

**CITY OF VERO BEACH, FLORIDA
OCTOBER 1, 2013 9:30 A.M.
REGULAR CITY COUNCIL MEETING
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

The invocation will be given by Pastor Larry Boan, Central Assembly of God, followed by the Pledge of Allegiance to the flag.

1. CALL TO ORDER

A. Roll Call

Mayor Craig Fletcher, present; Vice Mayor Tracy Carroll, present; Councilmember Pilar Turner, present; Councilmember Jay Kramer, present; and Councilmember Richard Winger, 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. Mrs. Carroll seconded the motion and it passed unanimously.

B. Proclamations

- 1. National Domestic Violence Awareness Month – October 2013**
- 2. National Long-Term Care Residents' Rights Month – October 2013**
- 3. Mental Health Month/Mental Illness Awareness Week – October 2013**

Mayor Fletcher read and presented the Proclamations.

C. Public Comment

Mr. Herb Whittall announced that it was Fire Safety Month. He then referred to item 3-A) on the agenda and said that he did not really have a problem with the Ordinance, but the one thing that did bother him was people getting waivers and that approval would be given through the Planning Department and not by the City Council. He also noted that down the block there was some mowing taking place and grass was going in the street. He thought that the City's mowing contractor should be talked to about allowing the grass to be blown out in the street. He also commented that he has been told the lawn contractor that they use is from Orlando. He did not understand why they were spending tax dollars to hire a contractor from Orlando when there are a lot of people who could use the work here in Indian River County.

Mr. Jim O'Connor, City Manager, explained that an RFP was put out for this work and the contractor from Orlando bid on it. He said some of the smaller companies in the area did not carry the insurance that the City requires.

Mr. Whittall felt that they could have hired someone from Indian River County to do the job and the money would stay in the County.

Mrs. Carroll brought up the grass that Mr. Whittall spoke of. She recalled she has brought up this subject before and has been told that shortly after mowing the street sweeper comes by and blows the grass. She asked what happens if there is a private company mowing.

Mr. O'Connor explained that a private company must abide by their Ordinance or code enforcement action could occur.

Mr. Mark Mucher referred to the Proclamation that was read earlier in the meeting on domestic violence and knew that there was domestic violence for men and it was not just for women. He thought that maybe they should review the Proclamations more clearly. Mr. Mucher was told that the wording that is used in the Proclamations is what the City is provided with from the person requesting the Proclamation.

Mr. Brian Heady brought up the incident about the grass and said that it doesn't make a difference about who did it, just fix it. He commented that after the Proclamations were read, there does not seem to be very many people in the audience. He pointed out who was still remaining in the audience. He knew it was a morning meeting and sometimes it is hard for the public to make the meetings during the day. He commented that Mrs. Carroll has shut down fellow Councilmembers when she didn't like what they had to say and the Mayor has people removed from the podium when he doesn't want to hear what they have to say. He thought it was nice when the Police Officer attending their Council meeting came in regular clothes instead of in their police uniform. He brought up that the Mayor removes citizens from the podium and none of the Council says anything. They just sit there silently. He reminded everyone there is an Election coming up and there needs to be a change.

Mrs. Linda Hillman, 2315 18th Avenue, wanted to thank Chief Curry and his officers for visiting her house while she was away. She said that before she went away she informed the Police Department that she was going to be gone. They drove by her house and noticed that someone was there. It was a friend of hers who decided to stay at the house while she was away. She appreciated that the Police Department took the time to find out who this person was. She then passed out some pictures indicating some of the code enforcement problems that are occurring in her neighborhood. These pictures were passed on to the Planning and Development Director. Mrs. Hillman commented that while she was away she heard she has a new neighbor. She said that Mr. Charlie Wilson has moved into her neighbor. She said if that rumor is true then she would welcome Mr. Wilson to the neighborhood. She mentioned the petitions that were signed when she was trying to do a recall of some of the City Councilmembers. She said that she is sending

out thank you letters to the people who signed the petitions and reminding them that Election Day is November 5th. She said if someone cannot get out and vote they can always request an absentee ballot.

Miss Amelia Graves referred to item 7-B) on today's agenda. She said it was a disaster debris removal contract that would piggyback with the Indian River County contracts. She asked if the City Manager would explain this.

Mr. O'Connor explained that the contractor that they were going to use has gone out of business. They will be putting out an RFP for a new contractor, but in the meantime they will piggyback on the County's contract just in case they should need work done before a new contractor is hired.

Miss Graves recalled that at a recent Finance Commission meeting Mr. O'Connor mentioned that there might not be enough people to help with cleanup after a storm.

Mr. O'Connor explained that what he meant was because the City does not have as many employees as they did in 2004 when the hurricanes hit that it may take more time to get the City cleaned up if another hurricane should hit this area.

Mr. Charlie Wilson thanked the City Council for their service. He knows that it is a tough job. He wanted to remind everyone what a wonderful community that they live in. He confirmed that he is a neighbor of Mrs. Hillman. He noted that he has been in this community since the 80's and he was born less than 20 miles from here. He then thanked staff for their hard work. He brought up the electric utilities and wanted to clear up the whole subject of this being a "done deal." There is a lot of conflict on whether the electric issue is a done deal. He said that perhaps sometime in this meeting this could be discussed. He mentioned that yesterday was the deadline for FMPA to respond to the letter that was sent out to them in August and he has not heard whether or not it is a done deal. He expressed there are still ways that the sale of the electric utilities could be stopped and cautioned the Council to make sure that does not happen.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – September 17, 2013**
- 2. Special Call City Council Minutes – September 17, 2013**
- 3. AURSI Bid #21-8/13/2013PWC Stock 200 Amp Dead Front Switchgear**
- 4. Approval of Audit Engagement Renewal – Rehmann**
- 5. Reiss Engineering, Inc. Professional Services Agreement and Work Order - Water Treatment Plant Membrane Replacement**
- 6. Request from the Tree and Beautification Commission to spend funds from the Tree and Beautification account for trees and plants along the 20th Avenue canal**

Mayor Fletcher informed the public that if there is an item on the consent agenda that they would like to discuss to please come forward. There was no one from the audience who wished to discuss any of the items.

Mrs. Turner pulled item 2D-4) off of the consent agenda.

Mrs. Carroll pulled item 2D-6) off of the consent agenda.

Mr. Kramer made a motion to approve the consent agenda as amended. Mrs. Carroll seconded the motion and it passed unanimously.

2D-4) Approval of Audit Engagement Renewal – Rehmann

Mrs. Turner recalled that back in 2008 when she was on the Finance Commission the City went out for bid for an auditor. She said that Rehmann had been serving as their auditor up until that time and their contract was renewed with a five year extension. Although she has no problem with the great service that they receive, it is more of a philosophical problem of continuing with one auditor over an extended period of time. She felt that it was financially prudent to have a rotation in their audit. She asked why they did not go out for bids for an auditor as they have done in the past.

Ms. Cindy Lawson, Finance Director, agreed that a five year contract is a minimum and it is good to go out for bid. However, she would like to stay with Rehmann for another year because the City has implemented some new accounting procedures. Also, from a turnover standpoint it is very time consuming for her staff because they would have to educate their new auditors. She asked to continue with this auditor for at least one more year in order to finalize the completion of some of these new implemented procedures. The process of obtaining a new auditor would be something that they would need to undertake starting in February if they are going to do that. Again, she requested one more year of the continuity and then if Council decides they want to go out to bid for a new auditor that a committee be formed to review the proposals that come in.

Mr. Ross Cotherman, Principal for Rehmann, reported that this was contemplated in the five year agreement and there were two options put in the agreement that there could be two, one year extensions. He just wanted Council to know that this was in the parameters of the RFP that was signed five years ago.

Mrs. Turner reiterated that she feels that Rehmann has done a fine job and that is not the issue.

Mr. Kramer understood that they were just approving a one year extension from the original five year contract.

Mrs. Turner made a motion to approve the one year extension with the clause that the Finance Director will prepare an RFP that be reviewed by the Finance Commission as they have done in the past. Mr. Kramer seconded the motion and it passed unanimously.

2D-6) Request from the Tree and Beautification Commission to spend funds from the Tree and Beautification account for trees and plants along the 20th Avenue canal

Mrs. Carroll asked if there was additional information as to what kind of trees are going to be purchased and what the plan is for this area.

Mr. O'Connor understood that this plan has been in existence for a number of years and the Tree and Beautification Commission volunteered to allocate some of their money to help in planting trees and plants along the 20th Avenue canal.

Mrs. Carroll asked if the money would be used to purchase the products from a private company or will they need to go out for an RFP.

Mr. O'Connor explained that the plants and trees will come from a private company and purchased on the market. He was not sure if the City did an RFP for this project.

Mrs. Carroll appreciated the work that the volunteers sitting on the Tree and Beautification Commission do and that they make sure the City continues to receive the designation of Tree City USA year after year.

Mr. Kramer made a motion to approve the request to spend funds from the Tree and Beautification account for trees and plants along the 20th Avenue canal. Mrs. Carroll seconded the motion and it passed unanimously.

3. PUBLIC HEARINGS

- A) An Ordinance of the City of Vero Beach, Florida, amending the Code of the City of Vero Beach, Chapter 62, Nonresidential Districts, Article III, by creating Section 62.36 to provide for Planned Development as a Conditional Use in the C-1A and C-1 Commercial Zoning Districts; Creating Article XIV, Planned Developments; Providing for Minimum Eligibility Requirements; Providing for Conditional Use Requirements and Minimum Performance and Development Standards; Providing for Waivers from Development Standards that demonstrate and promote a public benefit; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the Planning and Development Director**

Mayor Fletcher read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, reported that this is the first of two public hearings. The Ordinance adds a "Planned Development" as a permitted conditional use in the C-1 and C-1A zoning districts. He went over the application review and approval process. The process for review and approval of the application will be in accordance with existing procedures for conditional use approvals. Staff finds the

text amendment to be consistent with the goals, objectives, and policies of the Comprehensive Plan. The Planning and Zoning Board held a public hearing on July 18, 2013 and voted unanimously to recommend the Ordinance to Council for adoption.

Mr. Kramer made it clear that in passing this Ordinance they are just giving approval to allow an applicant to go through the process.

Mr. O'Connor explained by passing this Ordinance the City is giving more flexibility to the property owners and the developers.

Mrs. Carroll asked if there were other properties within the City limits that would be capable of utilizing this Ordinance.

Mr. McGarry answered yes. He gave an example of the old Postal Annex property. It would be developed to be more pedestrian friendly rather than strip centers that they see all over.

Mayor Fletcher opened the public hearing at 10:37 a.m.

Ms. Elizabeth Casano, 1610 3rd Court, President of the Rockridge Property Owners Association, said that she was speaking to Council today on behalf of Rockridge. The Rockridge neighborhood consists of over 400 homes located just west of the Alma Lee Loy bridge with properties on both sides of 17th Street and 6th Avenue. The Rockridge neighborhood is very aware that they live in a flood zone. She said as long as flood waters can drain quickly and efficiently, as the neighborhood was designed, there are no problems. She said over the years developers of City properties along the borders destroyed their wet lands and piped their stormwater runoff through their fragile drainage system. In 1983 the City and the County commissioned a drainage study to study the effects of development. The study pinpointed problems that without intervention they have a potential to become future catastrophes and Rockridge was one of them and nothing was done. In the early 2000's after a heavy rainstorm Rockridge would have standing water for days. After the 2004 hurricanes members of their Association spent two years doing research and in 2006 at an Indian River County Board of County Commission meeting the Rockridge Association presented their findings. That presentation resulted in the passing of a Resolution by the County, in which they requested the City of Vero Beach and all other governmental agencies to cease and desist from permitting any present or future developments from impeding, degrading or any way burdening the Rockridge drainage system. The Rockridge Association established a Task Force to keep an eye on something that might strain the drainage in Rockridge. Today the Rockridge drainage system is functioning better than it has in the last 20 years, which is why this Ordinance proposal has them a little nervous. They are not sure what the Ordinance means to them. On behalf of Rockridge, she asked them what assurances the neighbors can be given that future developers of the C-1A zoning will meet the maximum standards necessary for stormwater retention and drainage.

Mayor Fletcher asked Mr. McGarry if he saw any conflict with the County Ordinance and what they are doing here with this Ordinance.

Mr. McGarry noted that they have increased their stormwater regulations and there are no waivers in the Ordinance for the stormwater regulations.

Mrs. Carroll commented that the land they are talking about today close to Rockridge is already partially developed. She felt that the old Osceola School site that is going up for auction could have an impact on Rockridge depending on what is built on that property.

Mr. Kramer wanted to make sure that this Ordinance would not allow for developers to get waivers on drainage issues.

Mr. McGarry told Mr. Kramer that he was correct and that storm drainage falls under a concurrency matter, which they do not give waivers on.

Mrs. Turner made a motion to move the Ordinance for the second public hearing on October 15, 2013. Mrs. Carroll seconded the motion and it passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Turner yes, Mrs. Carroll yes, and Mayor Fletcher yes.

B) An Ordinance of the City of Vero Beach, Florida, amending Sections 72.42 and 72.43 of Article IV, Chapter 72, Landscape and Tree Protection of the City of Vero Beach Code; Providing for Revisions to permitting procedures for removal of Specimen Trees and Mitigation Requirements for Tree and Palm Removal; Providing for Conflict and Severability; Providing for an Effective Date – Requested by the Planning and Development Director

Mayor Fletcher read the Ordinance by title only.

Mr. McGarry recalled that at the first reading for this Ordinance he was asked to prepare an option to the Ordinance that would require Planning and Zoning Board approval to remove large specimen trees of a certain DBH rather than administrative approval by the Planning Director. If approved by the Council, Section 72.42(d) would be replaced with the substitute language that he has drafted. In further review of the Ordinance the second sentence in Section 72.42(d) g., starting with the words “And the tree or palm” has been revised to clarify that it applies to both tree and palm locations cited in the first sentence. He said that in drafting the proposed option, the intention was to limit the required Planning and Zoning Board approval to only significant trees that contribute to the tree canopy found in the City. He spoke to the City’s Grounds Maintenance Supervisor and determined that the two most significant species contributing to the City’s tree canopy are the Live Oak and Laurel Oak. He felt these two species should be the sole ones targeted for the additional review requirement. In determining the appropriate threshold for this review, staff recommends a minimum threshold of 35” DBH for Live Oaks and Laurel Oaks. Both Oaks are considered specimen trees if their DBG is 20” or more. He noted that the very few specimen Live Oak and Laurel Oak trees that have come before the Planning and Zoning Board are larger than 35.” This option establishes a review process for approval of applications to remove Live Oak or Laurel Oak trees of 35” DBH or

greater so the applicant would need to pay for advertising costs and triple (\$60) the normal application fee due to the additional review costs incurred by staff.

Mr. McGarry told Council that he was not recommending this option. However, if they chose to implement it, it is something that he could handle.

Mr. Winger felt the diameter should be less than 35 inches.

Mr. McGarry stated that he recommended 35” and would not recommend any lower than 30.” He expressed that a tree cannot be cut down unless there is a reason to do it and they are talking about a tree located in a buildable area. He said that the Planning Department works with applicants to protect trees.

Mr. Winger was not concerned about Laurel Oaks, but he has concerns with the Native Live Oak. He could accept 30” and to leave out the Laurel Oaks.

Mrs. Carroll asked if the Ordinance requires remediation planting of trees on site. Mr. McGarry answered yes.

Mayor Fletcher opened and closed the public hearing at 10:51 a.m., with no one wishing to be heard.

Mrs. Turner made a motion to approve the Ordinance as submitted. Mrs. Carroll seconded the motion and it passed 3-2 with Mr. Winger voting no, Mr. Kramer no, Mrs. Turner yes, Mrs. Carroll yes, and Mayor Fletcher yes.

C) An Ordinance of the City of Vero Beach, Florida, requested by Lichtenberg Corporation of Delaware to amend the Official Zoning Map by changing the Zoning District Designation from C-1B, General Commercial Trades and Services (0 Units per Acre) to C-1, Highway Oriented Commercial (Up to 30 Transient Units per Acre) Containing 2.06 Acres, More or Less, for Property located at 601 21st Street, including a portion of Lot 8, Plat of the Estate of H.T. Gifford, Lot 14, Block 1, Oak Park, and a portion of Tract “A” of the Replat of Park View; Providing for an Effective Date. – Requested by the Planning and Development Director

Mayor Fletcher read the Ordinance by title only.

Mr. McGarry was sworn in. He explained the property owner, Lichtenberg Corporation of Delaware, is requesting to rezone approximately 2.06 acres of land from C-1B, General Commercial Trades and Services to C-1, Highway Oriented Commercial Zoning District. The property is located at the southwest corner of 21st Street and 6th Avenue. The Planning and Zoning Board approved the Ordinance and he would recommend that Council also approve it. He submitted his report as part of the record.

Mayor Fletcher opened the public hearing at 10:57 a.m.

Mr. Winger asked Mr. McGarry if this property is currently where Bank of America is located. Mr. McGarry answered yes. Mr. Winger asked what was the time frame in getting this project completed. Mr. McGarry said that the property owner would like to have the project completed in 2015. Mr. McGarry made it clear that the Bank of America building will remain on the property; however he has not seen the full plan. Mr. Winger was just trying to ascertain what the new property will look like in 2015.

Mr. Keith Kite, of Kite Properties, was sworn in. He said he believed that what Mr. McGarry was trying to do was to provide that the City have a more modern approach to their planning and development. He said that all of these mixed use projects contemplated to occur throughout the City will be a value and he thought Mr. McGarry's goal was to make this City more livable going forward.

Mayor Fletcher closed the public hearing at 11:00 a.m.

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

4. RESOLUTIONS FOR ADOPTION

A) A Resolution of the City Council of the City of Vero Beach, Florida, creating an Ad Hoc Advisory Commission to Study and make Recommendations on matters affecting the City regarding the High-Speed Rail Project proposed by All Aboard Florida; Providing for Conflict and Severability; and Providing for an Effective Date – Requested by Vice-Mayor Tracy Carroll

Mayor Fletcher read the Resolution by title only.

Mayor Fletcher noted that the first thing they will need to discuss is how many members they want to have on this Commission.

Mr. Wayne Coment, City Attorney, stated that in the Resolution it calls for five regular members and two alternate members.

Mrs. Carroll commented there are numerous people in the community who are interested in serving on this Commission. She talked to Mrs. Penny Chandler, who said that she would be happy to serve on the Commission on behalf of the Chamber of Commerce. Mrs. Carroll expressed that the meetings will be open to the public.

Mr. Kramer asked if this was one of those Commissions that each Councilmember appoints a member to serve on it.

Mrs. Carroll explained that would be hard to do because they have already stipulated that they would like a Planning and Zoning Board member to serve on the Commission, a

member of Main Street Vero Beach to serve on the Commission, and a member of the Indian River County Chamber of Commerce to serve on the Commission.

Mr. Kramer commented that it looks like the members on this Commission have already been chosen.

Mrs. Turner pointed out this is the composition that was proposed by the City Council.

Mayor Fletcher opened and closed the public hearing at 11:04 a.m., with no one wishing to be heard.

Mrs. Vock was instructed to bring back to Council the names of those individuals who wish to serve on this Commission.

Mr. Turner made a motion to approve the Resolution. Mrs. Carroll seconded the motion and it passed 4-1 with Mr. Winger voting yes, Mr. Kramer no, Mrs. Turner yes, Mrs. Carroll yes, and Mayor Fletcher yes.

B) A Resolution of the City Council of the City of Vero Beach, Florida, Confirming and Restating City of Beach Public Comment Policies for Conformance with Section 286.0114, Florida Statutes, regarding opportunities for Members of the Public to be heard on Propositions before the City Council and the City's Boards and Commissions; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the City Attorney

Mayor Fletcher read the Resolution by title only.

Mr. Coment reported that this Resolution addresses a new state legislation taking effect today that relates to an opportunity to be heard by members of the public regarding propositions before boards and commissions of the various governmental entities of the State. The Resolution restates and formulates the Councils' previously stated policies regarding a general public comment section being included in the agenda for City board and commission meetings. Public comment has been a part of the Council agenda for many years and is addressed in the Code. The Resolution also addresses the provisions of newly adopted section 286.0114, Florida Statutes, which requires all boards and commissions to provide members of the public with an opportunity to be heard on propositions coming before them. This Resolution is intended as a temporary measure to promote compliance with the new statute. He will be working with the Clerk's office to do a more comprehensive review of the Code provisions applicable to this subject matter and bring back recommendations to Council. He said that if the Resolution passes the City Clerk will send copies to the different City boards and commissions.

Mayor Fletcher opened and closed the public hearing at 11:07 a.m., with no one wishing to be heard.

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

C) A Resolution authorizing the City of Vero Beach, Florida, to enter into a Supplemental Joint Participation Agreement with the State of Florida, Department of Transportation; Airport Master Plan & Sustainability Study (FDOT #423952-1-94-01) – Requested by the Airport Director

Mayor Fletcher read the Resolution by title only.

Mr. Eric Menger, Airport Director, reported that this project is being funded by both Federal and State grants, along with Airport revenues. The cost of the project is estimated at \$625,000. Only 5% of the funds will come out of the Airport funds. He recommended approval of the Resolution and acceptance of the Supplemental Joint Participation Agreement.

Mayor Fletcher opened and closed the public hearing at 11:09 a.m., with no one wishing to be heard.

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

D) A Resolution authorizing the City of Vero Beach, Florida, to enter into a Supplemental Joint Participation Agreement with the State of Florida, Department of Transportation: Rehab and Re-Designate Runway 4/22 and DBE Program (FDOT #425744-1-94-01) – Requested by the Airport Director

Mayor Fletcher read the Resolution by title only.

Mr. Menger reported that this project is being funded by both the Federal and State grants, along with Airport revenues. The project has been budgeted and approved in the Airport's Capital Improvement Program. He said FDOT will fund the project in the amount of \$400,000, FAA has committed \$1,691,120 of the cost for this project, and the remaining \$333,949.10 will come from the Airport fund.

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

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

Mr. Menger reminded everyone to come out to the Air Show this weekend.

- E) A Resolution of the City Council of the City of Vero Beach, Florida, Abandoning all City of Vero Beach interests in a portion of that certain Utility Easement recorded in official record book 725, at Page 2150, and a portion of that certain Water Line Easement recorded in Official Record Book 647, at Page 1634, all being part of the Public Records of Indian River County, Florida. – Requested by the Public Work’s Director**

Mayor Fletcher read the Resolution by title only.

Mr. O’Connor reported that by passing this Resolution it would be abandoning an existing utility easement that no longer contains the City of Vero Beach’s utility potable water mains. The mains have been relocated on-site into locations with new easements. The request was routed and reviewed by various City departments and the responses were favorable.

Mayor Fletcher opened and closed the public hearing at 11:14 a.m., with no one wishing to be heard.

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

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

None

6. CITY CLERK’S MATTERS

A) Holiday Meeting Schedule

Mrs. Vock reported that it has been customary for the City Council to cancel their second meeting in December because of the Christmas Holidays. She asked Council if they wished to cancel their December 17, 2013 City Council meeting.

Mayor Fletcher made a motion to cancel the December 17, 2013 City Council meeting. Mr. Kramer seconded the motion and it passed unanimously.

B) Appointment to the Veterans Memorial Island Sanctuary Advisory Committee

Mrs. Vock reported that there is an Alternate position open on the Veterans Memorial Island Sanctuary Advisory Committee. Mr. Ken Daige has submitted an application to serve on this Committee.

Mr. Winger made a motion to approve the appointment of Mr. Ken Daige to the Veterans Memorial Island Sanctuary Advisory Committee. Mr. Kramer seconded the motion and it passed unanimously.

7. CITY MANAGER'S MATTERS

A) Fiscal Year 12-13 and Fiscal Year 13-14 Electric Utility Rate Sufficiency

Mr. O'Connor commented that he is recommending a 1.9% increase in the electric utility. He is projecting that there will be a loss of approximately \$900,000 over this fiscal year that would have to come from their reserves and in order to keep their reserve balance where they would have about 110 to 115 days of operation he would recommend that this increase be passed on.

Ms. Lawson recalled that back in December 2012, she prepared a utility rate sufficiency forecast and has been updating it quarterly. In their backup material she provided a electric utility rate sufficiency for fiscal year 12-13 and fiscal year 13-14. What the study is showing right now is that they would come up about \$900,000 short for the whole fiscal year. The bottom line problem is their margin. They projected a certain amount of revenues with a certain cost of sales and revenues were down some, as well as the costs of sales being down. She said purchase power cost ran a little more to the high end of the range when they originally projected the low end of the range. She is suggesting for the next fiscal year they have a small increase in the fuel cost adjustment portion of the rates to be a little bit more conservative in their estimates as to what it is going to cost them next year and also to recover this \$900,000. She said the ultimate goal being not to erode their cash balances or show that they are not adopting rates that are sufficient to the expenditures between now and when they finalize the sale of the electric utilities. The Utility Commission reviewed this information and voted 5-1 to support the rate sufficiency study, which necessitates a rate increase.

Mrs. Turner complimented the electrical department in keeping their operating costs down.

Mr. Winger commented he could not support a rate increase at this time. He suggested not increasing the rates now and doing it in January, which really only means a couple hundred thousand dollars difference. He said philosophically he would like to have this electric issue done and be able to say to people that they will not be receiving those high electric rates. The other reason he has for wanting to table this until January is when they went through the budget hearings in July they did not deal with the electric too much and then at the workshop meeting in August he asked a lot of questions and received answers to the questions that he asked. He did not think that they have gone through the process of scrutinizing that part of the budget because they felt it was going to be sold. He did not think that they should put anything else on the "backs" of their citizens and he does not believe that they did the homework for the electric utilities. He was not in favor of raising the rates.

Mr. Winger made a motion to table this until January. Mr. Kramer seconded the motion.

Mr. Kramer commented what he was hearing was 110 to 115 days worth of cash. If he is not mistaken, when he first came on Council the reserves were suppose to be 90 days in cash. This tells him that there was an extra five million dollars that was added to the reserves other than what the policy was when he first was elected to Council.

Ms. Lawson explained that there are a lot of different ways of looking at this in terms of what you throw into the pot as cash available. She said if you look at the cash that they have on hand right now and the things that are not theirs to spend, such as customer's deposits and the sinking fund it is more like 99 days. She said you also have to be careful with the cash that you have on reserve because of bond obligations.

Mr. Kramer commented that in the past he has brought up some options to try and lower the rates through managing their Power Plant. He has not seen any actions being taken in order to lower their costs. He has talked to FMPA who told him that the City does not have to take Stanton I or Stanton II. He reiterated that he has thrown out a lot of options and no one ever uses them. It is always the same – sell to FPL and ignore the management of the power system.

Mr. Winger commented that under the OUC contract they have the right to dispatch the Plant. The City is paying roughly \$4.2 million dollars to keep the Plant in good shape. He said that they could run the Plant and save this \$4.2 million dollars by telling OUC that they would like to dispatch Units 2 and 5.

Mr. Kramer added that he has talked to OUC about that and they don't have a problem with the City making those requests.

Mr. O'Connor agreed that they could make a request, but reminded them that the fixed costs are in their contract with OUC.

Mrs. Turner stated before doing this she wants to see some financials showing that there actually will be some savings. At this point, she was not convinced that it would save them anything.

Mayor Fletcher said that he would support the increase because he did not want to see the City cut into their cash reserves.

Mrs. Turner added the reason that they have this shortage is because of the power costs. It is on the high range of the forecast. She would like to see them move ahead with this rate increase at a time of low power consumption and hopefully avoid another increase.

Mrs. Carroll reminded everyone to keep in mind that one of the fixed costs is the employees. There are a substantial number of employees whose responsibilities are to keep the Plant in prime running condition in case OUC asks that the Units be turned on.

She said these costs going up are out of their control and there is nothing that they can do about it.

The motion on the floor to table the issue failed 3-2 with Mrs. Turner, Mrs. Carroll and Mayor Fletcher being opposed to it.

Mr. O'Connor explained that no action was needed on this matter from Council. He will proceed with the rate increase.

B) Disaster Debris Removal Contract – Piggyback Indian River County Contracts

Mr. O'Connor explained the City discovered that their contract Debris Removal vendor is no longer in business. The City will be piggybacking with the County on the contractors that they use so that they will have coverage in case of a debris causing event. In the meantime they will be working on hiring a new contractor.

Mayor Fletcher asked if there was anyone from the public who wished to discuss this item. No one came forward.

It was the consensus of the Council that there is a need to do this.

C) Crestlawn Cemetery

Mr. O'Connor noted that they have been discussing Crestlawn Cemetery and are now recommending a business plan. At the next Council meeting they will be bringing forth a Resolution for adoption and adjustment of the rate structures, which is outlined in the memo that they received.

Mayor Fletcher stated that the point is that they plan on maintaining the cemetery themselves.

Mr. O'Connor answered yes. He said that was the direction that Council wanted to move in.

Mrs. Carroll noted that even with these rate increases they are still forecasting continued losses.

Mr. O'Connor explained that the only losses that will occur are the losses that are there from the past. The operations and projections going forward show that they will be building up cash reserves for the cemetery.

Mrs. Turner realizes that it is the public's desire to maintain the cemetery. However, she felt there needs to be more work done on a strategic plan. She said a large number of taxpayer's dollars have gone to support the cemetery. She explained that when the cemetery was originally established it was to be funded by a Trust. She said that Trust is

bankrupt and there are no reserves at this time. She said with this projection they won't see any reserves until after year 2016. The plan calls for developing another six acres in 2015 when they have 20 years of inventory left. That did not make any sense to her. If they plan on developing that area, irrigation and roads will have to be put in so where are those funds going to come from. She felt that there were still a lot of questions in operating the cemetery that need to be discussed. She suggested forming a committee to review the cemetery plan.

Mrs. Carroll suggested having some of the local cemetery owners be a part of that committee. She said they are in essence sales people for the product that the City is selling. She was also sure that some of those people would provide feedback on the services that the City provides, the fees they charge and how to more effectively market the product that they have.

Mr. O'Connor noted that they have used a mortuary in town to provide them with that feedback.

Mr. Winger asked Mr. O'Connor what he needed from them today.

Mr. O'Connor said this was just for information purposes and at the next Council meeting staff would be bringing a rate Resolution to them.

Mrs. Carroll asked if they decided to create a committee to assist with implementation of this plan going forward.

Mayor Fletcher trusted the City Manager's work and was not going to ask that a committee be formed to investigate this. Mr. Winger and Mr. Kramer agreed with Mayor Fletcher.

Mr. Mark Mucher commented that going back to when the decision was made to keep the cemetery, Council was told that the cemetery was breaking even it is making money, and doing fine. He said now when they look at this backup material it shows that the cemetery is losing money at a pretty good rate. He questioned if they were going to do the same amount of business when they increase the rates. He felt that they needed to keep an eye on the way things are going at the cemetery.

Mr. O'Connor stated that they are not projecting any losses in the operation of the cemetery based on this plan.

Mr. Mucher wondered if they took into consideration the elasticity of demand.

Mr. O'Connor explained that was factored in. What staff is saying is the City has a premium product on the market that has shown good sales and that people will pay the price that the City is charging because there is not much competition.

Mr. Winger felt comfortable with reviewing the rate Resolution when it comes before them at their next meeting.

Mr. Tony Young commended City staff for their hard work and he commended the City Council for taking the action to maintain what they believe is important to the City of Vero Beach. He said that if you look at the background of the cemetery that making improvements to the cemetery was the right thing to do. He feels the City has been very prudent in managing the cemetery and the people of this community are proud of the improvements and the columbarium that was built there. The money in the cemetery trust fund was used for what it was intended for. He felt that it was relevant to look at the prices that they are charging for the lots at the cemetery and for the niches. He said that he is a part of the Genealogical Society and they are doing research at many of the local cemeteries and by far Vero and Sebastain have the nicest cemeteries, which has a lot to do with them bring City owned cemeteries.

Mrs. Turner explained that she is looking at protecting the viability of the cemetery and not get into the issues again of having great expenditures at the cemetery or costs that are going to endanger it. If they don't do something then the subject to sell the cemetery will come up again. They have to look at a financial plan for the cemetery.

Mr. Young agreed and said that Mrs. Turner is looking at taking the right steps as they move forward.

Mrs. Mary Jane Stewart commented that she is a native of Vero Beach, and her dad purchased six plots at the cemetery and he did a great deal for this community. There are many people who are interested in this issue and so many of them help build the foundation of this City making it a wonderful place to live. She didn't like that Crestlawn Cemetery was being referred to as a product. She said that the cemetery represents so much more than a financial issue. She said that it is a moral issue. She thanked Council for taking time to consider that. She said many of the supporters of the cemetery have a long history in this area and appreciate Council's willingness to keep this a City cemetery.

Mr. Winger asked Mr. O'Connor for an update on the August 20th letter that was sent to FMPA.

Mr. O'Connor understood that discussions were still taking place and FMPA is asking for some clarification.

Mrs. Carroll brought up if the electric issue is a done deal, what are some of the other things that could occur that would need to come back to Council.

Mr. O'Connor clarified that they have a contract for sale and under the contract there are terms and conditions that must be met. Two critical issues that revolve around that is one they negotiate in good faith and two they would consider any reasonable modifications to the contract. He mentioned the issue that dealt with the contract between OUC and FPL.

He said if FPL was going to buy their power, those modifications would not come back to Council because in their contract it only specifies that the City has to purchase those power agreements from OUC at the set prices. He said “is the contract a done deal” and he has said this several times before their money is not in the City’s account and any contract is subject to that. The City Council can take whatever actions they wish, but the issue is what is the cost benefit analysis of those actions.

Mrs. Carroll mentioned that the other road block that could be instituted by City Council if they chose to would be to not fund the transactional attorneys that they hired in good faith. She said that if the City chose not to pay their bills then the attorneys probably would no longer work for the City, which could cause some problems.

Mr. O’Connor reiterated that negotiating in good faith is the key point. He said that if Council would choose not to fund the transactional attorneys because they don’t want to move forward with the contract then that would become an issue of the good faith negotiations.

Mr. Winger stated that essentially they have a signed contract and the only thing that will let them out of the contract is if they are not able to perform. He said that this being so then the contract is a done deal. If any City Councilmember tried to find a way out of the contract, which would be the inability to perform for factors beyond their control, that not only would they be violating the contract, but they also would be subject to a lawsuit for breach of the contract.

Mr. O’Connor explained if for some reason the City chose not to negotiate in good faith that at this point it would be a breach of the contract.

Mr. Winger added that if they did breach the contract then FPL would have a cause to sue the City.

Mr. Mark Mucher was a little alarmed with this done deal scenario. He sent an email to Mr. O’Connor and asked him about it and Mr. O’Connor emailed him back saying that it is out of the City Council’s hands right now. He has been told that the contract will come back to City Council at some point for modifications. He asked what will happen if three Councilmembers vote against the modifications.

Mr. O’Connor commented that from his conversations with Mr. Igoe, in his opinion there are modifications to the contract that will benefit the City. The contract does say that there will possibly be modifications and additional votes may be necessary by the Council.

Mr. Mucher asked if what he is hearing is that there can be minor modifications made without a vote. Mr. O’Connor said that was not what he was saying. He said that Council would have to vote on the modifications. Mr. Mucher did not think that the dollar amount of the contract will change, but the text of the contract will change and

modifications will be needed and it will make a difference as to who is on the Council and the way that the vote will go.

Mr. Kramer heard Mr. O'Connor mention something about FPL increasing their bid in case FMPA comes back and wants more money.

Mr. O'Connor explained that he used that as a hypothetical example. However, FPL understands that there is a cost for whoever takes their power supply contracts over and above what they can produce the power for.

Mr. Kramer commented the problem that he has with this is the good faith word, which is being thrown around and no one is looking at the City Council to see if they are negotiating in good faith. He is looking at the FPL offer that they gave Homestead for \$115 million dollars for less than 18,000 customers. He said that simple ratio math says that the City should be getting somewhere in the range of \$200 million dollars. He said that was FPL's starting offer. He felt that for some reason FPL has some leverage here in Vero Beach that the City will accept a zero profit sale. He does not think that the City Council has done anything in good faith when FPL has a starting offer of \$115 million dollars for less than 18,000 customers. The offer was made to Homestead right after the hurricanes.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

A. Old Business

1. Nitrogen loading of Indian River Lagoon – Requested by Councilmember Pilar Turner

Mrs. Turner mentioned that she brought this item to Council on May 7th and since that time Council has not received a response. She brought it back today to see if they could get some deadlines put in place and she thanked the City Manager for coming forward with some positive steps. The whole purpose is for the City to establish a baseline of nitrogen and phosphorous loading in the Lagoon. We need to know if we are contributing with stormwater outfalls. This information will give us a way to measure progress. In order to make further improvements we have to know where we are so we know whether we are helping or continuing to deteriorate the lagoon. She wants to see Vero Beach taking the lead in this and asked that these numbers be pulled together. Mrs. Turner then referred to the memo dated September 26, 2013, which includes four tasks and firm deadlines for completing these tasks. Hopefully this will help us prepare a program to save their Lagoon.

Mrs. Turner gave an update on the Fertilizer Ordinance. She said that there were two amendments to the County's Fertilizer Ordinance that were being presented to the County Commission at their meeting today. She thought the County Commission would pass the amended Ordinance. She will move forward on the City's Fertilizer Ordinance and present something to Council at their next meeting.

2. Ordinance to Reduce Youth Access to Electronic Cigarettes – Requested by Councilmember Dick Winger

Mr. Winger asked the City Council if there was a consensus to do something about electronic cigarettes. He was provided language for an Ordinance specifically addressing youth access to electronic nicotine delivery devices, including three key issues: 1) To restrict the sale of these devices to those 18 years of age and older; 2) To place all of these devices behind the counter requiring retailer-assisted sales, and 3) To restrict their use in all locations where the use of other tobacco products are currently restricted according to the rules of the Florida Clean Indoor Air Act. He did not feel that number three would apply to them.

Mayor Fletcher felt that they needed to wait until the State takes this up to have uniformity across the entire state. He would rather the State take this up then the City doing it.

Mrs. Turner felt that the State is looking for municipalities to take the lead. She said as they raise awareness in their community then the importance of the issue is raised at the State level.

Mr. Coment was of the opinion that because of the definition of tobacco products in the Federal and State law the liquid for the e-cigarettes that contains nicotine is derived from the tobacco leaf and fits into the definition of a tobacco product. He read into the record the position that the State of Florida has taken. He said if they do adopt something locally that the only enforcement they would have is through a code violation type penalty. If they made it a criminal infraction the State Attorney's office would not enforce it.

Mr. O'Connor suggested working with the Florida League of Cities to get this on their legislative agenda.

Mr. Winger made a motion to instruct the City Attorney to come back with an Ordinance. Mrs. Carroll seconded the motion and it passed 4-1 with Mayor Fletcher voting no.

Mr. O'Connor reminded Council that tonight is National Night Out in Riverside Park.

B. New Business

Mrs. Carroll asked if any of the Council planned to attend the breakfast that they have been invited to by the Vero Beach Lifeguards. Mr. Kramer said that he would try to attend. Mrs. Carroll told him if he is unable to attend, that she would be able to.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Craig Fletcher's Matters

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

Mayor Fletcher reported on the Treasure Coast Regional Planning Council meeting.

B. Vice Mayor Tracy Carroll's Matters

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

Mrs. Carroll reminded everyone that this weekend is the Air Show.

C. Councilmember Pilar Turner's Matters

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

Mrs. Turner attended the Treasure Coast League of Cities luncheon that was held in Vero Beach. She attended a two day FMPA strategy session where there was no mention of the FPL offer and what it would look like for their strategic plan. She said that the only reference to Vero's departure was noted in their critical issue as a threat from investment owned utilities. She said the All Requirements Project Board adopted as their core value that the needs of the organization transcend the needs of the individual member. She said that this core value was rejected by the Board of Directors. The Board of Directors also expressed continuing concern about the risks being imposed on the cities through actions of FMPA. She said that there would be an FMPA Executive Board meeting on October 17th.

Mrs. Turner thanked everyone who participated in the United Way Day of Caring. She mentioned that Autumn in the Park is this weekend and Waldos will be hosting a Safespace fundraiser.

D. Councilmember Jay Kramer's Matters

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

Mr. Kramer mentioned that the Fundraising Committee has been busy planning for the Holiday event and Mrs. Bev Paris is doing a great job. He asked Council that if they see her to make sure to thank her for the hard work that she is doing for this fundraiser. He attended Keith Touchberry's retirement party and Downtown Friday. He mentioned how many people participated in Hands Across the Lagoon last Saturday. There was also Celebrate the Arts held at Riverside Park on Saturday and this Friday is the Downtown Art Walk.

E. Councilmember Dick Winger's Matters

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

Mr. Winger attended Day of Caring, Hands Across the Lagoon, and a Florida League of Cities Energy and Environment Policy Committee meeting. The Energy and Environment Policy Committee is trying to draft legislation for the Florida League of Cities (FLOC). He encouraged the Council to contact the FLOC and express to them the importance of the Lagoon.

Mr. Kramer suggested that Mr. Winger send a letter to the Florida League of Cities and that the entire Council sign the letter. Mr. Winger will work with Mrs. Vock in drafting this letter.

11. ADJOURNMENT

Today's meeting adjourned at 12:18 p.m.