

**CITY OF VERO BEACH, FLORIDA  
MAY 5, 2020 8:30 A.M.  
REGULAR CITY COUNCIL MINUTES  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

The invocation was given by Pastor Randy Bryant of Ryanwood Fellowship.

**1. CALL TO ORDER**

**A. Pledge of Allegiance**

Mr. Brackett led the Council and the audience in the Pledge of Allegiance to the flag.

**B. Roll Call**

Mayor Tony Young, present; Vice Mayor Laura Moss, present; Councilmember Robbie Brackett, present; Councilmember Joe Graves, present and Councilmember Rey Neville, present. **ALSO PRESENT:** Monte Falls, City Manager; John Turner, City Attorney; and Tammy Bursick, City Clerk

**2. PRELIMINARY MATTERS**

**A. Approval of Minutes**

**1. Regular City Council Minutes – April 21, 2020**

**Mr. Neville made a motion to adopt the April 21, 2020 minutes. Vice Mayor Moss seconded the motion and it passed unanimously.**

**A. Agenda Additions, Deletions, and Adoption.**

Mr. Monte Falls, City Manager, requested that item 9-C) be pulled off of the agenda.

Mayor Young pulled item 3-C) off of the consent agenda to be discussed.

Mr. Brackett requested that item 6-B) Discussion of Local Restaurants be added to the agenda.

Mr. Graves requested that item 6-C) Discussion of all Local Businesses affected by COVID-19 be added to the agenda.

**Mr. Brackett made a motion to adopt the agenda as amended. Vice Mayor Moss seconded the motion and it passed unanimously.**

**B. Proclamations and recognitions by Council.**

## **Update on COVID 19 – City Manager and Police Chief**

Mr. Falls reported that the new Governor's order went into effect yesterday, which was the first phase in getting businesses back in operation. The order is still advising senior citizens and people with medical conditions to stay at home. The order extends people traveling to certain areas by airlines to still self-isolate for 14 days. There will be no bars or night clubs allowed to be open. Restaurants are allowed to be open with 25% capacity inside and restaurant seating outside. He said that gyms and fitness centers will still remain closed, as well as vacation rentals. He said that retail establishments are allowed to open with certain guidelines. The County Emergency Order #20-55 expired this morning with restrictions on local beaches and allowed them to open, but people need to be mindful of the CDC guidelines. He said at this present time there are 98 cases reported in Indian River County. There was one (1) day last week where five (5) cases were reported. However, they still stayed at 4.8% in positive tests. Their level of testing has started to go up a little bit. There have been eight (8) deaths in the community. He said out of those eight (8) people, five (5) of those people who passed away were in nursing facilities. The average age is 84 and in two (2) cases the age was below 80. He reiterated the need for older people to remain indoors. He told the community to please go out and enjoy the beaches and they are glad that they are open.

Mr. Graves asked if the eight (8) deaths in Indian River County are confirmed Covid-19 deaths. He said that the National numbers are saying that they are close to 69,000 deaths, but the actual confirmed cases are around 38,000.

Mr. Falls stated that he has only what has been reported. However, he could ask Chief Tad Stone and Mrs. Miranda Hawker from the Health Department if they can give this information.

Mr. Graves commented that on the National level it makes it difficult to determine the real numbers. He said if it is 38,000 then that is a very low percentage compared to 69,000. He said the true number is probably somewhere in between. He said there is a difference between people that died solely from Covid-19 and then there are people that died from other illnesses, but had the virus. He asked Mr. Falls if the 98 people confirmed were all of the asymptomatic patients or do they know.

Mr. Falls said he would find out. He did not think that they were starting any widespread asymptomatic testing. He said someone can get tested if they feel like they need to be tested.

Mr. Graves mentioned that he had a friend who thought that she had the virus and had to go to Stuart to take the test and it cost her \$150.00. He asked if the City could get the antibody testing.

Mayor Young reported that in Ft. Pierce and in Port St. Lucie they have testing available on demand and he feels that Indian River County is moving in that direction.

Mr. Graves wondered what they could do as a City to encourage that.

Mayor Young explained that they provide testing on demand in regards to the population of the area.

Chief David Currey reported that the Police Department has been patrolling beaches and it is going well. This past weekend was really busy. He said with opening the beaches all the way up they can social distance even better. The Police Department will continue to patrol the beaches and waterways. On Monday at the Police Department they started temperature stations and that helps Police Departments in regards to having peace of mind. They are finally fully staffed at the Police Department and looking to fill a third traffic position and two (2) utility officers, which will enable them to have someone on the water, beach and bike all year long. The Senior Resource Officers are being utilized while the schools are closed. He said overall the spirits at the Police Department are up. He said Sunday starts National Police Week.

Mayor Young read the Proclamation for National Police Week.

Mr. Graves asked Chief Currey if there had been an increase in child abuse or domestic violence during this pandemic period.

Chief Currey commented that he has not seen an increase in child abuse cases and domestic violence always occurs, but it does not seem out of the norm.

Mayor Young thanked Chief Currey for his public outreach during this pandemic. He said it has been a huge impact and he is doing a good job on his facebook site.

Vice Mayor Moss mentioned Mary Owen's 100<sup>th</sup> Birthday. She thanked the Police Department for participating in a parade going by her house and giving her flowers and balloons. She said that some of them from City Hall called and sang Happy Birthday to her.

Chief Currey expressed how proud he was of the men and women of the Vero Beach Police Department and he was honored to be the Police Chief.

Mayor Young continued with the update of the Coronavirus. He showed on the screen the proper way to wear cloth face coverings (on file in the Clerk's office).

Mr. Graves commented on the different opinions that there have been regarding masks. He said in the beginning people were being told not to wear masks and then they were being told to wear masks. He felt that this was a personal choice.

Mayor Young appreciated Mr. Graves input. He said if they look at the community there is a clear guidance that supports the impact of the face covering. It is preventing people that have the virus from spreading it to other people.

Vice Mayor Moss agreed that it was a personal choice. She does not have an underlying condition and does not have the virus and is not sick, but is wearing a mask. She said in the beginning when the virus first was known people were nervous about wearing masks and now it is just the opposite and that is they are nervous of people that are not wearing masks. She tries to respect everyone.

Mr. Graves just did not want people who do not wear masks to feel shamed that they are not wearing one.

Mayor Young continued with his presentation and explained that he was sharing some of the opinions made by the President of Cleveland Clinic.

Mr. Graves agreed that the facts are so important. He was not trying to call anyone out. It is just that the City Council gets criticized if they don't have all the correct data. He respects Cleveland Clinic. It is a well-known institution and there are other people taking a stance on this.

Mr. John Turner, City Attorney, commented that the City has been operating under a Declaration Emergency Order that is being renewed on a weekly basis. He wanted the City Council to be aware that they were entering into their number eight (8) order this week. He asked the City Council to ratify all of the Declarations that they have entered into so far.

Mayor Young understood that this was warranted. He was in agreement with a motion to ratify the Declaration Emergency orders.

Mr. Graves had not reviewed the orders and asked what this was about.

Mr. Turner explained that it allowed the City Manager to supervise the facilities at City Hall and set up communications with the surrounding cities and the County. The City Manager is also able to suspend some zoning and permitting requirements temporarily.

Mr. Graves asked if it involves closure of businesses. Mr. Falls answered no.

Chief Currey received the answers requested by Mr. Graves earlier in the meeting. He said that he spoke to Chief Tad Stone and the first question in regards to confirmed deaths due to Covid-19 and the numbers that they produced are all from the virus. He said there are some people that are passing away, but it is not Covid-19 related. He said that he has heard nothing about antibody testing. The last question was has current tests been done because of symptoms and Chief Stone's answer was yes and no. The initial symptoms have been expanded and tests are being offered to all nursing home staff if they want to be tested.

Mr. Graves asked Chief Currey to explain how the temperature stations are set up and how they work.

Chief Currey explained that they have a table set up that is being manned by a supervisor and the different shifts that come in are getting their temperatures taken. He understands this will be done at City Hall once it reopens.

Mr. Graves complimented the good leadership that is being shown to the community.

Mayor Young continued to highlight social distancing, quarantine, and isolation (on file in the Clerk's office). He showed some statistics of cases and deaths in different counties and the rates of hospitalization for Covid-19 (documents on file in the City Clerk's office). He said that they are very fortunate that the incidents are low in this County.

Mr. Graves asked how many hospital beds are available at their local hospital.

Mr. Falls reported that they are at about 50% capacity with beds and 20% of their ventilators are available.

Mayor Young cautioned people to still practice the stay at home order in moving forward.

**3. CONSENT AGENDA (include amount of expense)**

**A) Water and Sewer Department Service Truck Replacements - \$75,000**

**B) Approval for Banner and Thank Our Heroes Signs - \$400.00**

**Mr. Graves made a motion to approve items 3-A) and 3-B) from the consent agenda. Mr. Brackett seconded the motion and it passed unanimously.**

**C) Replace Existing 7.5 Ton HVAC Split System – (\$200,177.00)**

Mr. Falls reported this request is to replace an inoperative existing 7.5 ton split air conditioning system, which services two (2) leasable office spaces on the second floor of the Airport Terminal building. The proposal from Trane includes the installation of new ductwork and other components of the system. Funds for the air conditioner replacement were budgeted in the FY 19-20 approved budget with a current balance of \$70,000 (\$100,000 less a \$30,000.00 transfer for mold remediation). They were able to transfer \$104,000 from other expenditure accounts, leaving a remaining balance of \$26,117.00. The additional funds in the amount of \$26,117.00 will be incorporated in a budget amendment. The Airport Fund has adequate fund balances to support this budget amendment for the current fiscal year.

Mr. Neville asked why 589 man hours were needed to install the air conditioner and there is a Trane Contract Manager who receives \$169.00 an hour, which is not a cheap price. Mr. Falls could not answer that question. He said that this is a system that has multiple control units. Mr. Neville asked if the wiring was in place. Mr. Falls asked the Assistant Airport Director to address those questions.

Mr. Todd Scher, Assistant Airport Director, stated that he could not answer the question regarding the 589 man hours. He said that they need to trust the company on that. He said that the Airport staff worked with the Purchasing Agent to come up with a reasonable contract that they could piggyback off of and it was his recommendation that they proceed in that direction. He also could not speak to the Trane Contract Manager who receives \$169.00 an hour.

Mr. Neville asked if this was a competitive bid.

Mr. Falls answered no. He explained that they have a relationship with TRANE. There was an outside consultant who reviewed the cost for this work to make sure that it was reasonable.

Mr. Neville asked if it was reasonable from a technical point of view or from a bidding point of view. He asked if the hours were evaluated and expressed that is a lot of hours.

Mr. Scher said that there was a lot of conversation that took place between Mr. O'Brien and TRANE about the number of hours and eventually he was satisfied that this was a reasonable figure.

Mr. Brackett asked if this was a chiller system.

Mr. Scher did not know. He said that this goes back to 2008 and when they would call a new contractor in to fix the problem they would expand on what the initial contractor did to cause these problems. He said that the system when it was originally installed was not adequate.

Mr Graves asked who the consultant was and what his background is.

Mr. Falls requested to delay this item and bring it back to their next Council meeting so that he would be able to answer some of these questions.

Mr. Graves asked if there was anything inhibiting them from getting some competitive bids for this project.

Mr. Falls said that he wanted to sit down with the Purchasing Director and talk to him.

Mr. Graves always felt like competitive bids was the best way to go.

Mr. Neville asked what are the consequences in delaying this project for another two (2) weeks.

Mr. Scher commented that they currently have a tenant who is displaced because of this and they are working out of their conference room. Also, they have had some work done in this area because of the mold issue and are currently paying to rent air conditioning units

so that the mold stays away while they get the air conditioner replaced. He did not feel that either of these things were earth shattering and could not wait another two (2) weeks.

Mr. Neville asked why they have mold in this one area. Mr. Scher was not sure.

This item will be brought back at the May 19<sup>th</sup> City Council meeting.

#### **4. PUBLIC HEARINGS**

##### **A) ORDINANCES**

##### **B) RESOLUTIONS**

#### **1. A Resolution of the City of Vero Beach, Florida, Establishing Rates and Charges for the Use of the Vero Beach Regional Airport by Airlines. – Requested by the City Attorney**

The City Clerk read the Resolution by title only.

Mr. Turner reported that they will be giving a presentation on the Resolution establishing rates and charges for the use of the Vero Beach Regional Airport by airlines. On the phone he has Mr. Peter Kirsch and Mr. Steven Osit, from the law firm of Kaplan Kirsch Rockwell. This firm is very familiar with airport law and he thanked them for their assistance in drafting this Resolution. Staff will be requesting that the City Council approve the Resolution. He said that it may be amended as they go through the Resolution this morning. At the end of the discussion, he will request that it be adopted with any changes that they feel need to be made.

Mr. Falls added that after they terminated their lease agreement with Elite Airways they wanted to develop a non-discriminatory policy so that their Airport could be used by any commercial carrier. They hired this firm to assist them in doing that. He said it has been a pleasure working with them. He then turned the meeting over to Mr. Kirsch and Mr. Osit who gave a Power Point presentation (attached to the original minutes).

Mr. Graves asked if this document was prepared by Mr. Kirsch and his law firm. He did some checking and the feedback that he received is that this law firm is one of the best in the Country regarding airport law.

Mr. Kirsch provided a little bit of context as to what the City can and cannot do. He spent a little time on what the legal ramifications were. He then along with Mr. Osit continued with the Power Point presentation.

Mr. Brackett asked why 35% was picked for the charges. Mr. Osit said because it was comparable to what they had.

Mr. Graves asked what Elite Airways status is at this point. He asked are they a non-signatory carrier as of Friday.

Mr. Osit explained that if Elite Airways lands before the Resolution has been adopted they pay nothing. However, if they land after the Resolution has been adopted and they have not signed the permit then they will be a non-signatory carrier subject to those charges. He understands from Elite Airways that they do plan on signing the permit as early as tomorrow.

Mr. Graves asked if Elite Airways was to land at the Airport today and they land as a non-signatory carrier is the City entitled to deny City services.

Mr. Osit said that is correct. The City would be able to deny access to the Airport.

Mr. Graves continued by saying they could not prevent Elite Airways from landing, but as a non-signatory carrier are they able to deny City services to the use of the terminal, baggage claim area, etc.

Mr. Osit said no they could not deny that unless they have a basis for denying it in their regulations. Their regulations provide that payment has to be made in a timely manner and right now because Elite Airways is not under this Resolution and with their prior defaults the agreement would not be covered under this Resolution.

Mr. Graves said that as he understands the presentation, if Elite Airways landed as a non-signatory carrier it would take 30-days for them to be in default of this usage agreement before the City could deny services.

Mr. Osit said that was correct. At the end of the first month Elite Airways would have to provide a report (as required by this Resolution) of activity and the City would generate an invoice and if they failed to pay the invoice then they would be in violation of the Resolution and then they could pursue those remedies. In drafting this Resolution they wanted to have an incentive for airlines to become a permitted carrier because of the drawing account allows them to deduct money and they can't be in default of their payments to the City. The amount they are going to pay will be considerably more. So the City is exposed for a period of 30 to 60 days in how this is calculated for non-payment.

Mr. Graves said so to become a permitted carrier Elite Airways would need to pay their past due debt and then the City would issue a certification that they have become a permitted carrier and are entitled to all of the City's facilities.

Mr. Kirsch said that is correct and that Elite Airways has informed them that they want to become a permitted carrier and they intend to wire money for the full amount of unpaid balances plus the drawing account by the end of the day on May 7<sup>th</sup>.

Mr. Brackett commented that he liked the document and they should have done it a long time ago. He doesn't see another carrier coming in. So they will continue to foot the other

part of that \$70,000 if the airline is only paying 35% of it. He said that the \$70,000 has to do with a commercial carrier coming in, which could leave them in the “hole.”

Mr. Kirsch said that was a good comment and said there is the balance that they have to strike because there are other users at the Airport who are paying rates and charges for using the Airport. It is their hope that the Airport will be self-sufficient. If they were to charge the carrier for the entire use of the terminal they believe that those rates would probably not be reasonable. It requires \$70,000 from one carrier as compared to the passengers that they have and the number of flight operations it is likely that a carrier could complain to FAA successfully that the rates were not reasonable.

Mr. Osit added that it is a tradeoff for the carrier and the City. The drawing account gives the City three (3) months of protection for those rates and charges and in exchange for that benefit the City is conferring upon permitted carriers to benefit the 35% cap. If that is taken away then there is very little incentive for the carrier to part with three (3) months of cash in providing the City with that level of security.

Mayor Young stated that without the Resolution then Elite Airways is able to continue to operate at their discretion in compliance with FAA rules.

Mr. Osit said that is correct and the reason that this Resolution is so important.

Mayor Young asked if there were any commercial airports in the State that doesn't have a Resolution similar to this one.

Mr. Osit explained that there are two (2) things that every commercial airport has and that is a schedule of rates and charges that is adopted by Resolution and then in many cases the carriers have also signed a use of lease agreement, similar to what the City had previously with Elite Airways.

Vice Mayor Moss commented that looking to the future would the creation of a Port Authority eliminate this type of situation. By this she means having some sort of venture with the County.

Mr. Osit explained that there are all kinds of reasons why local airports set up independent Airport Authorities, but that is not one (1) of the reasons. He said being able to collect fees and how much they can charge is rarely the reason for having an Airport Authority. The amount they charge to carriers is independent of what governance structure is.

Mr. Graves clarified for the public by virtue of the City collecting this eight and one half million dollar grants over the last 15 years the City cannot prohibit Elite Airways from landing in Vero Beach. They cannot deny access to any particular operator. So by having this rules and rates Resolution passed it sets out a rate structure that allows them to take certain actions to an operator that is in non-compliance or not paying their fees in a timely manner.

Mr. Osit said it is a protection for the City to make sure that they have the authority, if they need to, to charge fees and also operating in compliance with the rules and regulations.

Mr. Brackett asked if the document could be changed if necessary.

Mr. Osit explained that the Airport will provide the new fees to all the airlines each year (incremental costs for providing service). That would be permissible without amending the Resolution. However, in the future if they find there are fees beyond the counter fees and the common use charge then that can be accomplished by amending the Resolution.

Mr. Turner mentioned the provision covering the estimated charges increased during the course of over 10%. He said this could be included in the amount due or under the drawing account. He asked if that was correct.

Mr. Osit answered yes. He said they set the beginning of each fiscal year with what the airline requirement will be, but if they realize half way through the year that the airline requirement is going to be at least 10% greater than they thought then they have the ability to adjust the charges in the middle of the year.

Mayor Young brought up the letters of authority issued by the Director. He asked if that authorization could be worded such that the Director would approve the letters of authorization based upon Council's authority.

Vice Mayor Moss said that she also had that same question and also had some questions with Section 2.6 and Section 21.2. Section 2.6 reads, *"The City hereby delegates to the Director or his or her duly authorized designee, the authority to enter into Letters of Authorization in the form attached to this Resolution as Attachment B, and to grant any consents or approvals required under this Resolution to an Airline operating at the Airport"* and the City in Section 1.11 is defined as, *"City shall mean the City of Vero Beach, Florida, acting by and through its City Council."* Vice Mayor Moss felt that the power should always reside with the City Council and this should be addressed. Section 21.2 reads, *"A Permitted Carrier's Letter of Authorization may be cancelled and terminated by the City by written notice to the Permitted Carrier should such Permitted Carrier fail to cure a material violation of any term(s) of this Resolution within thirty (30) days after having been served with written notice and demand to cure such violation. This Section 21.2 does not supersede the provisions of Section 6.3 regarding the City's right to cancel and terminate a Permitted Carrier's Letter of Authorization for such Permitted Carrier's failure to maintain its Drawing Account at above the Minimum Balance."*

Mr. Osit explained the letter of authorization is an administrative act. He said once the City Council adopts the Resolution and establishes the requirements in becoming a signatory carrier it is very important that they not exercise any additional discretion above and beyond those requirements in order to comply with the FAA grant obligations. If a carrier satisfies all of those requirements in Section 2 in order to become a permitted carrier then the Director may and he should, execute the letter of authorization to allow the carrier to begin service. He said if there is a default with the letter of authorization there is an

element of discretion involved here where the City has the option of terminating the letter of authorization.

Vice Mayor Moss referred to Section 21.2, which seems to her to be referring to the City Council. If the City is defined as Council in Section 1.11 and the City Council is deciding or determining the cancellation and termination then they (City Council) should be involved in the initial granting of the letter of authorization. She said this would be to remain consistent. She understands Mr. Osit's point that it's administrative, but she said it is not merely administrative.

Mr. Osit said this is merely how the City Council wants to be engaged. His experience is that many Councils' don't want to be engaged in administrative matters, but that doesn't mean that they can't be involved. If the City Council wants to have the ability to approve or disapprove letters of authorization that is fine. The downside is there may be some down time in getting City Council to act quickly if they have to have a Special Call meeting to make a decision on something.

Mr. Brackett stated that if a carrier meets all the qualifications then the City cannot withhold from granting them a certificate. He asked if that was correct. He said it really was not a decision making process.

Mr. Kirsch said that he was correct.

Vice Mayor Moss referred to Section 21.2 and asked to whom is he referring to in using the word City.

Mr. Osit explained in Section 21.2 the word City is being referred to City Council. He said generally when a Resolution, such as this one, refers to the City the City Council always has the authority to either exercise that authority themselves or to delegate that authority to the City Manager or the Airport Director or whoever they want. He asked Mr. Turner if that was consistent with how this City generally operates. Mr. Turner said that it was.

Mr. Falls commented that staff has no problem if the City Council wants to be advised if they have a new carrier.

Mr. Kirsch said in normal circumstances if a new airline is coming into an area they will not just show up one day. They will talk to the City and to the City Council and try to sell themselves on their service. It would be unlikely that it would be a surprise.

Vice Mayor Moss referred back to Section 2.6 where it says the City (meaning the City Council) hereby delegates to the Director or his duly authorized designee. They are delegating the authority to control the situation and they hope that they will be advised, but that is not in writing.

Mr. Brackett stated that there is no power of authority. He said the City Council could not turn someone down if the airline has met the criteria. He said the power of authority comes into play with or without passing this Resolution.

Vice Mayor Moss likes this document and said that the consensus is that they needed a document like this for a long time and were not aware of it.

Mr. Turner commented that it was also discussed in the Airport Commission meeting about including in the obligations that a permitted carrier provide financial information. He asked for Mr. Osit and Mr. Kirsch's reasons why they did not support putting that wording in this Resolution.

Mr. Osit explained that it was not included in the draft Resolution before Council today because of the concerns of the Finance Director that information likely could not be protected from disclosure so there were some concerns as to whether carriers would be willing to provide that information and financial health of the carrier would not be a legitimate basis to deny a letter of authorization if the carrier was otherwise willing to satisfy the requirements of Section 2. He felt because there was a risk of public disclosure that the airline would not take kindly to having to provide this information and the City could not do anything with it if they were given it.

Mr. Turner brought up another point that was raised at the Airport Commission meeting and it was disclosure by the permitted carriers owing money to other airports.

Mr. Osit said that this answer is pretty much like the one that he just gave. Asking an airline if they are in arrears may be something that the airline is uncomfortable with doing if they have a dispute with another airport.

Mr. Kirsch added that it is permissible for the City to collect information, but only on the basis in which the City needs to make a decision. The City could not deny a non-signatory operator based on their financial condition so collecting that information is unnecessary.

Mr. Kirsch added that they have tried to anticipate as many problems as possible in drafting this Resolution. If they find that there is something that they have not anticipated then they will come back to City Council recommending a revision.

Mr. Neville stated that he was concerned if they have the ability in terms of this document to control any carrier if they have documented evidence by the FAA of not properly maintaining their aircraft. Like issues of slow response or repairing things pertaining to the aircraft.

Mr. Kirsch answered no. He explained that an airport operator does not have any authority under federal law to regulate the operation of the aircraft. That is all exclusively within the jurisdiction of the FAA.

Mr. Osit added that if an airline was flying an aircraft that did not meet federal standards that would be a violation of not only FAA, but of the Resolution as well.

Mr. Brackett commented that he attended the Airport Commission meeting when this item was discussed and he commended the members of the Commission on doing a good job and asking a lot of tough questions. He felt that they vetted the Resolution very well.

Mayor Young echoed the same comments as Mr. Brackett.

Mr. Falls commented that at the Airport Commission meeting a lot of the same questions came up that he and Mr. Turner had. It was reassuring that they were asking some of the same questions that the Commission did. He said that staff is happy with the document. He said not only for Elite Airways, but for other airlines as well.

Mr. Graves recalled that at the meeting that Mr. Pearsall attended when the Elite Airways agreement was terminated, he mentioned going to the FAA with his concerns. He thanked Mr. Falls for spotting this issue and hiring this law firm to make sure that things are done right. It is apparent now, for whatever reason, the lease agreement that was entered into was not the proper way to handle this. He is proud of the fact that the City has stepped up and spotted this issue and taken care of it in such a professional manner.

Mr. Falls added that while this Resolution may not be perfect, they have tried to address things that they might foresee and they think that it is a good document and would recommend that it be adopted. He reported that as of this morning Elite Airways has satisfied their past due balance of the \$16,695. He was happy that Mr. Pearsall honored his obligation. He will be back in touch with Elite Airways to work out the other details that go along with the letter of authorization.

Mr. Graves was also glad to hear that Elite Airways paid their debt.

Mayor Young commented that at the Airport Commission meeting, both the Airport Director and the Assistant Airport Director were at that meeting and came forward and said that they felt this was a sound document.

**Vice Mayor Moss made a motion to approve the Resolution. Mr. Neville seconded the motion and it passed 5-0 with Mr. Neville voting yes, Mr. Graves yes, Mr. Brackett yes, Vice Mayor Moss yes, and Mayor Young yes.**

5. PUBLIC COMMENT (3-minute time limit)

6. CITY COUNCIL MATTERS

A) NEW BUSINESS

1) Pelican Island Audubon Society's Trees for Life

**Project:** <https://pelicanislandaudubonsociety.wpcomstaging.com/home-page/trees-for-life/>

**Memorandum and flyer attached. Council, staff, and community discussion and comments. – Requested by Vice Mayor Laura Moss**

Vice Mayor Moss reported that Dr. Richard Baker has been with the Pelican Island Audubon Society and involved with this project for more than a year now. He said they are growing trees from little acorns out at their location on Oslo Road. She said the trees are free with a little training so that the tree is planted properly. The goal is to have planted 100,000 trees in Indian River County over 10 years. She said Dr. Baker reached out to the City Council asking for any suggestions that City Council or staff might have in terms of getting these trees out to the community.

Vice Mayor Moss commented that it was unfortunate that they did not have everyone here at City Hall because they have just recently redone the landscaping here at City Hall to reflect native plants, Florida friendly plants, and rain gardens. This was with the help of Mr. Monte Falls, the City Manager and Ms. Nanette Haynes, the Groundskeeper. She said the day that staff was preparing the agenda, Mr. Charlie Pope sent an email informing the City that they received an award for the outside landscaping.

Dr. Richard Baker, President of the Pelican Island Audubon Society, commented that there was going to be an awards ceremony in March and they were going to be given out then. However, then their meetings were cancelled for March and April. He sent an article to the Press Journal about 5 (five) weeks ago regarding the awards and it just came out in the paper. He passed out awards to each Councilmember.

Vice Mayor Moss recalled that at the budget hearings last year that Council allocated the \$20,000 that was going to be used for carpet upstairs to go towards the rain garden project and that is what they see today. She thanked Ms. Haynes for all of her hard work in making it happen.

Dr. Baker commented that this City is setting an example for the world. He held up a new book that recently came out. In the book it notes that they need to conserve half the earth in conservation if they want to survive. He said that will be tough when you consider 86% of land east of the Mississippi is privately owned. He said they need to make national parks in their yards if they are going to survive. This City has done a terrific job of telling people what they need to do is get rid of some of their sod. He hoped that they would incorporate some new landscaping Ordinances to get rid of some of this sod.

Vice Mayor Moss commented that they will be discussing stormwater in the near future and that would be the time to address this problem. If they can lose the grass then they would create less runoff.

Mr. Baker continued by saying the City of Fellsmere just ordered over 900 trees and plants to be installed. The City of Sebastian has also come to their site and picked up trees. He

is still working on Indian River County to come along. Vice Mayor Moss said that they will. The County Commission is going to change.

Vice Mayor Moss commented that the duty of government is to set a very high bar and good example for everyone. They shouldn't ask people to do things that they haven't done first. She briefly went through pictures that she had taken and described what they were. She thanked Mrs. Ruth Stanbridge, Historic Society, for providing the historic markers in front of City Hall and to Dr. Baker for starting this project.

Mayor Young recognized Ms. Haynes for all of her hard work.

Ms. Nanette Haynes, Grounds Maintenance Manager, told Council that the whole project at City Hall should be completed by Thursday. She loves coming to City Hall to watch the plants grow and how they are all filling in so nicely. She said it shows life and the birds love it. It is also a big change for the look of City Hall.

Vice Mayor Moss had told someone about the native plants that were planted at City Hall because their Homeowner's Association was looking at doing something different in their neighborhood. They came to City Hall to observe what had been done here.

Ms. Haynes thanked the Garden Club for providing a lot of the plants that are at City Hall.

At this time, City Council took a five-minute break and the meeting reconvened at 9:50 a.m.

**2) City Hall Landscape Transformation from grass lawns to rain gardens and plants that are native and Florida-friendly.**

**Presentation of project and acknowledgment of Staff.**

**Photographs and Press Journal article of 04/29/2020 attached:**

**<http://treasurecoast.fl.newsmemory.com/?publink=0dd9e96c4> . – Requested by Vice Mayor Laura Moss**

This item was discussed with item 6A-1).

**B) Discussion of local restaurants**

**C) Discussion of local businesses**

Mr. Brackett commented that he had some conversations with Mr. Falls and he knows that the City is doing some things with the Planning and Development Department to loosen restrictions a little bit for permitting for the restaurants. He wants to make sure that they continue that and work as diligently and be as flexible as they can. There are a lot of restaurants that are trying to open back up. He said if you look at their downtown area a lot of the restaurants are next to parking lots or sidewalks and alleyways, which allow them to bring extra tables outside and then put them back in at night. He encouraged the City to continue to do what they are doing and working with those individuals.

Mr. Falls added that the City wants to make this as easy as possible. If there is a restaurant owner that wants to do this then they should call the Planning and Development Department and the City will work with them. The City wants to make sure that they keep safety in mind and they don't block access to any structures. There will be a temporary use work permit for the restaurant owners to fill out that can be issued to them in order to make this happen.

Mr. Brackett stated that he talked to most of the restaurant owners yesterday and encouraged them to do that.

Mayor Young asked if there was any actions that the Council needed to take in facilitating this permitting.

Mr. Turner said that it is always good to have the City Council's consensus that they agreed with this, but it is within the City Manager's jurisdiction to approve it.

Mr. Jason Jeffries, Planning and Development Director, reported that this is being done through the temporary use permit, which is already authorized under the Land Development Code. This information is available on the City's website and the restaurants just need to contact the Planning and Development Department and complete the application form and a fee will not be charged for it. The fees are being waived just for the temporary use permit for the restaurants until they are back open for normal business. The safety issues are being addressed as to where the additional tables are being put.

Vice Mayor Moss asked if they were contacting the restaurants to let them know.

Mr. Brackett reiterated that he has talked to a lot of the restaurant owners early on and they agreed that the more tables they could get outside the more people they will have coming to their restaurants.

Mr. Falls commented that if the Planning and Development Departments gets swamped with applications they may have to streamline the process, but they want to help the restaurants any way that they can.

Mr. Turner agreed with making the process easy and functional, but keeping safety as their first consideration.

Vice Mayor Moss felt that the community was ready for this and she encouraged the community to participate in eating at their local restaurants.

Mayor Young would like to see the Walking Tree Brewery and Orchid Island Brewery open again. He said that maybe the County could address that.

Vice Mayor Moss asked if art galleries could open.

Mr. Jeffries said that art galleries are retail so they are can open at 25% capacity.

Mr. Neville asked if they were talking about using public right of way and putting tables in them.

Mr. Falls answered yes if it can be done safely.

Mr. Graves asked Mr. Turner to look into the legal authority of the City Manager (acting through the direction of the City Council) to allow opening of businesses and removal of restrictions on use of City beaches during the continuation of the Governor's Executive Orders for COVID-19 pandemic. He said it is apparent that Indian River County has not been affected by the virus like other places have. The number of cases in the City limits is less than what was presented by the City Manager. As he pointed out earlier, the actual confirmed cases nationwide on someone's death certificate associated with the Coronavirus is 38,500. He said the National Health listed it at 68,000 from people that died with the virus, but not determined that the death was caused by the virus. He briefly went over the statistics outlined in Indian River County who have died and they can target their vulnerable population if they were to be affected with this virus. He said widespread testing increases the number of cases versus the mortality rate significantly. Some of the numbers locally indicate that they are past the height of the curve. That the State of Florida has passed the worst part and they are on the downside of the curve. He said that initially when this was enacted by the President and their Governor the purpose was to preserve health care resources to deal with infected people. The purpose of flattening the curve wasn't that we were going to make the virus go away, but preserve hospital beds, ventilators, etc. It is shown today in the County that they have 50% capacity of hospital beds, 50% capacity available in ICU and they are using less than 20% of their available ventilators. When he looks at this they have an Emergency Management Act that allows the City Manager to issue certain Executive Orders when an emergency is declared. However, the Statute that allows this comes under some scrutiny and cannot conflict with the United States Constitution. Local governments and State governments exercising these police powers must be complying with the United States Constitution. The 14<sup>th</sup> Amendment states that people have a right to live and work where they want and that is a significant freedom. He said if we are going to impose these powers that there are restrictions against arbitrary and impressive cases that justify interference and to prevent wrong impression. There has to be some real and substantive evidence to the police power that has been taken to what is going on. When he looks at their community this week and he sees major retailers, such as Lowes, Home Depot, Walmart, and Publix are packed with people. The 25% rule is not being abided by. He said so they are discriminating on their local small business owners by allowing certain retailers to operate and not allowing others to operate. It seems arbitrary to him as to who the government has allowed to remain open and stay in business and who they haven't. The question he has is whether or not there is a legitimate basis for the imposition of the Governor to have imposed the Emergency Management Act with the numbers that they have and given the stated purpose that originally the Emergency Management Act was initiated was to flatten the curve. He said while these restrictions are being imposed they have people that are hurting and being denied the ability to make a living. It is causing a lot of stress. They are taking people who have not tested positive and not within the vulnerable categories and depriving them

of their rights to go and assemble and ability to work. He referred to Mr. Turner's memorandum regarding this and it says that the City really can't take any action, but to him where is the line drawn as a local government or to a City that is struggling and a City that wants to work to provide for their families. There is a serious question as to whether or not the imposition of this Emergency Management Act actually violates the United States Constitution. He said what can they do as a City. Do they just follow along and do as they are told and perhaps their County is hit less and these restrictions are needed in other counties within the State, but not in Indian River County. Whatever the reason is they were not affected by this disease like they were told they were going to be. He said there will not be a vaccine available for the virus probably for another year and they will have to operate in an environment where this Coronavirus exists. He said just to say they have to shut down and they are denying citizens to work is wrong. As a City Council, he feels that they should make a stand and open their City up for business.

Mayor Young commented that they have all spent a great time looking at this crises. As they have been going through this he has asked people to come in to address the larger implications. He has talked to people from the schools, faith groups, and hospital. Yesterday he asked Mrs. Christine Kelley to come in and talk. She was a patient at Cleveland Clinic who had the virus. His years with the medical department has been to facilitate getting the mission done and the mission in the City is business. But, it is predicated on making sure that they have the health care that underlines that capability. He mentioned some things to consider and that is what it must be like to die isolated from people that you love. What must it be like to not be beside the person that raised you in their final moments. What is the cost of isolation. How best do we slow the spread of the infection. Who is the next person that contributes to the next vulnerable death and what can we do. He said they can avoid crowds, help each other with preventive measures, keeping their distance from people and most important be responsible. He said as it comes down to the most effective means in opening up their economy is getting back to work responsibly and taking ownership is part of it. It goes from the City Council to the business owner to the individual.

Vice Mayor Moss told Mr. Graves that she appreciated what he was saying and agrees with him. She said it has been painful and Mr. Brackett has expressed this also, watching the businesses struggle. The City Council is put in this position where in effect they are almost being asked to make medical decisions. Like is it safe. She said the Governor says 25% and should we say 50%, say 75% because they are a lot less dense in population. One size fits all orders doesn't necessarily fit us. She said that Mr. Graves was quite correct in that. She does not know if they are hamstrung in terms of these governmental orders that say 25%. She also did not know what degree of creative observation or obedience of the law they have to follow. For example they mentioned Walking Tree Brewery earlier and asked if they were allowed to take some of their tables and put them outside.

Mr. Brackett said no because they do not serve food so they are not allowed to open at this time. He said the question will come up when they are allowed to open and if it is at 50% capacity will they be allowed to go outside.

Mr. Graves wondered what the 25% capacity was based on and will it have any effect. He said some of the things that CDC has come out with like hand washing, distancing, etc., these things will have to be complied with and that is their new normal. But, to arbitrarily say he is going to tell a business they are only allowed to have 25% capacity, some businesses will not even open because they won't be able to make a profit. The State is arbitrarily deciding who survives and who does not survive. It seems unfair that some of the national businesses can thrive and their local businesses cannot. He said that seems arbitrary and unfair. He brought up hair salons and nail salons that are regulated by the Department of Health and he could not understand why they were not open. It is sad for people that are isolated and having to face death alone, but that is something he believes will be in place for a long time. If someone has the virus he would expect that person would be quarantined and kept in the hospital for some period of time. He does not know what affect a Resolution by this Council would actually have, but he wanted to make a motion. He made a motion that the City Council allow their restaurants, their retail establishments, their gyms, their hair salons, nail salons, bars, to open with the proviso that they practice these CDC guidelines of keeping distance and not allowing large groups to come together. He said as long as they have a restaurant and the tables are six (6) feet apart what does it matter. The issue is keeping distance from other people. He said these rules are not based on anything. They were told when this was initially imposed that they wanted to make sure that there was hospitalization and resources to deal with the sick and they do. He knows that things are subject to change. If it looks like the capacity is being shortened or they need to take further action then they can. They have some data now, which they didn't have in the beginning. He said this City Council's obligation is to the 16,000 taxpayers to the City of Vero Beach.

Vice Mayor Moss asked what the legal ramifications are.

Mr. Turner commented that is a tough question. He tried to layout in his memorandum to address all the points. He agrees totally with what has been said here today. He has a nephew on the west coast who has three (3) restaurants that he would like to reopen, but it is not worth it for him to reopen with 25% capacity. He said under the PPE they have to hire back all of their employees and how can he hire back all of his employees and only be allowed to be at 25% capacity of the restaurant. The restaurant organization has gone to the Governor and are objecting to this arbitrary level. He feels very sympathetic. However, as their attorney for the City it is a different issue. He said what they can do, which is the most logical, is to question the Governor as to his authority in basing this action. He knows that there have been cases that have been filed in Florida, but he does not know of any Resolutions yet. They could do some research and contact people that have been involved in it to get some analysis and their point of view. But, to just simply say that they are going to ignore the Executive Orders of the Governor and also not work with the County may lead them to being in violation of the act. It is a difficult place to be in where they are on the ladder. They are a municipal governmental agency, but they are not high up on the ladder.

Vice Mayor Moss asked what is involved in filing a writ.

Mr. Turner explained by filing a writ it will ask a governmental agency what is their authority for holding office, and issuing this Executive Order. He said under case law, it is proper to ask the Governor the reason that he issued an Executive Order.

Vice Mayor Moss asked what kind of effort on his part it would take to do this.

Mr. Turner said that it would be quite a bit of research and would entail some time.

Mr. Graves stated the other option would be to adopt the motion and if the Governor intercedes they could take that action. The problem is by taking someone to court it could take forever and serves no purpose. They are Americans and cannot just ignore the Constitution. He said that the United States Constitution supersedes any state law. This arbitrary enforcement is trampling on the United States Constitution and the rights of their citizens. As elected officials they need to be leaders. They get elected to make tough decisions. He feels very strongly with the data that they have that they should be leading this fight and helping their citizens.

Mayor Young stated that the most effective means to support the opening of the economy in a more expeditious fashion is to communicate that desire as a municipality through the County and have that as a part of the response to the Governor and maybe a letter as well to the Governor's Task Force. He was not comfortable at all with disregarding the basis by which the Governor has made his decision. The Governor does have many health care professionals that are giving him direction and input to him saying that this is a valid exercise of his authority. This is a balancing between the vulnerable and also insuring the economic vitality of their community.

Mr. Graves felt that the vulnerable should stay isolated. They know from the statistics of their County the ages of people that have been affected. Their citizens as a whole have the rights that are guaranteed to them under the United States Constitution and should not be trampled. As a local government they are subject to the Executive Orders of the Governor, but he believes that as elected officials they are able to question these orders and things that are being imposed upon the citizens. He agrees that the Governor is getting advice on how to handle the State as a whole and they are elected to represent 16,000 taxpayers and to do their best by them.

Mr. Neville asked Mr. Graves if he thought the Governor received a briefing on the legality of his Emergency Orders concerning the situation that they are in now. He asked Mr. Turner to follow up and find this out and it would be good to be able to read it. Mr. Turner said he will inquire and find out. Mr. Neville continued by saying they are on the first day of the opening of the 25% and they have 14-days of incubation to go through and determine whether or not there are any consequences from that. He felt that they needed to be judicious and careful before they do something that they may regret.

Vice Mayor Moss agrees with what Mr. Graves said about the Constitution and trampling upon it. It is very problematic especially the lack of real medical facts in these instances and the fact that it is different in this County in terms of the statistics. She said how about

in an abundance of caution that they put this back on the agenda for the next meeting and talk about it. In the meantime it gives everyone the opportunity to think about how they might address it. She said everything that has been said is correct and that is the problem. They just need a way to bring it together. This will give them time to think about it. She is so glad that Mr. Graves brought it up.

Mr. Brackett agreed that what Mr. Graves was saying has a lot of truth to it. The issue is what can they do and that is what the unknown is. He said at the minimum they could certainly encourage their Governor to do what he said he was going to do originally and that was do it geographically and it has not come out that way. He said some parts of the State would open up better than other parts of the State. He said a letter could be sent to the Governor based on the numbers that they have here. It is his understanding, and he could be wrong, that the Governor actually went against his own Task Force Committee. They recommended 50% and he went with 25%. They need to encourage him to at least get back to that basis so that restaurants have the ability to open. He said if they could have 50% capacity inside and then have outdoor seating then they would have a chance.

Vice Mayor Moss agreed that 50% makes a lot more sense.

Mr. Brackett commented that they got hit at the worst time in Vero Beach because it is season. He said a lot of these restaurants make their money for the whole year when it is season. The City needs to do everything that they can to be proactive and pro-business and get people back to work. He said it is not just the businesses, but the employees also. He said there were a lot of employees that were laid off. He said like Mr. Graves said earlier they need to be a leader in this situation. At the minimum they need to send a letter to the Governor asking him to be more proactive.

Vice Mayor Moss suggested putting this item back on the agenda for their next meeting and ask the City Attorney to bring something back to them.

Mr. Graves said he was all for talking about it at the next meeting, but expressed that he made a motion and asked if there was a second to his motion. The motion died for lack of a second.

Mr. Brackett did not think that the Council had the authority to go against the Governor's order.

Mr. Graves said it is all about being a leader.

Mr. Brackett felt that the proper way to question authority was through the court system and unfortunately they don't have enough time for that. He said that the State Police have been in this area checking local restaurants to see if the order is being violated.

Mr. Graves has seen some of this also, but thought that the violations were being thrown out.

Mr. Brackett hoped that they were being thrown out and he would hate to see any of the restaurants being shut down.

Mr. Graves was supportive of anything that they could do. He understands that they like to do things in a nice orderly way, but when things are happening to their citizens that they should be in a position to lead and question it. If they could send something to the Governor quickly it would help. He said two (2) more weeks is going to be very detrimental to people that are just barely hanging on. He said certain industries can work and some cannot and it is not being fairly applied.

Mr. Brackett agreed that it was an improper approach, but he does not want to do something that would put their businesses in trouble if they open when they are not supposed to. He would hate to see them lose their license or anything else. He said that is a choice that the businesses can make, but not a good approach for the City to take.

Vice Mayor Moss agreed that they could not jeopardize the City itself. She did not think going against the Governor was legally the right thing to do.

Mayor Young said that moving forward on this the City Attorney will come back at their next meeting with some recommendations.

Mr. Brackett commented that if Mr. Turner could come back with something quicker before their next meeting he was in favor of having a Special Call meeting to discuss it.

**B) OLD BUSINESS**

**1) 2020 US Census**

**Please see the City website (covb.org) or 2020census.gov for additional information.**

**a) 2020 Census from**

**b) PSA video (2020census.gov): What is the 2020 census? (30 seconds)**

**c) PSA video (2020census.gov): Is my 2020 census data safe? (30 seconds)**

**d) PSA video (2020census.gov): How do I take the 2020 census? (30 seconds)**

**Requested by Vice Mayor Laura Moss, Vice Chair of the Indian River County  
Census 2020 Committee**

Vice Mayor Moss reminded the community to fill out their Census forms if they have not already. She then showed three (3) short PSA videos.

**7. PUBLIC NOTICE ITEMS FOR FUTURE PUBLIC HEARING**

**8. CITY CLERK MATTERS**

**A) Setting City Council Workshop**

Mrs. Bursick asked the Council to check their calendars to see if June 23, 2020 at 9:30 a.m. would work for their next quarterly workshop.

**9. CITY MANAGER MATTERS (include amount of expense)  
(Staff/Consultant special reports and information items)**

**A) Discussion of Budget Priorities**

Mr. Falls brought up the budget hearings scheduled for July. He said that what he was looking for from Council is how they want staff to prepare the budget. He said that what he has instructed staff to do is to put their budgets together with the same level of service that they currently offer and then he will bring that to Council once it is put together and then they will start getting their revenue estimates and talk about how these things may or may not match up.

Mr. Graves commented that the COVID-19 is going to affect the City like it has everyone else and they need to be conservative in their budget. They need to make sure that they can pay for their essentials, which would be their employees and infrastructure projects. He said probably the beach parking should be put on hold and see what their revenue projections are before they do any of those extra things. He felt that their level of service was good. He said like any other business they need to go into a defensive mode, being conservative and not looking at new projects and getting through the next year and then see where they stand with regard to their revenue.

Mr. Brackett felt that their ad valorem revenue will probably stay the same because some of that has already been set. He knows that the one-cent fund is obviously going to be hurt. He did ask that staff look at the soft landing approach and complete that by \$500,000 and try to complete that by going to \$1.3 million instead of the \$1.5 million if that is possible.

Ms. Cindy Lawson, Finance Director, stated that a big percentage of their revenue sources is ad valorem taxes. She said they may not have any impact next year and it may roll into the following year. They also have a natural rise in personnel whether it be health care costs, raises, etc. She will take Mr. Brackett's recommendation as a goal, but she would love to hear from Council if they cannot achieve that goal are they okay with doing the \$1.5 million, which was their third year of this five (5) year plan. They will be conservative and their plan so far with the budget has been status quo.

Mayor Young asked Ms. Lawson if they will receive the sales tax number in July.

Ms. Lawson explained that anything they hear about sales tax right now is purely speculation. She said that the State doesn't even get the April collections until May 20<sup>th</sup>. So right now the State does not even have collections for a full month, which would be the first month when the virus shut everything down for the whole month. She said that normally she receives something in late June for them to make their budget estimates for July, but she is hearing at this point that might be delayed. The good news is that all of the State revenue sharing is 14% of their General Fund budget. She said of that amount a third of it is communication services tax, which is a percentage of cell phone bills and things like that. She didn't think that was likely to change.

Mr. Graves felt that their City employees should be secure in the fact that they are going to have their jobs. His first priority is taking care of their City employees, especially their Police Officers and that they are fair with them when it comes to their raises. The way they show appreciation to their Police Officers is by taking care of their salaries and giving them security that they will be taken care of. Other than that, staying in a defensive mode in regards to hiring and look at putting off some of those projects that don't have to be done now.

Mr. Brackett stated that there is no doubt that they are going to be impacted. He said that his business has stayed open this whole time and they are still projecting that their revenues will be down 50%.

Vice Mayor Moss had some things that she wanted to do before the budget workshops. She wanted to do this either at the next Council meeting or the first Council meeting in June. She wanted to see an infrastructure inventory. This would be what do they really need to do as opposed to what do they want to do in the next year. She is thinking about things like pipes, but she is also thinking about the recreational facilities. She asked that this list be prepared on what they really need to do. The other thing would be for Ms. Lawson to take the time to review with Council where they stand with the FPL funds (what has been spent to date and what is remaining), and what is the plan. Also, review where the funds from other sales have been used, such as the Dodgertown property, the Postal Annex, those pieces of property. She asked that Ms. Lawson take the time to review with Council these matters and she would appreciate it. She wants these two (2) items reviewed separate and apart from the budget workshops, because it can get lost in the process. She also wanted to review Leisure Square before they get into the budget workshop. She wants them to have a thorough understanding of it so they don't wind up with what happened last year.

Mr. Graves commented that in mentioning Leisure Square they need to make sure that those folks feel secure.

Ms. Lawson commented that the timing for that request is perfect. They just issued the CAFR for 2019 and she would be happy to talk about these things. She said as far as the other sales go they put that money in their Capital Infrastructure Fund, which is good news and will help in the downturn of the one-cent sales tax.

Vice Mayor Moss just wanted these things spelled out. She recalled at the time that sale proceeds from the Post Office were going into the Lagoon Legacy Fund.

Ms. Lawson explained that there was discussion that they would first spend the money on the Lateral E project and the Lateral E project is in that same fund. She then brought up the infrastructure inventory and said what she would like to do is take their five (5) year capital plan and highlight those things that they think are nice to have rather than essential.

Vice Mayor Moss commented that this is not only good for Council, but it is also good for the community. She said generally very few people are able to attend the budget workshops, which run the entire day. By reviewing these things at a regular City Council meeting it will give the community the opportunity to weigh in on some of these things prior to the discussion of the budget.

Ms. Lawson brought up Recreation and said last year when they split everything into different cost centers they have actually been including that in their quarterly report. She said for the first quarter of the year, Leisure Square was looking great, but for this third quarter of the year Recreation probably has not done so good. The budget will come to Council this year with those actuals and broken out by cost centers.

**B) Discussion of Audit Contract Renewal for Fiscal Year Ended September 30, 2020**

Ms. Lawson reported that in 2014, the City Council approved an auditing services engagement letter with Cherry Bekaert. Per the engagement letter, Cherry Bekaert provided audit services to the City of an initial term of five (5) years and audited the fiscal years ending September 30, 2014, 2015, 2016, 2017, and 2018. Following the initial term, the auditing services engagement included the option for three (3) one-year renewals if mutually agreed upon in writing by both parties. In May 2019, the City Council approved the first renewal of this engagement, in order to facilitate completion of the audit and financial reporting for the closure of the electric utility fund, since Cherry Bekaert was familiar with the various accounting and financial aspects of the sale. It was the City's intention to undertake an auditor selection process for the upcoming audit year ending September 30, 2020. However, because of the situation that they are in today she is recommending a second one-year renewal of Cherry Bekaert for auditing services for the fiscal year ending September 30, 2020. Cherry Bekaert has agreed to this renewal and has indicated that their fee will be reduced in consideration of the elimination of the electric utility fund from the City's audit and financial statements. If Council approves this recommendation, the Cherry Bekaert contract renewal letter and fee for fiscal year ending September 30, 2020, will be brought back for Council approval at their May 19, 2020, City Council meeting.

Council was in agreement of extending the contract for another year.

The Emergency City Management Executive Order will be extended for another week.

Mr. Neville reported that he had trouble calling in to City Hall last week and asked the City Manager to look into that.

**C) Approval of New Marina Rate for Vessels over 100'**

This item was pulled from today's agenda.

## **10. CITY ATTORNEY MATTERS**

### **A) Report on E-Cigarettes**

Mr. Turner reminded Council that they discussed E-cigarettes a few meetings ago and he was asked to do some research. The group that appeared at that meeting was encouraging them to look at tobacco use by juveniles. It was brought to their attention what Alachua County did and he took a look at it. He said generally speaking tobacco products are being regulated by the State and they have a preemption clause of many of the tobacco uses. He said there are at least eight (8) Statutes that apply to tobacco in the State so it is confusing. One of those Statutes state that local governments may regulate E-cigarettes. He said that tobacco is dangerous enough, but E-cigarettes are 10 times more dangerous according to some reports that he has read because of the concentration. Alachua County addressed last year an Ordinance that he found interesting because they did try to regulate cigarettes as to the age requirement from 18 years old to 21 years old. He will need to find out if that is preempted by the State because the State's regulation is 18 years old. He said they do have an interesting regulation on E-cigarettes and he would like to draft something. The City does have E-cigarettes addressed in their Ordinances and he might be able to strengthen it and bring back some suggestions if that is the direction of Council. He did receive an email from a representative of a restaurant and retail establishment who sells E-cigarettes inquiring about what he was going to be talking about today. He responded back to this person saying he was going to be seeking direction from Council on how to proceed. He wanted to be transparent that there are inquiries out there. He requested direction to bring back some recommendations and discuss them with Council.

Mr. Neville commented that vaping is another way to get people addicted to nicotine. He said that it is terrible that their young people sometimes feel compelled that they have to smoke these things. He said whatever they can do as a Council to at least get these children up to adulthood without being able to buy those E-cigarettes on their own would be helpful and he thinks that they should.

Vice Mayor agreed with strengthening the Ordinance and promoting public health.

Mr. Brackett thought that the State of Florida just raised the age of being able to buy tobacco to the age of 21. He said that passed in January. He agreed they should have some regulations in place.

Mr. Turner said it was going to be addressed in 2019, but he will double check. The regulations that they have in place are pretty general. He will bring back to Council some alternatives for their consideration.

The City Clerk read into the record an email that Council received from Mrs. Rosemary White (attached to the original minutes).

## **11. COUNCILMEMBER MATTERS**

**A. Mayor Young's Matters**

Sponsored presentation items by the public (10-minute time limit)

Mayor Young encouraged everyone to take part in "Run for the Fallen." You will need to sign up and walk for 30-minutes dedicated to a fallen veteran of your choice. Yesterday he walked in his neighborhood and felt that it was a good reflection for the community. The email address to register for this is [RunfortheFallen.org](http://RunfortheFallen.org).

Mayor Young reported that Mrs. Peggy Lyon's father passed away on Sunday. Mr. Lyon's accomplishments to the City were enormous.

**B. Vice Mayor Moss's Matters**

Vice Mayor Moss encouraged the community to continue supporting local businesses and non-profit agencies.

**1) Protecting our dunes. Photographs of dunes adjacent to the boardwalk at Jaycee Park attached. Taken 04/29/2020.**

Vice Mayor Moss showed two (2) pictures of the dunes at Jaycee Park. The one (1) picture showed where people were walking on the dune and the other picture showed what the dune should look like when people are not walking on it. She asked the public to please not walk on the dunes.

Sponsored presentation items by the public (10-minute time limit)

**C. Councilmember Brackett's Matters**

Mr. Brackett asked the community to continue being safe and support their local businesses.

Sponsored presentation items by the public (10-minute time limit)

**D. Councilmember Joe Graves's Matters**

Mr. Graves commented that he is honored to be a part of this City Council and was happy that the beaches are now open.

Sponsored presentation items by the public (10-minute time limit)

**E. Councilmember Rey Neville's Matters**

Mr. Neville cited the three (3) C's to live by, which are cooperate, courtesy and care.

Sponsored presentation items by the public (10-minute time limit)

**13. ADJOURNMENT**

Today's meeting adjourned at 12:05 p.m.

/tb