

**City Council**  
**6:30 p.m., Tuesday, November 18, 2014**

The regular meeting of City Council was called to order at 6:38 p.m. in Council Chambers of City Hall, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the meeting were Councilmembers Bergwerf, Bettelli, Buckhannon, Carroll, Ferencz, Harrington, Loftus and Ward, Mayor Cronin, Administrator Tucker, Attorney Halversen, Assistant City Administrator Dziuban and Clerk Copeland; a quorum was present to conduct business.

1. Mayor Cronin called the meeting to order and acknowledged that the press and public were duly notified of the meeting in accordance with the Freedom of Information Act. Prior to the Pledge of Allegiance, the Mayor offered a brief invocation, and Clerk Copeland called the roll.

**2. Reading of the Journals of Previous Meetings**

**MOTION: Mayor Cronin moved to approve the minutes of the regular meeting of October 28, 2014 and the Special Meeting of November 3, 2014 as submitted; Councilmember Bettelli seconded and the motion PASSED UNANIMOUSLY.**

**3. Citizens' Comments**

Jim Raih of 3904 Cameron Boulevard opined that the City would be making a mistake if the marina leases were modified to thirty (30) year terms without re-bidding them; he added that he saw no benefit to the City for extending the terms. On the subject of parking, Mr. Raih shared a discussion he had with Tom O'Rourke, Charleston County Parks and Recreation, when Mr. O'Rourke had said that he would work with the City in any way he could; Mr. Raih had suggested to Mr. O'Rourke that the hours of the County Park be extended.

**4. Reports from Standing Committees**

**A. Ways and Means Committee**

From the meeting held earlier in the evening, Mayor Cronin reported that the City has completed one-third ( $\frac{1}{3}$ ) of the fiscal year; General Fund expenditures are at twenty-nine percent (29%) of budget. Several revenue sources are performing very well, such as Local Option Sales Taxes and business and rental licenses. The City's cash balance is eighteen percent (18%) of annual General Fund expenditures; that is up from the same time last year. In the tourism funds, Municipal Accommodations Taxes are running six percent (6%) ahead of last year and Hospitality Taxes are running ten percent (10%) ahead of last year; State Accommodations Taxes received for the quarter ending September 30<sup>th</sup> were slightly ahead of the prior year. The Mayor and the Administrator met with SCDOT later in the week for a discussion on the beach access parking management plan.

1. Award of a contract to CPC Charleston Painting in the amount of \$10,245 to paint the columns and porch ceilings on the Recreation Expansion

**MOTION: Mayor Cronin moved to award a contract to CPC Painting Charleston in the amount of \$10,245 as detailed above; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.**

City Council  
November 18, 2014  
Page 2 of 14

2. Award of a contract to Technology Solutions in the amount of \$7,587.75 for a new server for the RecTrac system at the Recreation Department, pricing includes automatic back program

**MOTION: Mayor Cronin moved to award a contract to Technology Solutions in an amount not to exceed \$7,600 for a new server as described above; Councilmember Harrington seconded and the motion PASSED UNANIMOUSLY.**

3. Award of a contract to Empire Marketing Group in the amount of \$2,500, state contract pricing, to replace an ice machine for the Recreation Department

**MOTION: Mayor Cronin moved to award a contract to Empire Marketing Group in the amount of \$2,500 for a new ice machine; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.**

4. Award of a contract to Vic Bailey Ford in the amount of \$24,168, state contract pricing, for 1-2015 Ford Sedan Police Interceptor

**MOTION: Mayor Cronin moved to award a contract to Vic Bailey Ford in the amount of \$24,168 for a Ford Sedan Police Interceptor; Councilmember Bettelli seconded and the motion PASSED UNANIMOUSLY.**

The Mayor stated that the vehicle being replaced will have over one hundred thousand (100,000) miles on it once the new vehicle arrives.

**VOTE: The motion PASSED UNANIMOUSLY.**

5. Recommendation from the Public Safety Committee authorizing the addition of up to \$3,306 in expense to the Telephone and Cable budget for unexpected, required updates to the NCIC system

Mayor Cronin said that action would require an additional T1 line for the City.

**MOTION: Mayor Cronin moved to authorize the addition of \$3,306 to the Telephone and Cable expense line in the Police Department budget for unexpected, required updates to the NCIC system; Councilmember Bettelli seconded.**

Responding to Councilmember Buckhannon's questions about the T1 line, the Administrator explained that the City has one (1) T1 line; the additional T1 line must be a dedicated line.

Chief Buckhannon stated that AT&T informed the state that they would no longer provide service for the frame-relay for the existing NCIC system and that all participating agencies in the state must acquire a T1 line. The expense to the City is for the change from a frame-relay to

the T1 line. In addition, the Department was also notified that the City's router for the NCIC system is at its end-of-life, and Cisco will no longer support it; therefore, the City must get a new router to insure that it receives all updates to the NCIC system.

City Council  
November 18, 2014  
Page 3 of 14

Councilmember Buckhannon also asked how the NCIC service would be affected if the City chose not to change out the equipment and the Chief replied that the City would lose NCIC access.

The Chief explained that NCIC refers to the National Crime Information Center; this service provides information for people who are wanted, articles that are stolen, BOLOs (Be On the LookOut for) that are issued, as well as the link for vehicle licenses plate and drivers' licenses checks – it connects the City to other agencies in the state and the nation.

Since the money was not included in the budget, Councilmember Ward asked which fund would supply the additional funds; Administrator Tucker indicated that it would come from the Telephone and Cable line item in the Operating Budget. The possibility that the line will be over budget exists, but the dollar amount quoted will go down for every month that the change is delayed.

Councilmember Bettelli, who retired from AT&T, noted that frame-relay was old technology when he was managing projects fifteen (15) years ago.

**VOTE: The motion PASSED UNANIMOUSLY.**

The Committee also considered the budgeted purchase of a new rescue truck; the City received one (1) bid for a new truck and it was well in excess of the amount budgeted. The Committee agreed to throw out the bid and to re-bid the rescue truck with certain changes that might attract more bidders and a price more in line with the budget.

6. Consider Changes to the Hospitality Tax Ordinance to allow for revocation of a business license for non-payment of Hospitality Taxes

The Committee asked the City Attorney to draft an ordinance that would allow the City to revoke the business license for any business that collects Hospitality Taxes but does not remit them when due.

**MOTION: Councilmember Ward stated "so moved;" Councilmember Carroll seconded and the motion PASSED UNANIMOUSLY.**

The next meeting of the Ways and Means Committee will be at 5:45 p.m., Tuesday, January 20<sup>th</sup>.

## **B. Public Safety Committee**

Reporting on the meeting of November 6<sup>th</sup>, Chief Buckhannon showed the Committee the addition to the STOP sign at 25<sup>th</sup> Avenue and Waterway that was requested by the Committee.

The sign says that "Cross Traffic Does Not Stop." The Committee also discussed the City's noise ordinance and the kennels; since the kennels are heated in cold weather and have beds for the animals, the Committee decided to take no action at this time. The Committee learned about the City's protocol for the Ebola virus and the measures the City must make in order to maintain the NCIC system for the Police Department.

From the Fire Department's monthly report, Councilmember Bettelli stated that personnel had responded to a call of people stranded on a sandbar; from visual confirmation, rescuers found

City Council  
November 18, 2014  
Page 4 of 14

that the people were not in distress. Personnel also responded to a home on Cameron Boulevard about an odor coming from the hot water heater; after checking the residence for carbon monoxide

and being unable to locate the source of the smell, the residents were advised to have the water heater inspected by a service technician. For the month of October, personnel responded to eighty-one (81) calls, and, of that number, thirty-one (31) calls were EMS calls. Thirty-six (36) fire inspections were done that found a total of ninety-three (93) violations. Training for the month focused on airway skills.

Highlights from the October report from the Police Department included an incident of breach of trust when a woman hired two (2) men to paint her house and gave them her credit card information to buy supplies; when she received her bank statement, she found that they had made several other unauthorized purchases. A case of credit card fraud occurred when a man reported having contracted with a company to provide strippers for a party at his residence; only one (1) stripper arrived, and she charged his credit card over two thousand dollars (\$2,000) and left immediately without fulfilling the contract. Additionally, an officer saw three (3) juveniles driving a golf cart after dark; the juveniles were not authorized to use the golf cart and the owner did not know them; one (1) of them had keys to several types of golf carts in his pocket. The Department hopes that it has found the persons responsible for golf cart thefts and damage to those carts when returned. A Meet and Greet was held in the City Hall parking lot on Thursday, October 30<sup>th</sup> and approximately fifteen (15) residents attended. Dispatchers handled five thousand four hundred twenty-four (5,424) calls in the month; four thousand eight hundred forty-eight (4,848) were for the Police Department; five hundred sixty-seven (567) traffic stops were made, resulting in two hundred thirty-four (234) tickets. Officers arrested eighteen (18) persons in October primarily for traffic offenses. There were eleven (11) noise complaints and all received warnings. This is the time of year when training picks up for the Police Department; the state is encouraging training in criminal domestic violence.

The Public Safety Committee will hold its next meeting at 9:30 a.m., Wednesday, January 7<sup>th</sup>, 2015 in the Conference Room.

Councilmember Ferencz referred to the following statement from the minutes:

The Administrator suggested that the City may want to consider some modifications to the noise ordinance if it is not the City's intent to shut the amplified music down, unless the music is disturbing someone in their home under the existing provisions of the noise ordinance.

The Councilmember then asked for an expansion of the discussion since, in her opinion, no decision was made about how the City would respond to noise complaints like this in the future.

Councilmember Bettelli responded that the Committee would continue to gather information to ensure that residents do not have to contend with unnecessary noise levels in their homes; the Committee acknowledged that a part of some restaurants' business is musical entertainment, but it cannot be too loud. Councilmember Bettelli recalled that the current noise ordinance was enacted because the previous ordinance specified decibel level, and the City lost a law suit over that part of the ordinance. In his opinion, the current ordinance is fairer to residents.

City Council  
November 18, 2014  
Page 5 of 14

Administrator Tucker added that the Public Safety Committee and Council will be hearing more from the City Attorney with some suggested modifications to the noise ordinance. That dialogue from the last Public Safety meeting was dealing with the fact that the island has several venues that have amplified music out of doors, so the question becomes whether or not they are considered public places in the interpretation and is it or is it not the City's intent that those other venues must change because of that?

Councilmember Ferencz quoted the current ordinance that "it [amplified music] cannot disturb the repose of a resident within the home," and she asked whether that statement referred to public, private or does it matter. She also inquired about whether the home meant home-structure or the property of the resident.

The Administrator responded that that type of question would be answered with the modifications from the attorney.

Councilmember Carroll asked whether there have been additional noise complaints since the Real Property Committee meeting; Administrator Tucker said that there have been no police responses. The City did get one (1) complaint that was attributed to the same violator, but the noise was found to emanate from another source operating out of the marina site and they have been made aware of the noise ordinance. The new Goat Island business that has outdoor music has been informed about the City's and the County's noise ordinances. The Administrator assured Council that the City was doing everything it could to be proactive, making people aware of the rules and ensuring that those businesses are not disturbing anyone in his home.

Administrator Tucker stressed that it is very important when these incidents are happening for people either to call the livability hotline or the Police Department; if residents do not reach out to someone, the City is crippled by not having the appropriate paperwork that it needs in affecting change.

Since Goat Island is not in the City's jurisdiction, Councilmember Loftus inquired about the City's response if it received a call about loud, disturbing noise coming from that venue.

The Administrator confirmed that Charleston County would respond to determine if the noise violated Charleston County's noise ordinance.

### **C. Public Works Committee**

Reporting from the meeting of November 5<sup>th</sup>, Councilmember Ward stated that the Public Works Department will complete the fall cleaning of the beach access paths by the end of November. Vehicle maintenance was down for October, but Director Pitts foreshadowed a large invoice for the repairs to the flatbed truck which was down for the entire month. For the month, yard debris was up and garbage was down. The Committee had a lengthy discussion about Whispering Palm drainage; the project has been put on hold. The Committee reviewed and unanimously approved the job description for the Assistant Public Works Director. The Front Beach lighting project is moving forward, but it will not be completed until early in 2015.

The next meeting will be at 5:30 p.m., Wednesday, January 14, 2015 in the Conference Room.

City Council  
November 18, 2014  
Page 6 of 14

Mayor Cronin stated that he was aware that yard debris was stacking up on the island since the Caterpillar has been out of service; he assured residents that the City is looking for an alternative method of removing the debris.

**MOTION: Councilmember Ward moved to approve the job description for the position of Assistant Public Works Director; Councilmember Carroll seconded and the motion PASSED UNANIMOUSLY.**

#### **D. Recreation Committee**

From the meeting of November 4<sup>th</sup>, Councilmember Carroll reviewed the highlights of Director Page's October Report. Twenty-five (25) people attended the Hunter Education class hosted by DNR. Tennis classes remain full and have a waiting list. Forty-nine (49) seniors attended the Keenagers' meeting, and the Wellness Walkers have twenty (20) senior walking laps around the gym. Ghostly Tide Tales broke all previous attendance records with over three hundred (300) islanders of all ages on the beach to hear the scary tales. The Councilmember complimented the Police Department for their assistance in getting participants safely across Palm Boulevard. The Halloween pumpkin decorating contest between the departments of the City was won by City Hall with its depiction of Olaf from the movie "Frozen;" the Fire Department was second, the Recreation Department was third and the Building Department was fourth. As always, the Halloween Carnival was a huge success with more than eight hundred (800) participating. Preparing for the holidays, staff held a holiday craft workshop for children to make decorative ornaments. The Third Annual Holiday Street Festival will be from 2:00 p.m. til 7:00 p.m.; there will be food from local restaurants and clubs, carnival rides and entertainment that will include local celebrity Elise Testone. In addition, basketball, soccer and volleyball are going strong. The newly renovated athletic fields look great, but are not ready to be played on yet. The gym floor will be re-lined the week of November 24<sup>th</sup>, and "white line fever" is over for another year. The Committee unanimously approved the acquisition of a new server for the RecTrac program and a new ice maker in the gym, as well as the recommendation for award of the painting for the ceiling and posts of the Rec addition. Director Page is investigating various sign designs for the message boards at the entrances to the island; the Committee did agree on the design for the top portion of the signs.

The Recreation Committee will hold its next meeting at 9:00 a.m., Tuesday, January 6<sup>th</sup> in the Conference Room.

## **E. Personnel Committee**

From the meeting of November 5<sup>th</sup>, Councilmember Ferencz stated that the Committee discussed at length the City Administrator's annual evaluation and compromised as needed to develop a tool that all Committee members thought was suitable. (A copy is attached to the historical record of the meeting.) Councilmember Ferencz then reviewed items that the new evaluation tool would include.

**MOTION: Councilmember Ferencz moved to approve the City Administrator's evaluation tool as presented; Councilmember Ward seconded and the motion PASSED UNANIMOUSLY.**

City Council  
November 18, 2014  
Page 7 of 14

Councilmember Ward asked if the new tool would be available for Council to use for the 2014 evaluation and was informed that it would go into effect for the 2015 evaluation period.

Councilmember Ferencz commented that she did not know of any reason why the new tool could not be used for 2014, but noted that the Committee had not discussed the issue.

Councilmember Bettelli voiced the opinion that he did not think the evaluation should be used for 2014 due to the lateness in the year it was presented and approved.

Administrator Tucker reminded Council that the scoring established for the calendar year 2014 was approved by the Committee and Council in 2013; if the new evaluation was to be used, there would be a need to adjust the scoring based on what was approved last year. The Administrator said that she had understood that the new evaluation tool would go into effect for the 2015 evaluation year.

Councilmember Ward complimented and thanked Councilmember Ferencz for taking on this task because he thought something needed to be done.

Councilmember Ferencz reminded Council that they had received an e-mail from her asking that each Councilmember submit a list of goal for the Administrator for 2015; she noted that she has received three (3), but all are due by 5:00 p.m., Wednesday, November 19<sup>th</sup>.

Chief Buckhannon presented an overview of the City's screening and hiring practices, and Captain Usry answered questions about liability.

The Committee concluded the meeting with the discussion and approval of appointment and re-appointments to boards and commissions for 2015; they will be presented to Council for approval at the meeting of December 2<sup>nd</sup>.

Councilmember Ferencz noted that the City is fully staffed with no vacancies.

The next meeting of the Personnel Committee will be at 10:00 a.m., Tuesday, January 6<sup>th</sup> in the Conference Room.

Safety Sweepstakes winners for the month of October were Nick Bako from Recreation, Joseph Washington from Public Works, Dylan Reynolds from the Police and from the Fire Department, James Giddens.

Councilmember Carroll stated that Joseph Washington has been with the City for over thirty (30) years.

#### **F. Real Property Committee**

Councilmember Loftus said that he would report on the two (2) meetings of the Real Property Committee, i.e. October 14<sup>th</sup> and October 29<sup>th</sup>. At the second meeting and before Committee discussed the lease renewal for Morgan Creek Grill (MCG), Administrator Tucker outlined complaints from residents about the noise from the music at the restaurant. A number of

City Council  
November 18, 2014  
Page 8 of 14

residents were present to voice the problems they have experienced over recent years relative to the noise from Morgan Creek Grill. Francis Lynch produced a copy of an invoice showing that he had spent over eight thousand dollars (\$8,000) to soundproof his home due to the music coming from MCG, but it proved to be ineffective. Dr. Alfred Dawson stated that, on some days the noise is so high that he has to wear earplugs at the marina to keep from hurting his ears. Philip Smith noted that the noise has always been loud, but, when MCG repositioned the stage to face the parking lot, it got much worse for him as the nearest neighbor to the marina. Senator Campsen presented the Administrator with a list of twenty-nine (29) residents who shared his opinion that something must be done about the music emanating from MCG that has intruded their lives. In Senator Campsen's opinion, MCG was in clear violation of its lease of City's because it was in violation of §9.2.5. a (5) of the City's noise ordinance; the Code states:

The playing of . . . any musical instrument in such manner . . . as to disturb any person, or . . . as to disturb the quiet, comfort or repose of any persons in any dwelling or other residence.

Jay Clarke of MCG stated that he was not aware that the restaurant was in default of its lease; he reported speaking with the Livability Officer on several occasions and that he had purchased a decibel meter to monitor the noise levels from musical entertainment at the restaurant. In Mr. Clarke's opinion, the City needed to change or fine-tune the ordinance. He took exception with statements that nothing has been done to alleviate the problem; he stated that he has turned down the music and was no longer booking loud bands.

Residents informed the Committee that they have called the restaurant on many occasions regarding the noise levels, but nothing had been done.

The Senator expressed the opinion that an acceptable noise level needed to be established and included in the lease.

The Committee voted unanimously to extend the lease renewal period for sixty (60) days, or until December 31, 2014 to give the restaurant time to correct the issues for which they are in default.



The Committee also continued negotiations of the leases for the Marina Outpost and Marina Joint Ventures. Brian Berrigan, marina manager, and consultant John Shaffer presented a conceptual drawing of a proposed up-fit for the marina parking lot, as well as a possible dry-stack for boats. The plan as presented would provide one hundred fourteen (114) dedicated car spaces, seven-teen (17) dedicated trailer spaces and thirty-one (31) flex spaces, as well as improve the traffic flow through the marina; the plan was estimated to cost one point one million dollars (\$1,100,000) to construct. Mr. Berrigan and Mr. Taylor, attorney, proposed lease amendments that would add an additional twenty (20) years to both leases for a total of thirty (30) years and, in order to implement the plan for the parking lot, lease abatement for seven (7) years, which would cost the City approximately one point seven million dollars (\$1,700,000). Since the amendment also included the tenant as the responsible party for capital replacements that are currently on the City's schedule as capital replacements, Councilmember Buckhannon fully supported the lease term of thirty (30) years. The next meeting was re-scheduled for November 17<sup>th</sup> to give Mr.

City Council  
November 18, 2014  
Page 9 of 14

Berrigan and Mr. Taylor sufficient time to negotiate further with the City Administrator in an effort to generate amendments that would be agreeable to both parties.

From the November 17<sup>th</sup> meeting, Councilmember Loftus reported that Jay Clarke of Morgan Creek Grill stated that he had met with the Mayor and the Administrator, and he agreed not to have amplified music outside the restaurant, and he apologized for the problem and expressed that the noise problem has been solved. Based on what has happened at Morgan Creek since October 28<sup>th</sup> and now as well as the pledge not to have amplified music outside, the Committee agreed that the restaurant was no longer in default and renewed the restaurant's lease for an additional five (5) years.

The Committee again discussed the marina leases with Brian Berrigan and Mr. Taylor, who presented changes to the amendment originally presented. Impacts to the City from the latest version of the amendment were as follows:

- The bulkhead, the storage tanks and the docks would remain City assets and the City's responsibility;
- The City would continue to be responsible for payment of dock insurance;
- Additional rent for Marina Joint Ventures would be fifteen percent (15%) of revenue in excess of one million dollars (\$1,000,000);
- Additional rent for Marina Outpost would be two percent (2%) of revenue in excess of seven hundred fifty thousand dollars (\$750,000); and
- Rent abatement would begin after the execution of capital improvements.

Impacts to the lessee were as follows:

- All marina store assets would be the responsibility of the tenant for maintenance and replacement;
- The annual rent adjustment would be determined by the CPI and would continue if a period of rent abatement occurred;
- Financial statements would continue to be sent to the City;

- Property taxes would continue to be the City's responsibility; and
- The tenant would have the flexibility to make capital improvements at his own expense, but the City would retain the right of approval of projects in excess of one hundred thousand dollars (\$100,000).

Capital improvement plans must be submitted to the City by January 1<sup>st</sup> of any given year to be considered in the City's annual budgeting process.

Committee members agreed that the parking lot at the marina needs to be upgraded, but financing should be worked out for the City to know how to proceed.

Councilmember Bergwerf opined that the cost of six hundred thousand dollars (\$600,000) to the private backer was too large and that a new source of funding for the parking improvement should be found.

City Council  
November 18, 2014  
Page 10 of 14

The Committee unanimously approved going forward with a thirty (30) year lease with any additional details to be worked out with the City Administrator.

Jay Clarke of Morgan Creek Grill confirmed that the restaurant would be in compliance with all City ordinances and all elements of the lease. Councilmember Loftus mentioned that some residents had been upset over the changes made to golf cart parking and a brief discussion ensued. Councilmember Loftus reminded Mr. Clarke that the City had purchased the marina for the residents after a referendum passed. Mr. Clarke stated that, for reasons of child safety, the golf cart parking has been re-located at the request of this insurance agent.

The Committee unanimously agreed that, if Morgan Creek Grill remained in compliance through November 30, 2014, the lease would be extended for five (5) years.

Phillip Smith, neighbor to the marina, showed photographs to the Committee on the view of the watersports dock from his property and commented that they had outgrown their space at the marina. He noted that the owners perform on-site maintenance of their equipment and have more sports items than are allowed in their lease. Mr. Smith asked that the watersports dock be relocated at the marina and away from his residence.

The next Real Property Committee will hold its next meeting at 5:30 p.m., Monday, January 12, 2015 in the Conference Room.

Administrator Tucker reiterated that two (2) motions had come from the Real Property Committee meeting of November 17<sup>th</sup> and that they needed to be affirmed by Council.

**MOTION: Mayor Cronin moved that, if Morgan Creek Grill remained in compliance until November 30, 2014, their lease would automatically renew on December 1, 2014 for a period of five (5) years; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.**

**MOTION: Councilmember Buckhannon moved to approve the lease renewals for the Marina Outpost and Marina Joint Ventures for thirty (30) years until 2045 contingent upon the attorneys working through the language of the amendments excluding rent abatement and parking lot improvements; Councilmember Bergwerf seconded.**

Councilmember Ward referred to the listing of impact considerations and noted that, in items 3 and 4, the term “gross profits” is mentioned; he asked for a definition of gross profits.

Administrator Tucker responded that the language was the same as in the current lease and the only changes were to the percentages. She confirmed that the language would be verified to be consistent for the amendments and the original leases. The Administrator explained that the word “revenues” could not be substituted for “profits” due to the matter of fuel sales; fuel sales is an amount they can deduct because the profit margin is negligible.

City Council  
November 18, 2014  
Page 11 of 14

Councilmember Carroll agreed with a long-term lease to give the tenant a right to invest money with a considerable time period to recoup the costs; he questioned why the City would continue to be responsible for the docks and underground storage tanks.

Mayor Cronin explained that the storage tanks remain the City’s responsibility for environmental issues. The Administrator added another reason was that the City owns the land, and, if it was possible to avoid the expense of replacing them and if anything was to happen, the City would still have the liability of the tanks.

In the Administrator’s opinion, if the City was to go back to the lessee on the docks, storage tanks and bulkhead, the lessee would not agree because he simply cannot afford it.

Councilmember Carroll questioned the potential for a dry-stack due to the limited space and parking; Councilmember Loftus repeated that the City has final approval on any capital improvements.

Councilmember Ferencz voiced her understanding of one of the reasons behind the extended term as a period of time for the lessee to recoup his investments for making capital improvements; since that is no longer a consideration, she asked what the City and the City’s residents were getting in exchange for the additional term.

Councilmember Buckhannon commented that, each year at budget time, lengthy discussions take place over what items on the Capital Plan need to be replaced at the marina and who should pay; for the FY15 budget, a ninety thousand dollar (\$90,000) walk-in freezer was due to be replaced. A major reason for the longer term was to take the responsibility for replacing these “high ticket” items off the City’s Capital Plan. He recalled asking Brian Berrigan what it would take for him to assume full financial responsibility for the maintenance and care of the Marina store and everything in it, and his response was simple in that he could not borrow hundreds of thousands of dollars with only a five (5) year lease. The parking lot improvements had nothing to do with the lease renewals at the marina.

Councilmember Ferencz questioned that fact that the City would not have approval of capital investments less than one hundred thousand dollars (\$100,000); she commented that one could do a great deal of change with that amount of money on each lease.

Councilmember Ward stated that the City was protected through the zoning regulations.

Administrator Tucker noted that the City's process of approvals can mean thirty (30) days as a best scenario, but sometimes sixty (60) days. As with many of the City's tourism destinations, the marina must make significant changes must be made in the off-season, such as closing the store to replace the coolers; therefore, they must be able to move quickly and efficiently. The Committee discussed notification on the items less than one hundred thousand dollars (\$100,000).

Councilmember Carroll, speaking as a marina owner, said that he knew how expensive it was when dealing with docks; he was concerned that the City was taking on the costs for a proposed

City Council  
November 18, 2014  
Page 12 of 14

reconfiguring of the marina docks. He was bothered that the City would reconfigure the docks for a tenant.

Administrator Tucker noted that the docks will need to be replaced at some future time; when that happens, if it makes better sense for a more efficient configuration, the work should be done at that time. The docks have been and will continue to be the City's responsibility. The Administrator said that she had recently learned that, since the City of Charleston has a long term lease for the City marina grant; they would be eligible for this grant.

Councilmember Ferencz commented that the Real Property Committee had an Executive Session at their meeting the previous evening; she asked if there was any information from that session that the balance of Council needed to know.

The Administrator responded that, if Council were interested in that Executive Session, it should go into Executive Session at this time. The majority of Council did not think an Executive Session was needed.

**Amendment: Councilmember Carroll moved to include the responsibility of the docks in the lease for Marina Joint Ventures; Councilmember Ferencz seconded.**

Councilmember Loftus stated that the tenant would not sign the lease if the docks were included;  
the reconfiguration or replacement of the docks would bankrupt the tenant.

Councilmember Ferencz commented that the tenant was entertaining the idea of dry-stack boat storage. Mayor Cronin noted that, unlike the docks, the boat storage would be a revenue generator.

Councilmember Buckhannon remarked that the lease as it exists today "explicitly" states that the City is responsible for certain items including the docks, the underground storage tanks, the

bulkhead and dredging that occurs. In addition, there are items which have been debated year after year for answer to the question "Whose responsibility is it for these items on the Capital Plan that are in the marina store?" The Councilmember indicated that he was particularly bothered by this on-going debate and supported a new lease that would clearly define who was responsible for what at the marina, eliminating any future debating.

Councilmember Ferencz agreed with Councilmember Buckhannon on the need for a clear delineation in the lease, but she added that she also saw it as an opportunity to add other items that would fall on the City that would in other circumstances be the responsibility of the tenant.

**VOTE on the Amendment: The amendment failed on a vote of 2 to 7; Councilmembers Carroll and Ferencz supported the motion.**

**VOTE on the Primary Motion: The motion PASSED on a vote of 7 to 2 with Councilmembers Carroll and Ferencz dissenting.**

City Council  
November 18, 2014  
Page 13 of 14

On a subject of Parliamentary Procedures, Councilmember Ward asked whether individual Councilmembers could attend Executive Sessions of committee meetings, and, if no, he wanted to know why.

Administrator Tucker stated that, in general, Councilmembers have been discouraged from attending committees on which they do not serve and, most definitely, discouraged from participating. The reason the City has taken this stance is FOIA; if one (1) member attended a meeting and a second arrived for same meeting, a quorum of Council would be present and the "Council" meeting had not been properly noticed. If a Councilmember were attending an Executive Session for a committee on which he does not serve, they would be considered participating in the meeting.

Attorney Halversen added that the perception by the public is key; the Attorney General has advised against it. It is not illegal for a Councilmember to attend another meeting, but the Attorney General's advice is not to participate, i.e. to speak out, to become involved in the discussion or to attend a committee's Executive Session. By advising IOP Councilmembers not to attend other committees helps to avoid the perception. The Attorney noted that each Councilmember has the opportunity to read the minutes and to go into Executive Session with full Council if desired.

Responding to Councilmember Ward, Attorney Halversen said that this is a gray area only in the fact that it is harder to defend if the City is challenged; the City does not keep records of Executive Sessions. The lack of a record is the reason that the Attorney General's opinion advises against it.

Councilmember Buckhannon said, when a Councilmember attends a committee meeting of which he is not a member, he attends as "John Q Citizen;" therefore, he has no right to attend the Executive Session.

Mayor Cronin noted that the Committee goes into Executive Session, but the Committee, at its discretion, has the right to invite others to attend.

Administrator Tucker encouraged Councilmembers to go into Executive Session at this time if any member(s) of Council feels that he does not have all the information necessary to make a decision.

Councilmember Carroll stated that an article on this topic was included in a recent publication of the Municipal Association, and it did emphasize that a committee non-member Councilmember should not participate in any way to include nodding agreement or disagreement.

**5. Reports from City Officers, Boards and Commissions**

- A. Accommodations Tax Advisory Committee** – minutes attached
- B. Board of Zoning Appeals** – no meeting in November
- C. Planning Commission** – minutes attached

**6. Reports from Special or Joint Committees – None**

City Council  
November 18, 2014  
Page 14 of 14

**7. Petitions Received, Referred or Disposed of – None**

**8. Bills Already in Possession of Council**

Second Reading of Ordinance 2014-11 – An Ordinance to Amend Section 8(A) of Ordinance No. 1999-20 of the City of Isle of Palms, South Carolina (The “Franchise Ordinance”) to Increase the Franchise Fee Payments from the South Carolina Electric and Gas Company (The “Company”) to the City of Isle of Palms (The “City”) from Three Percent to Five Percent of the Gross Sales Revenue from all Residential and Commercial Sales of Electricity; to Provide New Conditions and an Effective Date for Changing the Franchise Fee Percentage Rate; and to Provide a new Maximum Franchise Fee Percentage Rate.

**MOTION:** Mayor Cronin moved to suspend the reading and to approve for First Reading of Ordinance 2014-11 described above; Councilmember Bettelli seconded.

Councilmember Buckhannon asked who the other energy providers on the island were and was told that there are no others. He noted that the increase stated in the ordinance was sixty-seven percent (67%) that was going to be passed along to island residents.

Councilmember Carroll indicated that other communities in the area have had the franchise fee at five percent (5%) for some time.

**VOTE:** The motion **PASSED** on a vote of 7 to 2 with Councilmembers Ward and Buckhannon casting the dissenting votes.

**9. Introduction of New Bills, Resolutions and Proclamations**

**10. Miscellaneous Business**

Future Meeting Dates: 3:30 p.m., Tuesday, December 2, 2014  
6:00 p.m., Tuesday, December 2, 2014  
6:00 p.m., Tuesday, January 6, 2015  
6:00 p.m., Tuesday, January 27, 2015

- 11. Executive Session** to receive legal advice related to potential claims concerning the City's lease with Barrier Isles, LLC and to received legal advice related to potential claims concerning the City's proposed parking management plan – not needed

**12. Adjourn**

**MOTION: Councilmember Ward moved to adjourn the meeting at 8:08 p.m.; Councilmember Buckhannon seconded and the motion PASSED UNANIMOUSLY.**

Respectfully submitted:  
Marie Copeland  
City Clerk