

**CITY OF VERO BEACH, FLORIDA
SEPTEMBER 3, 2013 6:00 P.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

A moment of silence was observed 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. Winger thought it would be appropriate to combine item 9B-1) with item 2C-1) on the agenda. He said there is a mass of people in the audience present for that discussion. He asked Mr. Kramer if he had a problem with having his item heard earlier in the meeting.

Mr. Kramer commented that because of the cost to pay attorneys he had no problem with moving the item up on the agenda.

Mr. Winger said the public would be able to give their comments on short term rentals and then Council would discuss it.

Mr. James O'Connor, City Manager, requested that item 7-C Discussion of Crestlawn Cemetery be pulled from tonight's agenda and it will be heard at the September 17th meeting.

Mr. Kramer made a motion to adopt the agenda as amended. Mrs. Turner seconded the motion and it passed unanimously.

B. Proclamations/Presentations

1. Retirement Proclamation to be presented to Captain Keith Touchberry

Mayor Fletcher presented Captain Keith Touchberry with a proclamation thanking him for the services that he gave to the City of Vero Beach.

2. Certificate to be presented to Mr. George Hunt, owner of Mulligans

This item was pulled from the agenda.

3. Lifesaving Award to be presented to Officer Sean Toole

Chief David Curry presented Officer Sean Toole with a lifesaving award.

4. Constitution Week – September 17 – 23, 2013

Mayor Fletcher read and presented the Proclamation.

5. Mr. John Igoe, Transactional Attorney, to give an update to Council on the selling of the utilities.

Mr. John Igoe, Transactional Attorney, was at tonight's meeting to give the status on the sale of the utilities, as well as ask for an additional payment for legal fees. He said on August 20, 2013, Mr. Eric Silagy, President of Florida Power and Light (FPL), sent a letter to Mr. Nicholas Guarriello, General Manager and CEO of Florida Municipal Power Agency (FMPA), outlining the pending transaction with the City of Vero Beach (please see attached letter). In the letter, Mr. Silagy indicated if FMPA is interested in proceeding with the transactions he would like to know by September 20, 2013. All of the organizations involved met on August 23rd and the primary subject was the conditions outlined in the letter. Mr. Igoe expressed that he felt that the meeting was very positive and he is feeling very optimistic and believes they have a path moving forward. In the letter, Mr. Silagy addressed that the City and Orlando Utilities Commission (OUC) have agreed to transfer the City's entitlements for the St. Lucie 2, Stanton 1 and Stanton 2 power sales and support contracts upon the sale of the electric utility. FPL has also entered into two (2) power purchase agreements for approximately three (3) years. In order to overcome the issues that FMPA has introduced regarding the City's reassignment of the Existing Power Sales Contracts to OUC, he asked that FMPA consider: a) FMPA and the City terminate the Existing Power Sales Contracts for all three (3) projects without further liability thereunder, and new power sales and support contracts for all three (3) projects identical in substance to the Existing Power Sales Contracts are entered into by OUC and FMPA; b) All rights, title and interest under the New Power Sales Contracts for Stanton 1 and Stanton 2 for approximately the first three (3) years after the close of the utility sale would be transferred to FMPA; c) FMPA would be paid at closing of the electric utility acquisition an aggregate amount to account for the difference in the contract payments and the market value of the New Power Sales Contracts for Stanton 1 and Stanton 2 during the delivery period. The maximum amount would be paid if the delivery period is three (3) full years. If the delivery period is less than three (3) years the amount of the payment would be reduced upon the actual length of the delivery period; and d) FMPA would take all actions reasonably requested by the City and FPL, including providing consents and approvals within its control and pursuing consents and approvals of third parties, to facilitate FPL's acquisition of the City electric utility in an expeditious and economic manner and without need for a private letter ruling

from the IRS or unanimous approval of the applicable project participants due to the revised transaction structure described in subparagraphs a) and b). Mr. Igoe felt that if they could reach an agreement on this payment, hopefully everything else would fall into place. He said that if all of these things are approved by September 20th then he can start drafting definitive documents. He feels that the City will need to retain a Financial Advisor. At this time, he did not know what the costs would be to hire a Financial Advisor, but feels one will be needed to deal with the various insurance companies. Mr. Igoe brought up his legal fees. He said that when Council engaged his firm in August 2011, no one realized the twists and turns that this transaction was going to take. It is costing far more than anyone would have anticipated. He is asking Council for a payment in advance of invoices as we go of \$250,000. He said in recognition of this burden, he did receive approval from his firm to give a discount to the City and charge \$50,000 off of their costs.

Mrs. Turner realized the high costs that the City is spending, but reminded the public that when FPL takes over the City's utilities, the community will save \$2 million dollars in one month.

Mayor Fletcher made a motion to authorize payment to the firm. Mrs. Carroll seconded the motion and it passed 4-1 with Mr. Kramer voting no.

Mrs. Carroll thanked Mr. Igoe for all of his hard work and told him Council appreciated the reduction in fees. She also acknowledged that the President of FPL is assisting the City as they move forward (referring to the letter that was sent to FMPA).

6. Dr. Edith Widder/Orca to give a presentation on the Lagoon.

Dr. Edith Widder, briefly went over her background. She is a deep sea biologist who at one time worked at Harbor Branch and then in 2005 left Harbor Branch and is now employed by Orca. She then gave a Power Point presentation.

7. Mr. Paul Dritenbas to give a presentation on the Rotary Initiative for Submerged Seagrass Awareness (RISSA) Project.

Mr. Paul Dritenbas, Rotary Club member, was at tonight's meeting to talk about the Rotary initiative for Submerged Seagrass Awareness (RISSA). He provided Council with a copy of a letter to the South Beach Property Owner's Association (on file in the City Clerk's office). This project, if initiated, is intended to preserve approximately 350 acres of existing grass flats that lie west of the barrier island and east of the Intracoastal Waterway (ICW). These shallow grass flats are well known among local anglers, fish ecologists and the scientific community as "The Moorings Flats." He said currently the intracoastal waterway has a posted 30 mph speed limit with idle only east of the channel. While most boaters adhere to this regulation, some do not. Boaters that are not familiar with the location of the shallow areas advance too far onto the flats with their big motors causing propeller damage to the grass bottom. This visible damage is called prop

scarring. Many times the water is too tannic or turbid from rainwater runoff to even see the bottom.

Mr. Dritenbas will be making a request on September 12th to the Rotary Club to release more funds in order to purchase buoys. He mentioned that at the center of the flats is a small oyster bed. The oysters at the south end of the bed are primarily old shells, but at the north edge they are still alive and accreting. This is a unique location that warrants further investigation to see if the enhancement effort is possible with the variables and conditions that are required to support an expanded oyster colony. Based on recent research in this area, it appears the 16" x 16" mats with the affixed shells may work well at this location.

Mr. Dritenbas mentioned where there were some healthy seagrasses.

Mrs. Turner thanked Mr. Dritenbas for telling the public about this solution with the oyster mats.

Mrs. Carroll commented that there were five (5) members from two (2) different Rotary Clubs in the audience tonight. She said the reason that these Rotary Clubs have the funds to help with a project like this one is because this City Council has allowed the Rotary Club to use their Parks for different events in order to raise money.

Council took a break at 7:20 p.m., and the meeting reconvened at 7:30 p.m.

C. Public Comment

1. Mr. David Hunter to discuss the short term and vacation rental code.

Mr. David Hunter, 3702 Eagle Drive, told Council that he was grateful for the Council and their service. He said the purpose of him being here tonight was to apprise the Council with the situation of short term and vacation rentals. Vacation rentals and transient rentals are allowable activities in the areas appropriately zoned for them. He got involved in this because of property near him that engaged in this activity. He gave examples of five (5) to six (6) cars parked in front of one house, which had at one time three bedrooms, but was converted to four (4) bedrooms, which means that a lot of people can live in the house for a week. He remembers that they (people renting the home) would hang out by the pool and have parties, which caused noise in the neighborhood and it is very disturbing to a neighborhood when a house is turned into a hotel. Mr. Hunter provided Council with a description of Public Lodging Establishment (on file in the Clerk's office). A transient establishment is a public lodging establishment rented for less than 30 days or one month for transient occupancy with the intent that the guests who stay will be temporary. Examples of transient public lodging are hotels, motels, bed and breakfast inns, rooming houses, vacation condominiums, vacation houses and apartments. A State license is needed to run these transient establishments. He mentioned that in Chapter 61 of the City Code it does not allow transient quarters in residential areas. The case presented to the Code Enforcement Board was unfortunate

and the Code Enforcement Board may not have understood the issues. It would have been more appropriate for the City Council to make that decision. He told Council that if they don't agree to take this matter to court, then they have inadvertently voted to throw out their zoning Code for transient rentals. He said that he was not against tourism and is in favor of seasonal rentals for two (2), three (3), or four (4) months at a time, as long as it is for a longer term period. He said that if you don't have people staying for some length of time then you don't know who your neighbors are. He said that there are a lot of good hotels where these people can stay at. He also mentioned at the Code Enforcement Board meeting that public comment was not allowed.

Mr. Wayne Coment, City Attorney, explained that the hearing was an evidentiary proceeding and only someone called as a witness can be allowed to be heard.

Mr. Hunter felt excluded from not being able to present his side of the case. He said some of the local hotels feel they are going to lose business if these residential guesthouses are allowed. In terms of promoting property rights, he said zoning protects their property rights and this kind of business needs to be conducted in the appropriate areas. In closing, he appreciated Council's support and asked them to appeal the decision that the Code Enforcement Board made to the Circuit Court. He also mentioned the members that sit on the Code Enforcement Board are not lawyers. He said if this is overturned then they (the City) can define what is in the Code.

Mrs. Carroll noted that Mr. Hunter said that the Code Enforcement Board members are not lawyers. She said that Mr. Richardson has a Doctrine in Law.

Mr. Hunter apologized. He did not know that Mr. Richardson was a lawyer.

Mrs. Honey Minuse stated that neighborhoods are very important to her. She noted that she was Chairman of the Executive Committee for IRNA and read a prepared statement concerning their views on short term transient rentals in single family residential neighborhoods (please see attached).

Mr. Randy Fryer, 902 Seagrape Lane, wants their community to be preserved and not allow less than 30 day rentals in the community. He has seen it go full circle at the home located next to his at 906 Seagrape Lane. He would come home and see cars everywhere. It was a nightmare. He said thankfully the house has gone back to a single family residence.

Mr. Geroge Bychienzkie (spelling may not be correct) reminded Council there are unintended consequences in that a lot of other things can happen that we don't want to happen. He said first you allow 30 day rentals, then what is to stop people from renting three (3) days, two (2) days or by the hour.

Ms. Ann Rogers, 3626 Indian River Drive East, mentioned that the central beach area doesn't have bylaws like a gated community; therefore the residents in that area have to rely on the City to enforce the laws. She said it is not a short term rental area. There are

plenty of hotels and commercial rental properties for these activities without affecting the central beach area. She wanted to keep the peace and serenity that is needed by all.

Mr. Charlie Myers went over how some City employees are treated. He said that after thirty years of working for the City he has decided to retire. He is tired of feeling like a piece of garbage you see on the road. The City employees have not received raises in four years, and the cost of living keeps going up. He is tired of seeing good employees threatened that they are going to lose their jobs. He mentioned that the former City Manager, Mr. John Little, stood by his employees and backed them up. He told Council that he hoped that they get what they want and not what they really deserve.

Mrs. Caroline Ginn, 5151 North A1A, was at tonight's meeting to talk about the sale of the utilities. She handed out a packet of information to Council, but was not sure that she had the final term sheet. She questioned how the municipal debt was going to be paid off. She said FPL will not be able to assume that and she hated to see their reserves used to pay for their debt and go to FPL.

Mr. James O'Connor, City Manager, explained that the debt owed will be paid at the closing with the proceeds that the City makes from the sale. He said that money will be placed in an escrow account to pay off the bonds.

Mrs. Ginn still did not believe that the debt owed would be paid off.

Mrs. Carroll suggested that Mr. O'Connor and Mrs. Ginn meet and discuss this and if Mrs. Ginn still had some concerns she can come back and talk to Council. Mrs. Ginn said that she would do that.

Ms. Rosemarie Wilson felt that they could solve the short term rental problem without suing and creating some nasty litigation.

Mr. Randy Old, Seagrape Lane, witnessed a short term rental on his street and said that it was not pleasant. It behooves Council not to allow this.

Mr. John Carroll, 422 Live Oak Road, stated that he made a presentation before the Code Enforcement Board and he did receive a favorable response from the Code Enforcement Board because the Code is ambiguous. He said a lot of people have not read the Code. He commented on the three (3) Board members who voted in favor of this and said that each one of those members had been on the Board for at least nine (9) years. He doesn't believe that a Code Enforcement Board case has ever come before this Council. The two members on the Code Enforcement Board who voted against the Code were both on the Board for less than a year. He read the actual Section in the Code that he was cited under. He asked what does that say. Mr. McGarry testified that there is no provision in the Code for 30 days. He has to rely on the State to give him guidance. When he first started coming to Vero Beach he rented three homes at different times in Riomar. He said this has been going on for a long time. There are approximately 400 listings in Indian River County and 200 of those listings are in the City. He felt that it would be an

injustice to the three (3) members of the Code Enforcement Board who have served almost ten (10) years and know the Code and it does not say limited to thirty (30) days. The State has said they want vacation rentals and not allow any municipality to restrict them. He said if something is not in the Code then it cannot be enforced.

Mr. Tom Tierney, 2101 Indian River Boulevard, Attorney representing Mr. & Mrs. Carroll and who represented them at the hearing before the Code Enforcement Board, requested to speak. He said the order that the Carrolls' received from the Code Enforcement Board does state that the City Code is vague on this issue and therefore there was no violation. Mr. McGarry admitted the definition that he was using to cite the Carrolls' was vague. Mr. McGarry utilized the definition he found in the Florida Statutes. There was another case in the State who had a similar Ordinance and City staff decided to utilize the definition in the Florida Statutes. That case was in the City of Venice, Florida. Mr. Tierney briefly went over that case and the outcome. He said that the County dealt with this same issue and are following State guidelines and there has not been any controversy associated with their decision. He said that personally he has utilized the web to find homes to stay at (not in the City of Vero Beach), when vacationing and the time frame was less than thirty (30) days. He said that when he utilized these homes there were not a lot of cars in the driveway from him staying there and the garbage was properly disposed of.

Mr. David Hunter said the question Mr. Carroll raised about what is the difference between 29 or 30 days is that the State of Florida requires a license for someone renting out for less than 29 days. He does not feel that he has exaggerated this problem. His neighbors have had to live in a neighborhood where this situation has taken place. He feels by Council asking for this appeal that there is a likelihood that they will be successful in winning the court case. This is not your traditional type of appeal. He said in the Venice case there was one judge and one case.

Mr. Charlie Wilson, P.O. 655114, Vero Beach, Florida, explained why he was giving his P.O. Box number instead of his home address. He said that some years ago his house was broken into and he would rather that no one knows his physical address to prevent this from occurring again. He complimented the City for doing so many right things, such as the progress that they are making and their concerns for the Lagoon. He said that there are more things that bring them together than tear them apart. He congratulated Council on their courage in moving forward on the electric issue. He discussed the short term rental situation and said that it seems to him they missed the window of opportunity from 2008 to 2011 when they knew the situation existed and in that time frame could have made any Ordinance that they wanted to. He said staff should have known at that time that this legislation was going through. As he understands it, there was discussion among the League of Cities on this issue. He does understand the communities concern about having a short term rental dwelling next door to them, but at the same time they don't know what the unintended consequences are. All they know is that they have to follow the law. One of the things that Mr. McGarry stated in his testimony at the Code Enforcement Board hearing was that he has sole option of interpreting this and he didn't care if anyone liked it or not. Mr. Wilson said he was not sure that was the appropriate

thing to say to any resident of their City (he read this excerpt word for word out of the minutes). He questioned if the Planning Director has the sole authority to make this decision of interpretation, what happens when you change Planning Directors. He said they could hire a new Planning Director who thinks differently. He said that is why the Ordinances have to be clear. He suggested that they look at their Ordinances, because it is the City's responsibility to write clear law.

Mr. Ken Daige, 1846 21st Avenue, commented that the issue before Council is to appeal the decision made by the Code Enforcement Board. He said that the Code on the books helps his neighborhood. He felt that Council should file the appeal so the Code can remain on the books. He said the internet reaches many people all over the world and you don't know who is going to come into these neighborhoods. He said that some of the people that came into his neighborhood put a hurting on them. The Code allowed them to clean up this problem. He reiterated that short term rentals will destroy the neighborhoods. The County chose to remove their Code off their books and that is their business. He said the Council is here to protect the citizens of this community and their neighborhoods.

Mr. Mark Mucher mentioned that he has served on the Planning and Zoning Board for 17 years and he knows that a lot of their (City of Vero Beach) Code is "crap" and it needs to be cleaned up. He recalled that they did have an opportunity to clean it up and should have done it when they had the chance. He does not like rentals at all. He knows that people are at today's meeting encouraging the Council to file an appeal, but that does not mean that they will win. He suggested getting a strong legal opinion before filing an appeal.

Mr. Brian Heady commented that 50% of all cases that go to trial have a lawyer that loses. He was asked to come before them and speak on the "Tracy Carroll thing." The issue is can you rent your home for the night, by the week, or by the hour. He said whatever the time frame is it is all the same - short term rentals. The Code Enforcement Board is a board of non-elected officials that decided it is okay to rent short term and the person in question that owns the property and subject of the complaints is Mrs. Tracy Carroll.

Mayor Fletcher asked Mr. Heady not to make this personal and to talk in general terms.

Mr. Heady stated that he was not making it personal. He continued by saying that the person is a City Councilmember, an Elected Official, and is paid less than minimum wage for the time that it takes to do this job. He said if Mrs. Carroll is willing to do this job at the salary that it pays then she must really want to serve and protect the community. He said that Mrs. Carroll is making minimum wage as an Elected Official, but leasing a half a million dollar house on the beach short term, like a hotel room only it is an half a million dollar mansion. She pays over \$7,000 a year in property taxes. Mr. Heady researched the Property Appraiser's site and found more homes that Mrs. Carroll owns.

Mayor Fletcher told Mr. Heady again not to make this personal. He then turned Mr. Heady's microphone off and called him out of order and asked an officer to remove Mr. Heady from the dais. He again told Mr. Heady that he was out of order. Mr. Heady asked the Mayor how was he out of order. Mayor Fletcher told him that he asked him repeatedly not to make this personal and he continued to attack a member of the Council. Mr. Heady said that he did not attack anyone. Mayor Fletcher told Mr. Heady that he was not going to argue with him and again called him out of order. He said that Mr. Heady may remain in the Council Chambers.

Mrs. Linda Hillman, 2315 18th Avenue, commented that at the Council meeting held on August 20th she was asked by Mrs. Carroll not to make her comments personal and that according to the City Charter it is not allowed. She said that she reviewed the Charter and read it. However, she hoped that Council was prepared to change the Charter this evening because in that Charter it also states that anyone that comes up to the podium must state their name and address. She said that when Mr. Wilson comes up to the podium he gives a post office box number. She asked how come there are selective followings. She asked why is it that Mr. Wilson is allowed to come up to the podium and not give his address as it states in the Charter.

Mr. Coment explained that the provisions outlining City Council meetings, is in the Code and not in the Charter. He said all it says in the Code is state your address, but doesn't specify street address, mailing address, etc.

Mrs. Carroll expressed that the Council does not have the power to change the Charter.

Mrs. Hillman recalled that at the last Council meeting, she was speaking for one minute and fifty seven seconds when Mrs. Carroll asked her to refrain from personal comments. However, Mr. Wilson stood up and spoke for about five minutes and mentioned people by name (including herself) and he was not told that he should not make personal remarks about people. She said that when she was told by Mrs. Carroll that was not allowed she listened to her and stopped making them. She felt that if those personal remarks applied to the Council then they should also apply to the public. She reminded the people who recently signed the petitions that she was circulating that the election is coming up.

9B-1) Consideration to appeal decision on short term rentals – Requested by Councilmember Jay Kramer – (this item was moved up on the agenda)

Mr. Kramer commented that this is an issue that he never wanted to address. He said especially with this economy and the number of foreclosures that there are. He said the City can't clarify the Ordinance and the legislature shut the door in 2011. He is not in favor of advertising to the world that the City allows short term rentals. He made a motion to appeal the decision. Mr. Winger seconded the motion.

Mr. Winger commented that there are courts to decide what the law is. He said none of the four Councilmembers who will have to rule on this are judges or lawyers. He agrees

that it is unfortunate that this has been brought forward. He feels that it should go to court and be decided by a judge.

Mrs. Turner said it was clear there have been short term rentals in this community for many years. She said there is one in her neighborhood. She reiterated that there are over 200 listed in the City, so this is not something new. She said since it is being brought up right before a City Council election there are some political overtones. She said in order to ascertain whether they have a permissible Code, the only option they have is to get a legal opinion. That would be her recommendation as opposed to appealing this decision in court. She said that Council could request an independent legal interpretation on this issue. Once they have this legal opinion then they can decide whether or not they wish to file an appeal.

Mr. Coment pointed out that because Mrs. Carroll has a potential conflict that she will not be able to vote on this matter. He has a conflict because he represents the Code Enforcement Board.

Mrs. Carroll commented that there was a period of time when the Planning and Zoning Board had the opportunity to discuss this. She commented that their Planning and Development Director came from the Florida Keys where short term rentals were discussed many times and rules were made. She said the opportunity existed with him, with his experience of being employed in the Keys, to institute something similar in the City of Vero Beach. She recalled speaking to Mr. McGarry about this years ago and he said that he was very involved in drafting the regulations that occur in the Keys. She said that one of Mr. McGarry's responsibilities, and he has stated it, is that he is the sole interpreter of what the Code says. She held up the Code book for the public to see and went over some of the things that are included in the Code. She said that what the Code Enforcement Board, with 28 years of combined experience, determined was that there was not a violation. She said what Council is telling these members is thanks for your 28 years of combined experience, but now we are going to take your decision to court. She asked the Clerk, who has been employed with the City for almost 30 years, if there has ever been a single case where the City Council tried to overthrow a decision of their volunteers. Mrs. Vock could not recall one. She (Mrs. Carroll) wanted to make it clear that the only person in the City who determines what the Code is by his own admission was the Planning and Development Director. He had the opportunity to change the Code and he missed it. If Mr. McGarry feels responsible then perhaps that is a point that he needs to take up with the City Manager.

Mr. Winger told Mrs. Carroll that she was making the assumption that the Code is not lawful (meets the requirements of the law). He said that Mrs. Carroll does not know that. He feels that every City Council has the responsibility of supporting its City Manager, Officers and the people that report to them. He said that the Council has an obligation to Mr. McGarry to find out what the law is.

Mrs. Carroll asked Mr. Coment based on his experience, will a finding from the courts tell Council what the law is or will the finding actually allow short term rentals or disallow short term rentals.

Mr. Coment explained that with this type of an appeal there are different things that the courts look at. He said the first thing that they will look at is whether or not the Code Enforcement Board followed the law. If the appellate court agrees that the Code is vague then that will be the opinion that they will get from the court. However, if they disagree then they would reverse the Code Enforcement Board's findings and send it back to the Code Enforcement Board to enter an order that is consistent with the evidence presented or they could ask for a rehearing.

Mrs. Carroll asked would a judge or a jury hear this matter.

Mr. Coment said that typically it is a three judge panel.

Mrs. Carroll continued by saying that these judges would not be looking at new data, but solely looking at the record that the Code Enforcement Board made their decision on.

Mayor Fletcher felt the only way that they were going to find answers is to go to court. He supported the appeal for this to go to the Circuit Court.

The motion passed 3-1 with Mrs. Turner voting no, who again suggested that they seek the opinion of an attorney.

Mayor Fletcher stated that he also thought about that, but felt that all they would get is another opinion.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – August 20, 2013**
- 2. Regular City Council Minutes – July 16, 2013**
- 3. Special Call City Council Minutes – August 13, 2013**
- 4. Request to Serve Alcohol – Buggy Bunch Food Truck Events – Riverside Park**
- 5. Final Payment Request from Gomez & Son Fence, for Airport Security Fence Improvements (Bid #250-12/CSS; FDOT #420768-1-94-01**
- 6. Revision to Bid No. 290-11PJW – Emergency Services Contract**
- 7. Recommendation of Award – Pebble Quicklime Annual Supply Contract – Bid No. 200-13**
- 8. Beach Cleaning and Maintenance – Bid No. 240-13/JO**
- 9. Approval of Additional Wells Fargo Banking Services – Merchant Services**

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

Mr. Carroll pulled item 2D-8) off of the consent agenda.

Mr. Winger pulled item 2D-9) off of the consent agenda.

Mrs. Turner made a motion to adopt all items on the consent agenda, except for 2D-6), 2D-8), and 2D-9). Mr. Kramer seconded the motion and it passed unanimously.

2D-6) Revision to Bid No 290-11PJW – Emergency Services Contract

Mrs. Turner referred to their backup material and noted that under the justification it says that the City is currently reducing staff through a process of “right sizing” departments at the direction of City Council. She asked that it be explained why this contract was needed.

Mr. O’Connor explained that what they were doing was making the emergency services contract more flexible. He said for example, when they layoff some of their employees they will be able to go back and use this contract for some of their services and not just on an emergency basis. He said with the reduction of forces the contract allows them to do this.

Mrs. Turner still wanted to see the reduction of forces. Mr. O’Connor said that there has been a substantial reduction of forces in the Water & Sewer Department. Mrs. Turner said that it was in the Water Lab.

Mr. Rob Bolton, Water and Sewer Director, stated that in his department there has been a reduction of forces in a lot of areas. He said that they are looking at utilizing this contract to find additional support when they need help. He said that originally it was bid for emergency services only, but what they would like to use it for is daily operations on an as needed basis.

Mr. O’Connor added that since it is being used as an as needed basis then the City does not have to pay anything unless they have to use the services.

Mrs. Turner had some concerns with having an unlimited contract with no cost controls on it. There are opportunities for a contract like this one to be abused. She asked Mr. O’Connor to supervise this contract. She was in favor of staffing for their norm and not staffing for peak periods.

Mrs. Turner made a motion to approve the Revision to Bid No. 290-11PJW – Emergency Services Contract. Mr. Kramer seconded the motion and it passed unanimously.

2D-8) Beach Cleaning and Maintenance – Bid No. 240-13/JO

Mrs. Carroll mentioned that there have been some discussions about using a lower cost contractor for their maintenance. She wanted to make sure that staff was comfortable with the vendor that they have chosen to do their beach cleaning and maintenance.

Mr. Monte Falls, Public Works Director, stated that he had great faith in out servicing to these qualifying firms. He said all of their record checks were good and he is hopeful to receive the services as outlined in the contract.

Mrs. Carroll made a motion to approve the Beach Cleaning and Maintenance Contract – Bid No. 240-13/JO. Mr. Kramer seconded the motion and it passed unanimously.

2D-9) Approval of Additional Wells Fargo Banking Services – Merchant Services

Mr. Winger noted in Ms. Lawson’s memo that at this time they would just be accepting credit cards in the following four (4) locations: “Riverside Tennis Complex, the Community Center, Leisure Square, and the Planning Department offices. If it appears advantageous and cost effective, this may be expanded to other locations including the Marina and Utility Customer Service.” He wondered why they didn’t do all of the six (6) locations now.

Ms. Lawson explained that the electric utility payments is a much bigger thing to tackle because acceptance of payments is integrated in their billing system. The Marina already accepts credit cards and if they can achieve better rates under this billing then they may put them under this.

Mrs. Turner suggested offering a discount to someone paying with cash.

Mrs. Carroll asked if it was legal to charge a fee to someone using their credit card.

Ms. Lawson said it was not legal to tag on percentages to credit cards. She will look at charging a fee, or offering discounts for cash. They will also be looking at the revenue coming in from the credit cards and making adjustments to the charge if they need to.

Mr. O’Connor commented that the County charges a flat fee to someone using a credit card. He said they may want to do what the County does.

Mr. Winger made a motion approve the Wells Fargo Merchant Services. Mrs. Carroll seconded the motion and it passed unanimously.

Council took a break at 9:03 p.m., and the meeting reconvened at 9:10 p.m.

3. PUBLIC HEARINGS

- A) An Ordinance of the City of Vero Beach, Florida, amending the Code of the City of Vero Beach, Chapter 60, Appendix, Definitions by Revising the**

definitions for Boardinghouse, Community Residential Home, Dwelling Unit, Family, and Multiple-Family Residential Structure; Creating a definition for 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 he provided Council with the revisions made to the definition of “boardinghouses” per their discussions when this Ordinance was last heard.

Mayor Fletcher opened the public hearing at 9:11 p.m.

Mr. Michel O’Haire, Attorney representing some surrounding neighbors, commented that he has been working with staff in tweaking the Ordinance that they have on boardinghouses. He said that in order to make the Ordinance enforceable that this tweaking needed to be done. He knows that Council will hear that private property rights should permit someone in a single family residential neighborhood to take in roomers. He could tell his clients “just thank god that she doesn’t want to run a metal scrap yard from her house,” but that is what zoning is all about. If that is what “she” wants to do then “she” should go somewhere that it is permitted. He felt that it was a blight in a residential neighborhood to have rooms rented for a short period of time. The people who are running rooming houses are doing it by taking shortcuts that motel and hotels would not take. He asked Council to pass this Ordinance tonight. The person “she” that they are talking about tonight does not even live at this home. The purpose that she owns the home is to rent out rooms. He said it is a commercial enterprise and “she” has no investment in the neighborhood and neither do her tenants. The neighbors in this area hired him to get this Ordinance passed, which is what he wants to see done. The Planning and Zoning Board approved it unanimously. It gives the Planning Department the tools to stop someone from running a boardinghouse and to be able to shut them down.

Mr. Ken Daige asked for Council’s consideration in passing this Ordinance tonight and hoped that they would all be in favor of it.

Mr. Barry Segal, Attorney representing Ms. Irene Snyder, stated that something that never came up in the Planning and Zoning Board hearing was this person being referred to as “she” is referring to his client. He said that this is clearly an event where one neighbor is against another neighbor, which is something that needs to be taken into consideration when evaluating what is happening here. He also mentioned that rights that are taken away cannot be given back. He was hoping that was something that they did not gloss over when they are talking about a person’s property rights. There has been no evidence shown to this Council or the Planning and Zoning Board that there are changes to property values. He said that his client has never rented short term. She has never exceeded densities on her properties. He said that she does have two houses where she rents out rooms. One house has a mother and daughter living in one of the rooms. He said that Ms. Snyder has rented to pilots, baseball players, nurses, and different people

who work in the community. The issues that are being raised are not something that is linked to a boarding house. He has a real estate law practice and he sees problems all the time with rentals. The issues that are being presented to Council can be addressed in the existing Code provisions. He said that there is nothing taking place in his clients homes that is not governed by the Code. He said passage of this Ordinance will affect the room rate situation, such as renting rooms to Flight Safety students. He felt that by passing this Ordinance will be giving code enforcement a hard task to enforce. His client has always rented to her tenants for six months to a year and never a shorter time then six months. He recalled at the Planning and Zoning Board meeting that someone said to him that they don't believe a word that he said. Mr. Segal suggested starting slowly with this and adjusting it over time if it needs to be adjusted. He said that they could rewrite the provision to say a six month minimum, and allow only one person per room.

Mrs. Carroll commented that they are putting a definition of family in this Ordinance. She asked if this was a legal concern with all of the things going on around the Country on the definition of what a family is. She reiterated that she wondered if it was legal for the City to come up with a definition for "family."

Mr. Coment agreed that their Code was dated and did not take into consideration the definition of today's family. After listening to Mr. Segal, if there is only one lease and people are living in the home as a family that they will not meet the Code.

Mrs. Carroll said so three roommates together could lease a house as long as all of their names were on the lease. She was told that was correct. She continued by saying if one of the roommates moved out and another roommate wanted to come in than a whole new lease would have to be written. Mr. Coment did not think that the roommates would necessarily all have their names on one lease.

Mr. McGarry added that if the owner lives in the house then the owner could have multiple people living at the home.

Mrs. Carroll commented that when they brought this up before she asked the question why are they calling it a dwelling unit that has kitchen capabilities. She said that if this Ordinance makes it illegal for one person to rent a house and their roommate moves out is this person still under the same lease if someone else moves in, if so that is wrong. She said there are a lot of people in this community that have to have roommates in order to afford to pay their rent.

It was agreed to reword the definition of *Boardinghouse*: A dwelling unit within which more than one individual room or one suite, but less than the entire dwelling unit, is used, maintained, or offered for rental.

Mr. Winger made a motion to approve the Ordinance with the amendment. 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.

B) An Ordinance of the City of Vero Beach, Florida, Amending the Code of the City of Vero Beach, Chapter 72, Traffic and Vehicles, Article II, Division 3, Residential Restrictions and Chapter 63, Off-Street Parking and Loading Requirements; by Creating Section 74-82(D) and Amending Section 63.02(K) related to Restrictions on the Parking of Motor Vehicles in front yard setbacks in Residential Zoning Districts; 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 reported that based on the concerns raised at the last meeting, he came up with a series of options to add to the Ordinance.

Mrs. Turner asked when this Ordinance was reviewed by the Planning and Zoning Board, what options did they approve.

Mr. McGarry said that the Planning and Zoning Board was presented with the same proposed Ordinance that Council has. He does not have a strong opinion on whether or not Council chooses to pass this Ordinance.

Mrs. Carroll asked based on the Ordinance they just passed for boardinghouses, does Mr. McGarry feel that it is necessary that they also have this Ordinance passed. She said they would be taking away property rights of every single home in the City of Vero Beach.

Mr. McGarry explained that it isn't just boardinghouses. He said that they do get other complaints. He said that zoning is in place to protect property values and some rights are given up if you live in a single family neighborhood.

Mrs. Carroll asked if a car could park in the swale on the road.

Mr. McGarry said that is allowed because it is a public right-of-way.

Mr. O'Connor explained that this boils down to do you believe there is a problem with people parking their cars, boats, etc., on their front yards.

Mrs. Carroll did not think there was a problem. She said however with boats that there are Ordinances that specifically cover them.

Mr. Coment noted that when Mr. O'Haire originally called him about boardinghouses, he asked him what his clients (the neighbors) were complaining about. He was told that they are complaining about people parking on the front lawn.

Mrs. Carroll felt there are one or maybe two houses in the entire City that brought up this problem. She feels that the problem has been addressed with the boardinghouse Ordinance that Council just passed. She feels that this is a bad Ordinance.

Mr. Kramer did not have a problem with having an option put in the Ordinance saying that the provisions of this Ordinance will not apply to motor vehicles parked for a period of 72 hours or less for occasional social gatherings that do not occur more than once per calendar month.

Mayor Fletcher closed the public hearing at 9:38 p.m., with no one else wishing to be heard.

Mr. Winger made a motion to approve the Ordinance with the option the provisions of the Ordinance will not apply to motor vehicles parking for a period of 72 hours or less for occasional social gatherings that do not occur more than once per calendar month. Mrs. Turner seconded the motion and it passed 4-1 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Turner yes, Mrs. Carroll no, and Mayor Fletcher yes.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

- A) A Resolution of the City Council of the City of Vero Beach, Florida, authorizing the City of Vero Beach, Florida, to enter into a “Locally Funded Agreement – Amendment Number One” with the Florida Department of Transportation relating to Color Coating of Replacement Traffic Signal Mast Arm Assemblies to be installed at State Road A1A and 17th Street; Providing for an Effective Date. – Requested by the Public Works Department**

Mayor Fletcher read the Resolution by title only.

Mr. Kramer made a motion to approve the Resolution. 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.

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

- A) A Resolution of the City of Vero Beach, Florida, Establishing Rates and Fees for the Collection and Disposal of Solid Waste and Recyclable Material and Sale of Items used for collection purposes; Repealing Resolution 2012-24; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the Public Works Department**

Mayor Fletcher read the Resolution by title only.

Mr. O’Connor reported that in order to cover the cost of collecting and disposing of solid waste and recovered material he is asking Council to adopt the new rate fees as outlined in the Resolution.

Mrs. Turner recalled that they just adjusted the rates in September 2012.

Mr. O'Connor said that they are adjusting the rates again to build up their capital reserve to purchase a new truck. The rates were adjusted in 2012 to pay for equipment.

Mrs. Turner was trying to get a rationale for the rate increase. She noted that with the roll-out by City Crew the rates went down from \$10.00 to \$2.00. She was told that it used to be \$10.00 per lift each week and now it is \$2.00 per lift.

Mr. Falls felt that it was very ambiguous in the way that it read, so they changed it to \$2.00 per service to make it clear.

Mr. Kramer made a motion to approve the Resolution and set the public hearing for September 17, 2013. 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.

B) An Ordinance of the City of Vero Beach, Florida, requested by 703-725 17th Street, LLC to annex 2.50 acres more or less into the City, which property lies South of the City limits along the South side of 17th Street, East of US Highway 1 pursuant to the Voluntary Annexation provisions of Section 171.044, Florida Statutes; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the Planning Department

Mayor Fletcher read the Ordinance by title only.

Mr. McGarry showed on the doc cam where this property is located. He said that this is a voluntary annexation and the property is located south of the City limits along the south side of 17th Street. He said that the Ordinance has been approved by the Planning and Zoning Board and he would recommend moving it forward.

Mr. Kramer made a motion to approve the Ordinance and set the public hearing for October 15, 2013. 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.

C) An Ordinance of the City of Vero Beach, Florida, Requested by the City Manager to amend the Comprehensive Plan Future Land Use Map by changing the Land Use Designation from RM, Residential Medium (up to 10 units/per acre) to GU, Government/Institutional/Public Use (0 Units per acre) for properties located between the 17th and 18th Streets, including a portion of Lot 1, Block 2, of the Plat of the Dr. Richard B. Bullington's Subdivision, containing 6.53 acres, more or less; Providing for an Effective Date. – Requested by the Planning Department

Mayor Fletcher read both 5-C) and 5-D) together by title only.

Mrs. Carroll made a motion to approve the Ordinance and set the public hearing for November 19, 2013. 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.

D) An Ordinance of the City of Vero Beach, Florida, Requested by the City Manager to amend the Official Zoning Map by Changing the Zoning Designation from RM-10, Medium and High Density Multiple-Family Residential (up to 10 units per acre), containing 3.65 acres, more or less, and the Zoning Designation from POI, Professional/Office/Institutional (0 units per acre) containing 2.88 acres, more or less, to GU, Government Use (0 units per acre) for properties located between 17th and 18th Street, including a portion of Lot 1, Block 2, of the Plat of the Dr. Richard B. Bullington's Subdivision, totaling 6.53 acres, more or less; Providing for an Effective Date. – Requested by the Planning Department

Mr. McGarry stated that because this will be a quasi judicial hearing, they will not discuss it too much tonight. However, this land swap is a decision that Council will have to make. The owners of Shiva 17th Street, LLC, and Vero Town Homes, LLC, and his department are requesting a combination small scale comprehensive map amendment and zoning map amendment to change the land use designations of properties comprising of approximately 6.53 acres located between 17th and 18th Streets. He showed on the doc cam where the properties are located. This involves the land swap for the relocation of the substation. He said that the public hearings for these two Ordinances 5-C) and 5-D) will be heard on November 19, 2013. They have scheduled the public hearing for that date giving the different parties time to enter into negotiations.

Mr. Winger said so in effect the actual swap of the property will not occur until the closing of the sale of the electric.

Mr. O'Connor stated that was correct. He said that would not preclude the City Council from making the swap if they still wanted to. But, the intent of passing these Ordinances was because of the sale of the utilities.

Mr. Winger would not want to do the swap if they are not going to sell the utilities. He said that the postal annex has more commercial value then the property on 17th Street. He reiterated that he would not want to close on this property until the electric deal closes.

Mr. O'Connor agreed with Mr. Winger. He said if the closing was not a part of this process, he would not be recommending that the City take over that other parcel.

Mr. Kramer asked what the problem is with putting an RFP out and getting the property sold.

Mr. O'Connor explained that in their contract with FPL, they have to provide a space for the substation and this is the only piece of property that they can provide for the substation.

Mr. Kramer asked if they could do the swap ahead of time.

Mr. O'Connor said that they could, however they might get stuck with a piece of property that they would have no use for.

Mr. Kramer thought if they received market price then they would be compensated.

Mr. O'Connor added that they will have appraisals done on both parcels of land and the differential amount would be paid to the City.

Mr. Kramer made a motion to approve the Ordinance on first reading and set the public hearing for November 19, 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.

6. CITY CLERK'S MATTERS

A) Appointment to the Recreation Commission

Mrs. Vock reported that they have received one application for the alternate member number two position on the Recreation Commission. This vacancy has been open since July.

Mayor Fletcher made a motion to appoint Mrs. Angie Schepers as alternate member number two to the Recreation Commission. Mr. Kramer seconded the motion and it passed unanimously.

7. CITY MANAGER'S MATTERS

A) Work Order Agreement between the City of Vero Beach and Kimley-Horn & Associates, Inc.; Airport Access Improvements (FDOT #431038-1-94-01)

Mr. O'Connor reported that this project is to make improvements to Airport Drive and to construct a replacement bridge across the main relief canal to improve the southern entrance to the Airport. The project is proposed to be budgeted over three fiscal years and partially funded with three grants from FDOT. He recommended approval of the Work Order to Kimley-Horn and Associates.

Mr. Kramer made a motion to approve the Work Order Agreement between the City and Kimley-Horn and Associates for the Airport access improvements. Mayor Fletcher seconded the motion and it passed unanimously.

B) Work Order Agreements between the City of Vero Beach and 1) CDM Smith and 2) URS: to Rehabilitate Runway 4/22 (Construction) & Rehabilitate Taxiway A/E (FDOT #425774-1-94-01 & FDOT #425749-1-94-01: FAA # AIP-38)

Mr. O'Connor reported that this project is to rehabilitate both Runway 4/22 and Taxiway A/E. He recommended approval of the work orders, however they will not be executed until after the Airport receives the grant acceptance letter from the FAA. At that time the final work orders will be routed for signatures.

Mrs. Turner made a motion to approve the Work Order Agreements between the City and 1) CDM Smith and 2) URS: to rehabilitate Runway 4/22 and Rehabilitate Taxiway A/E, but expressed that they will not be executed until after the Airport receives the grant acceptance letter from the FAA. Mr. Kramer seconded the motion and it passed unanimously.

C) Crestlawn Cemetery

This item was pulled off of the agenda and will be heard at the next Council meeting.

Mr. Winger referred to their fertilizer Ordinance and wondered if the City should drop their fertilizer Ordinance and go with the one that the County has recently adopted.

Mrs. Turner felt that this item needed some discussion. She would like to see them rescind their Ordinance and go with the County's Ordinance, which is a much stronger Ordinance. She requested that it be put on the October 1st agenda for discussion.

Mrs. Carroll mentioned that Council received a letter from someone in the community referring to the wooden deck at the splash fountain. She handed Mr. O'Connor a copy of the letter and asked that he look into it. Mr. O'Connor said that he would.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

A. Old Business

B. New Business

1. Consideration to appeal decision on short term rentals – Requested by Councilmember Jay Kramer

This item was heard earlier in the meeting.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Craig Fletcher's Matters

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

B. Vice Mayor Tracy Carroll's Matters

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

C. Councilmember Pilar Turner's Matters

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

Mrs. Turner commented on how informative the Lagoon seminar was that was held on Saturday. She attended the Downtown Mainstreet festival held last Friday. She also thanked Waldos and Mulligans for supporting the lifeguards this weekend for the fundraising events that they had. She said that the Poker Run was a success. Mrs. Turner congratulated Mr. Peter O'Malley for getting the wonderful Historic Dodgertown name back. She also reminded everyone that the Downtown Art Stroll will be this Friday night.

D. Councilmember Jay Kramer's Matters

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

E. Councilmember Dick Winger's Matters

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

11. ADJOURNMENT

Mr. Kramer made a motion to adjourn tonight's meeting at 10:00 p.m. Mrs. Carroll seconded the motion and it passed unanimously.

/tv