leased for one dollar a year and it will be a twenty-year lease.

Mr. O'Connor explained that the terms and conditions of the lease have not all been worked out. He said that there will be a nominal lease payment required and the dog park will be open to the public. Also, the insurance requirements and liability requirements have been shifted to the organization operating the dog park.

Mr. Goldman expressed how much that piece of property is worth and felt that the City might be giving away a valuable piece of property with nothing in return. He did not think that more than two (2) acres was needed for a viable dog park. He said if you go to the dog park, none of the dogs are on a leash. He was concerned with the fiduciary responsibility of taking valuable assets and turning them over to someone.

Mr. O'Connor explained to Mr. Goldman that in the dog exercise area that leashes are not required. Also, that partial of land is in the City Charter and could not be sold without a vote of the citizens. The lease that is being negotiated will have clauses in it, where the City can get out of the lease if they need to. It will also be in the lease that the City will still have the right to use some of the land for a staging area in case of a hurricane. This will not be a lease that the lessee has total control, but will be required to pay for maintenance and operation of the facility.

Mr. Mark Mucher commented that it was his understanding that the designated dog exercise area was for the rear portion of MacWilliam Park. He also understood the direction given to the City Manager was to negotiate a lease and look at alternative locations. He guessed that alternative locations were not being looked at. He suggested that the dog park be located at the vacant area across from Crestlawn Cemetery. He didn't think that it was necessary to lease this whole piece of property to these people.

Mayor Winger felt that hearing these comments will be helpful for Council when the lease comes back to them.

Mr. Wayne Coment, City Attorney added that the description area that the City Council has designated does encompass the entire area of land.

Mrs. Turner asked Mr. O'Connor to confirm that there would be doggie-bags available at the Parks. Mr. O'Connor said that there would be.

Mrs. Turner made a motion to approve the Resolution. Mr. Kramer seconded the motion and it passed 4-0 with Ms. Graves voting yes, Mrs. Turner yes, Mr. Kramer yes, and Mayor Winger yes.

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

- A) An Ordinance of the City of Vero Beach, Florida, Amending Chapter 58 "Personnel and Retirement," Article II, Divisions 4 and 5 of the Code of Ordinances of the City of Vero Beach to Provide for Internal Revenue Code**

**Compliance; Providing for Repeal of All Ordinances in conflict herewith; Providing for Severability; Providing for Codification and Providing an Effective Date. – Requested by the Police Pension Board**

Mayor Winger read the Ordinance by title only.

Mr. O'Connor reported that the passage of this Ordinance is to conform to future laws promulgated by the Internal Revenue Service. A copy of the Ordinance was sent to their outside Attorney handling their pension plan and no comments were received back from him.

Mrs. Turner did not see that there would be any cost impact to their current plan.

Mr. David Pusher, Police Pension Board Chairman, reported that the passage of this Ordinance, provides language to bring their Plan in compliance with the Internal Revenue Code and they have no choice but to do it. He said that the Police Pension Board has delayed it for several months waiting to hear what IRS plans to do with it, but at this point they must move it through.

Mayor Winger opened and closed the public hearing at 11:12 a.m., with no one wishing to be heard.

Mr. Kramer made a motion to hold the public hearing on the Ordinance at the February 18, 2014 meeting. Ms. Graves seconded the motion and it passed 4-0 with Ms. Graves voting yes, Mrs. Turner yes, Mr. Kramer yes, and Mayor Winger yes.

**B) An Ordinance of the City of Vero Beach, Florida, Amending Sections 2-102, 2-105, and 2-106 in Article III, "Commission and Boards," of Chapter 2, "Administration," of the Code of the City of Vero Beach, Relating to City Commissions and Boards; Providing for Transition and Severability; Providing for an Effective Date.**

Mayor Winger read the Ordinance by title only.

Mr. Coment went over the changes made to the Ordinance since it was last heard by the City Council. He said the Utilities Commission will have seven (7) regular voting members. Each City Councilmember will appoint one member and there will be one (1) regular voting member appointed by the City Council. Indian River Shores will continue to provide a resident as a voting member and the majority of the Commission must be residents of the City unless the City Council specifically provides otherwise.

Mr. Kramer commented that he initially brought this Ordinance forward and the contents have changed because of how some of the other Councilmembers wanted it.

Mrs. Turner asked Mr. Coment to explain the second Whereas clause in the Ordinance: *The City Council finds that individual councilmember appointment of members to the*

*Utilities Commission will serve to provide a more representative and streamlined method of conducting the business of the Utilities Commission.*

Mr. Coment explained that he took this clause out of their previous Ordinance when the Utility Commission was adopted.

Mrs. Turner did not believe that particular Whereas clause was appropriate for this Ordinance.

Mr. Coment said if Council wants to remove it from the Ordinance, that certainly could be done.

Mr. Kramer asked why that sentence would not be appropriate.

Mrs. Turner commented that it is not more representative of their utility customers. She then questioned by increasing membership on the Commission, how is that streamlining in conducting business.

Mr. Kramer felt that “representative” needed to be clarified. He said if Mrs. Turner was talking about representative of Councilmembers, then this is much more representative of Councilmembers than what they have now.

Mrs. Turner expressed that Council has always voted in whole on who will be appointed to their different Commissions.

Mr. Kramer told her that was not so. He said with the Finance Commission, they have individual appointees. He recalled that Mrs. Turner appointed all of the members to be on the Utility Commission that is in place now.

Mrs. Turner told Mr. Kramer that she did not appoint everyone to be on that Commission. She said that it was a Council vote. She was sorry if Mr. Kramer did not think a 3-2 Council vote was fair, but that is how the system works.

Mr. Kramer asked how did the other Councilmembers know what names were going to be on that list that she presented (members to vote on to be Utility Commission members).

Mrs. Turner stated that the other Councilmembers voted on members that were provided to them. She said they had the same opportunity that Mr. Kramer did.

Mr. Kramer noted that he did not have an opportunity to interview those people. He had no idea what was going to happen. He said five minutes before the meeting started this list of people appeared. He felt that it was a Sunshine Law violation and the opportunity to interview these people should have been given.

Mrs. Turner expressed that all of the Councilmembers were given the same opportunity to vote and she was sorry that he has “sour grapes” that the vote did not go his way. However, she still objects to this Whereas clause in the Ordinance.

Mr. Kramer said that maybe Mayor Winger should show up with his appointees five minutes before the meeting and whoever he picks they will agree with.

Mrs. Turner stated that Mayor Winger has the right to do that and all of the members on their Commissions serve at the pleasure of the Council.

Mr. Kramer said – some Councilmembers more than others.

Ms. Graves understood the points made by Mrs. Turner and Mr. Kramer, but felt that they should proceed in moving forward with the Ordinance.

Mrs. Turner continued by bringing up the Whereas clause on page 2 of 11, that states: *Whereas the City Council finds that the amendments provided for in this Ordinance are in the public interest in that they will serve to promote and improve efficiency and representation in the operation of the City government.* Mrs. Turner asked that this statement be justified, because she does not agree with it.

Mr. Kramer asked Mrs. Turner if she did not agree with promoting efficiency.

Mrs. Turner did not agree that this particular Ordinance improves representation for their utility customers.

Mr. Kramer questioned if the Commission serves at the will of the Council or their customers.

Mrs. Turner stated that according to their Code, the Board serves at the pleasure of City Council.

Mr. Kramer said that the representation is pointed towards City Council. He told Mrs. Turner that she could change it so that it reads that it is for representation of the ratepayers. But he thought that they were looking at representation of City Council.

Mayor Winger commented that he is interested in ratepayers, but he is also interested in the people who own the utility, which are the taxpayers of Vero Beach. His interest in the ratepayers is obvious because he is suggesting having three County residents serve on the Commission instead of two. He does feel that the people who own the utilities should be able to control it.

Ms. Graves commented that the idea of passing this Ordinance is so this Utility Commission can represent everyone involved with their utilities. She said that all of their ratepayers want to pay less, so she didn't think that there was a difference whether someone lives in the City or in the County. She suggested moving forward on this.

Mrs. Turner explained that it was the distinction between those customers located out of the City not having a voice and ability to vote for City Councilmembers.

Mayor Winger reminded Council that he wants to appoint a County resident to the Commission as his appointee because he feels that this person is one of the most qualified people that he knows to serve on this Commission.

Mayor Winger opened up the hearing at 11:20 a.m., for public comments.

Mr. Mark Mucher commented that it is very significant that they start taking a more careful look at the Whereas clauses that are put in their Ordinances/Resolutions. He said that a possible solution would be that if Council wants to put in that this is more representative of the Council, then they should just say that. It sounds like these Whereas clauses are being thrown in because that is the way it always has been done (boiler plate), and they need to be looked at more carefully and be clear.

Mr. Coment interjected that Council could opt out of the general provision that states that a general majority of Commission/Board members have to be City residents. They could say that in this situation that provision of the Code does not apply.

Mr. Brian Heady commented the appointment by individual Councilmembers to both the Utilities and Finance Commission is important and elections do have consequences. He said the flavor of the Commission will be affected by a change in City Council. He felt it was important that the stakeholders (City residents) that own the utility have a majority of people on that Commission. He said the idea that a County resident is the only one qualified to sit on this Commission was ridiculous to him. He then brought up the vote and his concerns on the vote that was taken of the members who were appointed to the High Speed Rail Commission.

Mr. Kramer made a motion to hold a second public hearing on this Ordinance on February 18, 2014. Ms. Graves seconded the motion and it passed 3-1 with Ms. Graves voting yes, Mrs. Turner no, Mr. Kramer yes, and Mayor Winger yes.

**C) A Resolution of the City Council of the City of Vero Beach, Florida; Repealing previously adopted Water and Sewer Rates charged in those certain unincorporated areas of Indian River County located within the City's Water and Sewer Utility Service Area; Adopting and Amended Water and Sewer Rate Structure and Charges for such areas; and Providing for an Effective Date.**

Mr. O'Connor reported that in discussions they have had pertaining to the franchise agreement, one of the major issues was providing County rates to people living in County areas. The passage of this Ordinance will allow that and give them some time to work on the franchise agreement, which does not expire until March 2017. He cautioned that by passing this Ordinance it will have a different impact on different people. The smaller

user customers will see a decrease, but the larger customers, such as the Hospital, will see a substantial impact on their water consumption because they are a major user. He did mention this concern to the County Administrator. The other thing that the City needs to address is the franchise agreement and how it affects different issues. He said what keeps being discussed is that the County would like to have the Indian River Shores agreement mirror theirs. He explained that they are two different situations. He said number one, Indian River Shores actually owns and created some of their system so they have some ownership rights, which the City did concede and the system that the City owns and operates were retained as their assets. He felt that this was going to be a very distinctive difference between the two points of discussion and how this works. The other issue is the petition by the County to put the City under the PSC. He thinks in a new franchise agreement that they need to include that if the City agrees to the County rates, coming under the PSC rate structure is within their jurisdiction. He suggested having a clause in the franchise agreement that states if the City of Vero Beach, in any form or fashion, comes under the PSC it would invalidate any great discussions or considerations in the franchise, because it would obviously put them in a different class. Mr. O'Connor recalled that in the franchise agreement it is important that they have recognition of the 1989 agreement, which established permanent territorial standards. He said another issue that stands out is the value of their utilities. There needs to be a clause in the agreement about the going concern that they have built in customers and that the City built the utilities to reach out to these customers. He said an easy solution would be to adopt the existing franchise agreement and just extend it for another thirty years. Mr. O'Connor stated that the adoption of these rates is a fair thing to do for these customers because they have heard from the County that these customers would like to have County rates. He said that this will not only apply to South Beach, but also to the customers outside of the City, in and around the Hospital area.

Mayor Winger wanted to move ahead with the approved rates for County customers as soon as they can. However, after listening to Mr. O'Connor's comments, he asked Mr. O'Connor if he wanted to make changes to the Resolution.

Mr. O'Connor did not want to make any changes to this Resolution. He just brought up the other issues, because this rate structure issue is a part of a bigger picture, which is the franchise agreement itself.

Mayor Winger opened and closed the public hearing at 11:33 a.m., with no one wishing to be heard.

Mrs. Turner had some questions on the economics of this. She understood that the attachment that they have included with the Resolution is from a study that was done by GAI. She was told by Mr. O'Connor that was correct. Mrs. Turner asked what the impact of the City in dropping the 10% equalization charge. Mr. O'Connor explained that their revenue stream will increase by about 2.58%. He further explained that this document (please see attached) reflects the 10% outside City surcharge and the 6% equalization charge as charged by the County.

Mrs. Turner wanted to make sure that they were ending up with is a comparable rate structure as to what the County is charging the City of Sebastian. Mr. O'Connor told her that they were.

Ms. Graves mentioned that Mr. O'Connor brought up the impact on the Hospital. She wondered if there would be a way to set the Hospital up in a different structure. She had some concerns that this would negatively impact them.

Mayor Winger commented that one of the things that he has learned about rates is that any meddling with the rate structures can have bad effects. He said that someone either goes with the City system or with the County system. What they have been hearing from ratepayers outside of the City is that they want the County rates.

Mr. O'Connor commented that he would tell them on any given day that revenues have to exceed expenditures.

Mrs. Turner stated that certainly the County rates are created to increase with the usage of water in order to encourage conservation. She said the bottom line is that you want to conserve water consumption.

Ms. Graves did not think that the Hospital has many means of conserving water. She brought them up because she knows they are having a difficult time.

Mayor Winger commented that Council made a decision that they did not want to get involved in "winners and losers."

Mrs. Turner made a motion to hold the second public hearing for this Resolution on February 18, 2014. Mayor Winger seconded the motion and it passed 4-0 with Ms. Graves voting yes, Mrs. Turner yes, Mr. Kramer yes, and Mayor Winger yes.

## **6. CITY CLERK'S MATTERS**

### **A) Summer Council Meetings**

Mrs. Vock recalled that the Council usually cancels the first Council meeting in July and the first Council meeting in August in order to plan for their summer vacations. She asked Council if they wished to do the same thing this year.

It was the consensus of Council to cancel the July 1<sup>st</sup> and August 5<sup>th</sup> City Council meetings.

### **B) Annual Reports from City Commission/Boards**

Mrs. Vock presented Council with the annual reports from all of the City Commission and Boards. She said that the Chairman of each Board was available to answer any questions that Council might have.

Mrs. Turner thanked the Board members for all of their hard work and the services that they provide to the City of Vero Beach.

## **7. CITY MANAGER'S MATTERS**

### **A) Review of City Properties for Charter Protection**

Mr. O'Connor reported that staff is working on reviewing City properties for possible Charter protection. He presented them with a summary, which includes: 1) Properties included in the Charter; 2) Properties to consider adding to the Charter; and 3) Properties to define or redefine boundaries. He said staff still needs time to better define the boundaries of the listed properties due to ambiguities and acquisitions. He will be bringing back something to Council in the near future for their consideration.

Mayor Winger asked how they get it out to the public on what is being considered.

Mr. O'Connor said that the information is on the City website and anyone can request a copy of it. These different areas have been discussed by the Council at a number of their meetings.

Ms. Graves noted that she has attended most of the staff meetings where this matter has been discussed. She said that the presentation and work done by staff has been tremendous. She suggested that the closer they come to finishing this task, that a workshop be held to explain to the public what is going on so that everyone understands.

Mr. O'Connor agreed with having a workshop. He said that when this passes he wants to make sure that there are no questions that haven't been answered. They will establish what Parks go on the ballot. He cautioned that they are only allowed up to 75 words on the referendum ballot so they need to make it clear that the voters know what they are being asked to vote on. He said that maybe the Recreation Commission needs to take the lead on this.

Mr. Kramer agreed with having a workshop to get the public's input.

Ms. Graves mentioned that there is a timeline that will need to be met in order to move forward in getting this matter on the ballot.

### **B) Proposal on Beach Umbrella and Chair Rentals**

Mr. O'Connor reported that as a means of generating revenue for the City Recreation Department a request for proposal to provide a beach umbrella and chair rental service for South Beach Park was put out and there were two companies who submitted bids back to the City. The matter was taken to the Recreation Commission who unanimously approved the concept at their meeting and recommended Shark Bait as long as they comply with all of the City obligations.

Mr. Scott Caviness, owner of Shark Bait, commented that he made some mistakes in his life a long time ago and he doesn't hide it from people. He disclosed his history to the City Manager and Recreation Director about a year ago, when they first started talking about this venture. He then read a prepared statement (please see attached).

Mayor Winger commented that he has told both the City Manager and the City Attorney that he wants to see this area limited on the beach.

Mr. Caviness said that he was trying to provide this service at a reasonable cost of \$10.00 per day. He expressed that he would never want to see a whole slew of umbrellas on the beach (referred to a picture that he showed the Recreation Commission).

Mayor Winger commented that the beach area is pretty narrow. He suggested tabling this item until the February 18<sup>th</sup> meeting, which would allow the public to become familiar with the concept.

Mr. O'Connor explained that a contract will still need to come back to Council. He said at that time the public could address any concerns that they might have.

Mrs. Turner commented that based on Mr. Caviness's record with the other resorts on the beach, which are very happy with his performance, she would agree with moving forward with the contract.

Mayor Winger agreed that everyone deserves a second chance. He told Mr. Caviness that nothing in his past has anything to do with them making a decision on using his company, as long as he is performing within the law.

Mrs. Turner thanked Mr. Caviness for all of the assistance that he provides to their lifeguards.

Mr. O'Connor will bring back a contract to Council for the Beach Umbrella and Chair Rentals.

Ms. Graves asked if the Council will see an actual financial report on how well Mr. Caviness is doing with providing this service.

Mr. Coment explained that Mr. Caviness will need to provide that information to the Finance Department on a monthly basis.

Ms. Graves felt that this was a great service to offer their visiting tourists. She appreciated all of the work that has been done on this.

**C) FPL Update**

Mr. O'Connor referred to the email that he received from Mrs. Amy Brunjes, External Affairs Manager, for Florida Power and Light (FPL) (please see attached). The letter indicates that FPL is still working on options and alternatives. There may be some other considerations brought to Council, but not in terms of costs. Mr. O'Connor noted that this is a very daunting task.

Mrs. Turner brought up the Florida Inland Navigation District and the present grants available.

Mr. O'Connor stated that the City is looking at those grants to try to make sure that they are needed. He noted that a lot of those grants require matching grants.

## **8. CITY ATTORNEY'S MATTERS**

None

## **9. CITY COUNCIL MATTERS**

### **A. Old Business**

### **B. New Business**

#### **1. Council Meeting Agenda/Order of Business – Requested by Mayor Richard Winger**

Mayor Winger commented that Council, as they sit up on the dais, are all on an equal basis and the person who is Mayor at the time Chairs the meeting. He asked this Council how they want the meetings run. He mentioned that this morning under Public Comment there were two (2) individuals who spoke for a total of 28 minutes, which is okay with him if it is okay with the City Council. He said that pretty much the same thing occurred at their meeting in January. He said there are rules in place on how the meetings are to be run, which they can either follow or not follow. He said for some reason they have divided Public Comment into two (2) sections. He said if someone asks a Councilmember or a Charter Officer to be on the agenda longer than the prescribed time, then there is a form that needs to be filled out. He said that the form was used for this particular meeting. He doesn't know if Council wants to continue using the form or not. He said the understanding is if you are not on the agenda then your time is suppose to be limited to three (3) minutes. He is willing to run the meetings any way that Council would like him to, he just wants to know how they would like them to be run.

Ms. Graves reported that she recently attended the Florida League of Cities Elected Institute of Municipal Officials training class and they have found success in using the form. She felt that the most important thing for them is to hear from the public. She gets concerned where two (2) people dominate the conversation where they are debating with each other. She said this might make people wanting to speak somewhat intimidated to get up and be heard. She wants to make sure that everyone has a chance to talk, but they do

it in way that it encourages everyone to be heard. She felt placing the part of the Code that pertains to Public Comment on their agenda might be a reminder of how the meetings are to be handled.

Mrs. Turner was very comfortable leaving running the meeting to the Mayor's discretion. She said as far as the time period goes there are people who will abuse it. She referred to the Code where it discusses decorum, which is something that they may need to remind the public about. The public has an obligation to respond in a responsible way and if they do not then it is in the Mayor's purview to tell the person speaking that they need to make their point or sit down.

Mr. Kramer noted that there was a commentator today that singled out Mrs. Turner and he would like to get back to the idea that Councilmembers are not singled out and the whole Council is addressed. He said Council has to keep in mind that they work for the people and are here because the people voted for them to be here. He strongly agrees that if someone comes to the podium and wants to talk that Council has a responsibility to listen to them. He said to what length, that would be the Mayor's call because he does have the responsibility of running the meeting. He knows when he was Mayor he let people talk at length because there was a lot of energy in the community and people needed to vent. He said that near the end of his term as Mayor the meetings did get a little shorter. He said that it is up to the Mayor as to how long he wants to let people speak.

Mayor Winger stated that he would tend to want to go with five (5) minutes, except if someone asks for more time on the form. There was a gentleman who filled out the form to speak today and said that he needed five (5) minutes and he took ten (10) minutes. The other person speaking today who filled out the form refused to give a time limit. In that particular case, in the future, when someone comes to the podium he will ask the person how much time they need and they will be reminded when their time is up.

## **10. INDIVIDUAL COUNCILMEMBERS' MATTERS**

### **A. Mayor Richard Winger's Matters**

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

### **B. Vice Mayor Jay Kramer's Matters**

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

Mr. Kramer complimented the downtown area and asked the public to notice the light posts the next time they are driving through downtown. He also thanked Downtown Mainstreet for putting up the banners in the downtown area.

**C. Councilmember Pilar Turner's Matters**

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

Mrs. Turner reported that the tourist tax for the month of November was up 18% and for the month of December is was up 11%. She attended the lunch provided by Keep Indian River Beautiful and they are doing a great job in trying to encourage recycling. There was an interesting exhibit combining art and conservation at the Museum of Art, thinking in the lines of how we can communicate the whole facts of science and moving forward in protecting their Lagoon. Mrs. Turner thanked staff for coordinating with the Garden Fest members so that their event could be so successful. This Saturday night on Ocean Drive there will be Sunset Saturday. She also invited everyone to attend the "Love the Lagoon" event at Harbor Branch on Friday. She said Friday night will be the Gallery Stroll downtown and on Saturday morning Tour de Vero will kick off at Carrabbas.

**D. Councilmember Amelia Graves' Matters**

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

Ms. Graves reported on her tour of the Airport and the impact that Flight Safety makes to this community.

**E. Councilmember Craig Fletcher's Matters**

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

**11. ADJOURNMENT**

Mr. Kramer made a motion to adjourn today's meeting at 12:12 p.m. Mrs. Turner seconded the motion and it passed unanimously.

/tv