



CITY COUNCIL MEETING
6:00pm, Tuesday, July 26, 2022
1207 Palm Boulevard, Isle of Palms, SC and
broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>

MINUTES

1. Call to order

Present: Council members Popson, Streetman, Miars, Ward, Anderson, Bogosian, Hahn, Pierce, and Mayor Pounds

Staff Present: Administrator Fragoso (via Zoom), City Attorney Halversen, Attorney Kitz, various department heads

2. Citizen's Comments

Mr. Randy Bell said he does not agree with the suspension of the committee structure. He believes it would "consolidate agenda control and content with the City Administrator and Mayor thus damaging our weak mayor/weak administrator/strong council form of government." He said he is now opposed to a reduction in the size of Council. He spoke to an incorrect application of Robert's Rules of Order at the June Council meeting. He supports the transfer of the marina lease but encouraged Council to heed the advice of Mr. Kitz on the matters of due diligence. He would like the marina lease to codify the number of boat vessels. He would like to see an engineered parking plan agreed to by Islander 71. He does not believe that permitting self-service alcohol consumption is in the best interests of a family community.

Ms. Suzy Wheeler spoke with concern about the marina lease. She would like for an audit of the existing tenant and would like to see the due diligence items requested. She would like a public forum between the City Council and the residents about the marina lease transfer. She would like answers from each Council member to the following questions: Has Mr. Schuler met all of the nine items of due diligence as advised by legal counsel? Has Mr. Schuler agreed to put all of his promises in writing to your satisfaction? Are you willing to put the audit clause back in the lease? Have you had the time and opportunity to participate in the lease negotiations as they are happening not after the fact? Will you do the financial review of the current tenant prior to the transfer of the lease? Will you close loopholes of revenue streams that are lost to the City with the ability of layered transactions? Will you require Mr. Schuler to sign a personal guarantee? Why are you giving away the yellow private parking lot? Have you been threatened with a lawsuit if you don't agree to this transfer?

Ms. Elizabeth Fisher of Fisher Recycling said that the Isle of Palms will be the first local municipality to participate in glass recycling. She gave some facts about the company regarding its glass recycling efforts.

Dr. Nick Mueller advised against anything other than a simple lease transfer. He said an audit is needed. He said Council should require a complete appraisal of the property, of the value of services, and risk assessment of the property prior to any transfer. He said, "I implore you to remember by law your fiduciary duty to the residents of the island and not the tenant."

Mr. Chas Akers, a new member of the ATAX Committee with 30 years marketing experience, spoke to the importance of continuing to better the City's relationship with the CVB. He said, "If we walk away from this relationship, we stand to lose basically a two-to-one ratio of our marketing spend plus the overall strength and relative performance of fixed assets of headcount to actual media marketing spend. I encourage you to vote positive to approve the budget that has been presented."

3. Special Presentations – Introduction of new City employees.

HR Officer Ladd introduced several new staff members, including:

4. Approval of previous meetings' minutes

City Council Workshop – July 12, 2022

City Council Regular Meeting – June 28, 2022

Special Council Meeting – June 28, 2022

Special Council and Planning Commission – June 21, 2022

Special Personnel Committee – June 21, 2022

Ways and Means Committee – June 21, 2022

Public Works Committee – June 8, 2022

Real Property Committee – June 6, 2022

Recreation Committee – June 6, 2022

Public Safety Committee – June 2, 2022

Personnel Committee – June 1, 2022

MOTION: Council Member Streetman made a motion to approve the above listed minutes. Council Member Anderson seconded the motion. The motion passed unanimously.

5. Old Business

A. Discussion and consideration of hosting several public listening sessions to receive input from residents regarding proposed regulations of short-term rentals

MOTION: Council Member Anderson made a motion to approve the idea of scheduling several public listening sessions regarding the proposed regulations of short-term rentals in September. Council Member Streetman seconded the motion.

The details have yet to be worked out. Council Member Miars would like to be able to tally the public's views on this topic. Council Member Popson said he believes this to be a property rights issue that should continue to be discussed.

VOTE: A vote was taken with all in favor.

B. Consideration of Charleston Visitors Bureau proposed FY23 budget for the expenditure of the state ATAX – Presentation by Helen Hill

Ms. Helen Hill said the new budget reflects feedback received from the ATAX Committee. The CVB is looking forward to working with the new IOP Chamber of Commerce. She assured City Council that she and her staff are fully committed to filling IOP's 424 hotel rooms and their 1,004 rental rooms every day.

Council Member Bogosian said the new budget is an improvement. He asked for clarity on the website expense and advertising on The Knot. He said he likes the idea of validating all of the CVB's expenses. He suggested the City hire its own marketing consultant to work closely with the CVB to ensure proper branding of the IOP.

Ms. Hill clarified the website expense in the budget is for website marketing. She said advertising in The Knot was specifically for Wild Dunes and destination weddings. She said she believes the IOP Chamber believes they are the ones working with the CVB to ensure proper branding of IOP. Mayor Pounds added that TERC and the ATAX Committee are responsible for monitoring and reviewing the CVB's budget.

Council Member Streetman noted that at a previous meeting he said he would recuse himself from any vote on this matter since he sits on the Board of Governors. However, after research, he has determined this to be unnecessary, so he will be voting. He said the newly formed Chamber of Commerce has a lot of work to do before they can be considered a DMO. However, they could use some of the 30% funds to advertise IOP during the shoulder seasons.

Discussion ensued about the addition of a staff person who would work collaboratively with the CVB. Ms. Hill said other municipalities have such positions and they are happy to work with whomever the City puts forth. Mayor Pounds said this is an issue the ATAX Committee can look into further. Council Member Pierce said he would like to see this done within this fiscal year.

MOTION: Council Member Streetman made a motion to approve the CVB's FY23 budget as presented. Council Member Popson seconded the motion. The motion passed unanimously.

C. Discussion and consideration of disclosing the list of nine (9) due diligence items requested by the City related to the marina leases assignment

MOTION: Council Member Pierce made a motion to disclose the list of the nine due diligence items requested by the City related to the marina lease assignment. Council Member Miars seconded the motion.

Council Member Pierce clarified that the motion to release what was requested only, not what has been received.

Council Member Hahn said, “I think it is important for all of us to understand that this marina is currently leased until 2045, and as such, we do not have the right to make changes, make demands, or mandate any changes that better the City’s position. We do not have that right. The only right we have is to ensure that the existing lease does not harm the City, the transfer of the existing lease does not harm the City. Everybody in this room, I believe, agrees that the lease we currently have is terrible. It is awful. We cannot fix that today because we do not have that right. We are third parties to a business transaction between the current tenant and the new tenant, and all we can do is object to that business decision if it harms our position. So let’s look at that for a minute. We do not have the right to demand due diligence because the City did not ask for due diligence with Mr. Berrigan. So releasing the due diligence does nothing but flame fire that does not need to exist because we don’t have that right to ask for it. We cannot require a personal guarantee because Mr. Berrigan’s personal guarantee continues in place. We do not have the right to add any new language concerning audits because if it does not already exist in the existing document. We cannot regain rights the City has waived in the past. All we can do is ensure that the City’s position before transfer is not harmed with the transfer of the lease. I don’t like any of this. I have transferred multiple leases personally that I did not like, but I did it because you have to follow the law. Now we have an opportunity here because the new tenant has agreed to make some small changes that I believe benefit the citizens tremendously. We regain control of a parking lot that we had lost with the original lease, and we clear up obvious liability with on-site consumption. How do we do that? Currently the City is liable for on-site consumption because we allow it and have allowed it for 30 years. If we transfer that liability to the new tenant by allowing or clarifying in the lease that on-site consumption is in fact available, then that liability goes to him in his license. That’s all he asked for with this. This isn’t a big giveaway. This isn’t a bonanza. He’s taking on the liability because he wants a license because he is trying to run a business. This is the reality of the situation that we face. We cannot fix prior Council mistakes with this transfer. Again, this is the sale of an asset between the tenant and the proposed new tenant. The City’s position is not harmed by this transfer. The City benefits from parking and a transfer of liability to the tenant where it belongs. Yes, we’ve got a fiduciary duty. All of us do to all the residents of the island. I plan to fulfill that fiduciary duty by voting to transfer the marina lease. How does that relate to the question on the table of do we release the due diligence items? We do not have a right to ask for due diligence. We did it, and our lawyers suggested if I was going to ask, this is the stuff I’d ask for, but we didn’t have a right to do any of that because we never asked for it from Mr. Berrigan. Nobody like to see, I see all kinds of people’s heads nodding in here they are in disagreement. I don’t like it. It doesn’t mean we can do it. We have to follow the law.”

Council Member Miars responded, “Whether or not we have a right to the due diligence is not a question. I don’t think any of us up here, it was a question we specifically asked of our attorneys that we have hired as a City, and they produced the documents. They submitted the documents. They informed us that these requests were reasonable in the ordinary course of business. If we want to act in a reasonable manner as City Council people and with a fiduciary duty, what we have to do is respect the opinion of our attorney who wrote these issues, these questions. If these were not necessary, it would have been really nice if we had been told that two months ago. That is not what we were told two months ago. They were sent, they were requested. They have been requested over and over and over again, and I find it –

City Attorney Halversen interjected, “Yes, I would just advise Council members not to disclose any attorney client communications just for the record.”

Council Member Miars said, “I’m not. I’m just giving my opinion as Mr. Hahn did. So these due diligence requests are similar to discovery requests that are sent out in litigation. It is a request. It’s not special, it is not attorney-client privileged or anything of that nature. It is simply a question. That is what I have been told by numerous people. Very common and typical in the business. There is no reason why we cannot share with the public what these questions are. When people start refusing to share things, it does make people wonder why. When people refuse to answer questions, it makes people wonder why. Also, I would just like to say that I feel like we owe it to the citizens too, at the very least, let them know what questions have been asked.”

Council members Streetman, Bogosian, and Pierce all agreed the documents should be released.

VOTE: A vote was taken as follows:

Ayes: Pierce, Miars, Popson, Streetman, Ward, Anderson, Bogosian, Pounds

Nays: Hahn

The motion passed 8-1.

Mayor Pounds said the list of requested due diligence items would be added to the City’s website.

D. Discussion of consent of marina assignments to Morgan Creek LLC and proposed amendments to the marina store and marina operations leases

Mayor Pounds said, “I won’t repeat everything that Blair said, but just a couple of different additional items. From a guarantee standpoint, we have a personal guarantee with the existing leaseholder. That will continue and be added to with the corporate guarantee from an entity that has a whole lot more assets to it. We have clarity on the consumption issue. So whether you agree with the consumption or not, we would at least have amendments that provide a regulated and supervised consumption area to the existing footprint where such consumption has been present for decades. We would have a new option for the residents in a boat club for those that would be interested in doing that. We would have a clearly defined mix of businesses. These are all the things that are in our existing amendment as it sits today that is in the packet for City Council. So we have a clearly defined mix of businesses. We have controls and threshold and limits of expansion for all commercial activities including boat club, ensuring a balance of business at the marina. The shared lot back to the City. Again, not from an ownership standpoint, we own the dirt, but from a control standpoint. This has been a source of conflict, so we would remove the tenant control of the managerial authority of that shared lot on the intercoastal side of the marina. We have improved controls on future assignments and subletting that do not exist with the present lease. We have allowances for operational improvements to improve dry storage capabilities that do not entail dry stack, and we have controls on related-party transactions that do not presently exist. The controls ensure the City receives 120% of fair market value rent for

any such transactions through verifiable procedures. So all that would go away if we just do what has been suggested, an as-is assignment.”

Council Member Pierce had questions about the prepaid moneys, the guarantee, and the strengthening of the transferability clauses. Council Member Anderson said clarification is needed over subletting to affiliates. Council Member Bogosian said the amendments do not match what Mr. Schuler has said in public about what he wants to do with the Marina.

In response to Council Member Hahn’s earlier remarks, Council Member Bogosian added, “We’re a third party. We don’t know if we are harmed unless we do the due diligence. That is why we are asking for the due diligence to ensure that we are not harmed. And when you say we cannot better our position, these amendments are all intended to better our position. So by your own argument, we shouldn’t even be entertaining these amendments. We should throw them out. We should go back. If our obligation is to sign these leases, the new should entertain signing the existing lease. By your own argument.

Council Member Hahn responded, “Well without consent, we cannot better our position without consent. We cannot mandate anything is what I was saying.

MOTION: Council Member Ward made a motion to postpone further discussion about this time and the shared parking lot until after Executive Session. Council Member Bogosian seconded the motion.

Council Member Streetman said Council has “messed around” with the lease amendments since early in the process in an attempt to get the “perfect lease.” He would like to see the lease approved. He said, “It is my belief that Mr. Schuler has good intentions and has every intention to work closely with the City and the residents to make sure that we have a marina down there we can all be proud of. I think most citizens feel that way, but I think we have some that are just making the argument, quite honestly, to be making the argument, and I don’t agree with it.”

VOTE: A vote was taken with all in favor.

E. Discussion of date for Council mid-year retreat

Mayor Pounds suggested the morning of September 20 as a possible date for the mid-year Council retreat. As Council Member Bogosian will be out of town that day, Mayor Pounds said he would come back to Council with other possible dates.

6. New Business

A. Consideration of proposed changes to the annual leave accrual policy and addition of the day after Christmas as an observed holiday [Strategic Plan Priority 6, Goal a & b]

Discussed during the July 12 Council workshop, these proposed changes are the last piece of the suggestions from the Wage & Compensation study. Administrator Fragoso said a review of the employee handbook will be completed before the end of 2022 and will include the City’s

encouragement that employees take at least one week of vacation per year.

MOTION: Council Member Streetman made a motion to approve the changes as recommended. Council Member Hahn seconded the motion. The motion passed unanimously.

B. Consideration of purchase of F-150 replacement for Public Works Department
[FY23 Budget, State ATAX, Public Works - \$37,000 State Contract]

MOTION: Council Member Ward made a motion to approve, and Council Member Streetman seconded the motion. The motion passed unanimously.

C. Consideration of proposal for the management of shared parking lot at the Marina

To be further discussed in Executive Session

D. Discussion and consideration of commissioning a mural for the Public Work Workshop

MOTION: Council Member Popson made a motion to approve, and Council Member Ward seconded the motion.

Mayor Pounds said, “This would really be just giving staff direction to go look at alternatives, find an artists, get a price point, and come back to Council.” The mural will be paid for with ATAX funds.

VOTE: The motion passed unanimously.

7. Boards and Commissions Report

- A. **Board of Zoning Appeals** – minutes attached
- B. **Planning Commission** – minutes attached
- C. **Accommodations Tax Advisory Committee** – minutes attached
- D. **Environmental Advisory Committee** – minutes attached

i. Consideration of 1 year proposal from Fisher Recycling in an amount not to exceed \$10,000 for collection and recycling of glass [Strategic Plan Priority 5, Goals a-d]

Director Kerr said the annual cost for the two pickup sites will not exceed \$10,000 and could possibly be offset by a grant.

MOTION: Mayor Pounds made a motion to suspend the rules of order to allow for Elizabeth Fisher to speak to Council about this proposal. Council Member Ward seconded the motion. The motion passed unanimously.

Ms. Fisher explained that the glass recycled from the island is not resold. It is a source of supply for countertops and then the remaining tonnage is recycled in Beaufort, SC. It is then recycled

into foam glass. She believes that education and visibility of the containers will help the program be a success.

She added that Charleston County does not recycle glass as is thought. They repurpose it as landfill cover and add it in to road beds.

Council Member Bogosian supports this effort from the Environmental Advisory Committee. Administrator Fragoso said there is \$15,000 in the FY23 budget for initiatives from this Committee.

MOTION: Council Member Bogosian made a motion to approve an amount not to exceed \$10,000 for two glass recycling bins and pickup for one year. Council Member Ward seconded the motion. The motion passed unanimously.

ii. Consideration of recommendation to adopt an ordinance prohibiting holes landward of the high tide on the beach and requiring holes to be filled in

Director Kerr reviewed the work and thought process of the Environmental Advisory Committee to date and current recommendation of prohibiting the digging of holes in the sand landward of the mean high tide line. He said they don't anticipate tickets being written for this activity, but believes it give law enforcement the ability to educate the public about the dangers of leaving holes on the beach. It would work similarly to the lights off for turtles ordinance.

Several Council members asked about the need for another ordinance, especially one that cannot be enforced. Chief Cornett said that his staff is already stopping to speak with people as they see them to educate them about the need to fill in their holes. He believes that the passing of an ordinance will result in more calls about the holes and the expectation for tickets. He said they do their best to speak to as many people as possible about digging holes, but they cannot catch everyone.

Council Member Bogosian said he would take Council's feedback to the Environmental Advisory Committee for more work. It was suggested that this be more of an educational campaign rather than an ordinance.

8. Ordinances, Resolutions and Petitions

A. Second Reading

i. Ordinance 2022-06 – An ordinance to present a referendum question to the citizens of the Isle of Palms at the next general election on the question of whether the electors approve reducing the size of City Council from a Mayor and 8 Council Members to a Mayor and 6 Council Members.

MOTION: Council Member Streetman made a motion to approve and waive the reading, and Council Member Hahn seconded the motion.

Council Member Ward said he would like to see such an action come via citizen petition. Council Member Anderson said she would like to see how the workshop experience works out before moving forward with this effort. Council Member Popson said he is not against a referendum, but he is against reducing the size of Council.

Mayor Pounds read the proposed ballot question.

VOTE: A vote was taken as follows:

Ayes: Hahn, Bogosian, Pierce, Miars, Streetman, Pounds

Nays: Anderson, Ward, Popson

The motion passed 6-3.

ii. Ordinance 2022-05 – An ordinance authorizing the amendment and assignment of Marina Outpost, LLC., Inc. to Morgan Creek Marina, LLC

Discussed during Executive Session.

iii. Ordinance 2022-04 – An ordinance authorizing the amendment and assignment of Marina Joint Ventures, Inc. to Morgan Creek Marina, LLC

Discussed during Executive Session.

B. **First Reading** – None

C. **Resolutions and Petitions** – None

9. Executive Session

MOTION: Council Member Ward made a motion to move into Executive Session pursuant to S.C. Code §30-4-70(a)(2) to receive legal advice related to potential claims concerning alterations to Isle of Palms zoning districts and for the discussion of negotiations incident to proposed contractual arrangements related to the marina. Council Member Streetman seconded the motion. The motion passed unanimously.

City Council moved into Executive Session at 7:38pm.

City Council returned from Executive Session at 9:09pm. Mayor Pounds said no action was taken. He said no decisions were made. Further discussion about the marina lease will continue at a Special City Council meeting on Tuesday, August 2, 2022 at 5pm.

10. Adjournment

Council Member Ward made a motion to adjourn, and Council Member Streetman seconded the motion. The meeting was adjourned at 9:10pm.

Respectfully submitted,

Nicole DeNeane
City Clerk