

CITY COUNCIL

7:00 p.m., Wednesday, January 28, 2009

The regular meeting of the City Council was held at 7:00 p.m., Wednesday, January 28, 2009 in Council Chambers of City Hall located at 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the meeting were Mayor Pro Tem Rice, Council members Bettelli, Buckhannon, Cronin, Duffy, Loftus, Piening and Taylor, City Administrator Tucker, City Attorney Sottile, Deputy City Attorney Halversen, Assistant to the City Administrator Dziuban and City Clerk Copeland. There was a quorum present to conduct business.

1. Mayor Pro Tem Rice called the meeting to order and acknowledged that the press and the public had been duly notified of the meeting in accordance with the Freedom of Information Act. For the invocation, she read an inspirational poem that had been written by her great-grandmother entitled "The Eternal Question." The roll was called after the Mayor Pro Tem led the Pledge of Allegiance.

2. Consideration of Mayor Pro Tem

MOTION: Councilman Taylor moved to extend Mayor Pro Tem Rice's term for an additional month; Councilman Bettelli seconded.

MOTION: Councilman Duffy moved to amend the original motion for Mayor Pro Tem Rice to retain the title for the year 2009; Councilman Loftus seconded and the motion PASSED UNANIMOUSLY.

Call for the Question: The amended motion PASSED UNANIMOUSLY.

3. Reading of Journals of Previous Meetings

MOTION: Councilman Cronin moved to approve the minutes of the regular meeting of November 28, 2008, the Special Meeting of December 9, 2008 and the Special Meeting of January 6, 2009 as submitted; Councilman Bettelli seconded and the motion PASSED UNANIMOUSLY.

4. Citizens Comments

A. Announcement of 2008 Light It Up Holiday Lights Contest Winners

Commercial Winners:

- 1st Place: Windjammer
- 2nd Place: Wild Dunes Pavilion

Breach Inlet to IOP Connector:

- 1st Place: Parker Family, 704 Carolina Boulevard
- 2nd Place: Prentice Family, 401 Palm Boulevard

IOP Connector to 41st Avenue:

- 1st Place: Evans Family, 3301 Hartnett Boulevard
- 2nd Place: Leopold Family, 4 24th Avenue

41st Avenue to Wild Dunes:

- 1st Place: McArthur/White Family, 12 48th Avenue
- 2nd Place: Goosgree Family, 25 41st Avenue

B. Presentation by Perrin Lawson of the Charleston Visitors Bureau

Mr. Lawson's presentation was compiled into a PowerPoint handout; a copy is attached to the minutes. The following are key points he made that were not included in the handout:

- The federal per diem has been increased to \$141/day making it possible for governmental meetings/convocations/seminars, etc. to be held in Charleston;
- The Charleston Visitors Bureau is seeking to attract affluent, educated tourists;
- Their goal is not to bring more people, but to bring people who spend more; and
- Charleston Visitors Bureau has excellent relationship with "Southern Living" and, an upcoming issue will have a section devoted to the Charleston beaches – Folly, Isle of Palms and Kiawah.

The new visitors center in Mount Pleasant is scheduled to open in late spring, and it is anticipated that one hundred thousand (100,000) people will pass through its doors per year.

When asked by Councilman Loftus what the percentage of tourists were returning tourists, Mr. Lawson stated that the number is approximately sixty percent (60%) and the thirteen to fourteen percent (13-14%) of that group say they have visited Charleston eight to ten (8-10) times.

Mayor Pro Tem Rice asked what kind of budget the City would need if it were to decide to perform the services provided by the Visitors Bureau for itself; Mr. Lawson estimated two and one-half to three million dollars (\$2,500,000 to \$3,000,000).

Other Citizens' Comments:

Bev Ballow, 3009 Waterway, began her comments stating that she appreciated the service the members of Council give to the community. She stated that her purpose for addressing Council was to express her feelings about the new definition of "family unit" in the re-codified City code. She noted that she did not define a family as "a group of unrelated people, not limited to four (4) [which it is in the current code], constitutes a family on a short-term residency." She added, in her opinion, that would "include a fraternity of thirty (30) brothers and a lot of other things that [she] grew up to believe did not constitute a family." Ms. Ballow stated that she had searched for a legal definition

of the work “family” for residency purposes, but was unsuccessful. In conclusion she asked the following questions:

- How did this come about?
- Who started the change?
- Who suggested the change?

Barbara Bergwerf, 611 Ocean Boulevard, stated that she was a member of the Planning Commission. She noted that she had missed the December Planning Commission meeting, but had listened to the tape of that meeting in preparation for the January meeting. She reported that the change in the “family unit” definition was discussed at the December meeting, but, in her view, the Planning Commission had only devoted a minute to a minutes and a half discussing it before voting to approve it. Ms. Bergwerf commented that she thought the change was inappropriate. She also stated that she had researched Municode, the company hired for the re-codification, and did not find anything that suggested a group renting a property for a week should be considered a family. She, therefore, hoped that the Council would consider not including the new definition in the code.

Paul Reddy, 404 Merritt Boulevard, stated that the new definition of “family unit” conflicts with the goal of the Comprehensive Plan, which is to preserve the residential character of the Isle of Palms. He also expressed his opinion that this new definition was a threat to his property rights; he would prefer to see enforcement of the existing ordinance.

Jane McMackin, 35 32nd Avenue, stated that she had been a member of Council when the Short-Term Rental Ordinance was written and that the new definition appeared to be associated with that ordinance. She stated that, when the Short-Term Rental Ordinances were passed, the intent was to protect the residential neighborhoods; she thought the single family neighborhoods were being slowly and steadily eroded. Mrs. McMackin stated she thought the definition should stay as it has been or revised it to be more in tune with today’s families, but not to allow party groups to move in for the weekend to fit into the definition. In conclusion, she stated that she would like to see the City solve “the short-term rental issue that has been plaguing our community for a long time – just solve it by meeting it head on.”

5. Reports from Standing Committees

1. Ways and Means

- A. Recommendation from Accommodations Tax Advisory Committee to approve \$3,000 for General Government to print maps of Isle of Palms**

MOTION: Councilman Taylor moved to approve the Accommodations Tax Committee's recommendation for \$3,000 for General Government to print maps of the Isle of Palms to hand out to visitors to the island; Councilman Bettelli seconded.

Councilman Cronin remarked that the maps would not contain any advertising.

Call for the Question: The motion PASSED UNANIMOUSLY.

B. Recommendations from the Real Property Advisory Committee:

1. Award contract for Front Beach Parking Lots to Schupp Enterprises.

Councilman Taylor explained that for ten (10) years the City had a management group running the City parking lots. The contract for the management for the lots was put out in the fall and the City received one (1) bid; the Real Property Committee asked that the City Administrator do additional negotiating with that bidder. The Committee ultimately agreed to a contract with Schupp Enterprises.

MOTION: Councilman Taylor moved for approval of the contract with Schupp Enterprises for \$68,000 for 2009 and \$85,000 for the years 2010 through 2012 plus 15% of all proceeds in excess of \$85,000 for the term of the contract for management of the Front Beach Parking Lots; Councilman Cronin seconded.

Councilman Piening stated that he would vote against approval of this contract. He noted that the contract proposal had been given to Council immediately prior to the meeting; therefore, he had not had sufficient time to study it thoroughly. He said that, in the past, the parking lot contract had generated \$132,000 per year in revenue for the City; the bid of \$68,000 for 2009 was a substantial decrease. Through renegotiation, fifteen percent (15%) additional for all collections in excess of \$85,000 was agreed upon, but he was still of the opinion that the City's revenue would be too low. With a twelve percent (12%) decrease in the number of parking spaces, the decrease in revenue should be approximately sixteen thousand dollars (\$16,000), or \$116,000 per year. Considering the state of the economy, Councilman Piening offered two (2) theories, i.e. (1) there could be an increase in the number of people coming to the beach as they are unable to leave town to vacation, and, (2) if this is a major concern, possibly the term of the contract should be shortened to two (2) years to determine the trend.

Mayor Pro Tem Rice expressed her disagreement with Councilman Piening as to the number of spaces lost because of the construction of the Public Safety Building. She also remarked that the City was fortunate to be working with Schupp Enterprises.

Councilman Taylor stated that the twelve percent (12%) reduction may be correct, but it was an estimate that was made when Council studied the impact of the Public Safety Building on the smaller City parking lot. In addition to the twelve percent (12%), there is the total loss of the smaller lot through July 2009 and maybe longer due to the construction. He reported that the Committee had discussed, but decided against, increasing the fees to encourage parking in the lots and not the residential streets. The Committee also had discussed re-bidding the contract, but had agreed that to do so would be costly and would not guarantee different results.

Like Councilman Piening, Councilman Loftus commented on the lack of time to study the proposal before being asked to vote, but he repeated that there would be a loss every year of the contract that would require the City to cut some services or to make up the revenue in some other way.

MOTION: Councilman Loftus moved to amend the motion on the floor and to negotiate a one (1) year term of the contract to see the actual revenue with the current economy and construction, then to open the bidding again for an extended term; Councilman Piening seconded. The motion was DEFEATED on a vote of 3 to 6; Councilman Duffy, Loftus and Piening cast the only supporting votes.

Councilman Cronin informed the Council that the prior contractor had paid the City four dollars (\$4.00) for every five dollars (\$5.00) collected.

Mayor Pro Tem Rice recounted that Council knew that the construction of the Public Safety Building was going to have a lasting negative impact on the City's parking lot revenues. She, in addition, reminded Council that the Committee had worked on this contract for months and had negotiated a contract that they felt was in the best interest of the City; therefore, she was of the opinion that the Council should respect the Committee's recommendations.

Call for the Question: The motion to award the contract for the Front Beach parking lots to Schupp Enterprises according to the terms stated in the original motion PASSED on a vote of 6 to 3; Councilmen Duffy, Loftus and Piening cast the "nay" votes.

2. Approval of Bulkhead Replacement Change Order #1 to relocate the above ground electrical junction box for \$1,949.64.

Councilman Taylor explained that this change order to relocate the junction box underground accomplished two (2) things in that it eliminated the need for the City to purchase additional cable that would be needed if the box were left where it is and placed the pedestal at ground level to be more aesthetically pleasing.

MOTION: Councilman Taylor moved to approve Bulkhead Replacement Change Order #1 for the relocation of the above ground electrical junction box for \$1,949.64; Councilman Buckhannon seconded and the motion PASSED UNANIMOUSLY.

3. Consideration of Change Order related to placement of electrical lines and the relocation of water lines during the Bulkhead Replacement Project.

Councilman Taylor reported that he had sent an email to Council members the prior evening stating his desire to remove this item from the agenda. He recalled that it had been discussed at Ways and Means, but many questions still remained to be answered. He related that Administrator Tucker had met with two (2) separate teams yesterday and learned that the information the Council had received "was in a fluid environment and might change . . . going forward." He continued that the Administrator would contact Council members when she was comfortable with the information, and the change order(s) would be added to the appropriate meeting or a Special Meeting would be called, if necessary.

Councilman Taylor asked to suspend the rules to remove item 5,A,B3; Councilman Cronin seconded.

C. Recommendation from the Public Safety Committee to approve Change Order #6 for the Public Safety Building for additional data/telephone and power receptacles in the Dispatch area for \$759.61.

MOTION: Councilman Taylor so moved; Councilman Bettelli seconded and the motion PASSED UNANIMOUSLY.

D. Recommendation from the Public Works Committee to approve \$3,200 from the Short-term Drainage Contingency Fund for Eadies Construction to clean the piped ditch from the large parking lot on Front Beach to 14th Avenue and Ocean Boulevard.

MOTION: Councilman Taylor so moved; Councilman Bettelli seconded and the motion PASSED UNANIMOUSLY.

B. Public Safety Committee

Chairman Buckhannon reported that a resident had come to the Committee requesting a change at the end of 25th Avenue; the Committee agreed to work with SCDOT to determine the best course of action at that location. In addition, Administrator Tucker and Chief Graham displayed the Silver Award that had been awarded to the City for Fire Station 2 by "Fire Chief" magazine. The Committee discussed and agreed to move forward with Change Order #6 in the Dispatch Area for the Public Safety Building. The Chairman reported that Administrator Tucker proposed moving certain expenses related to the alarm system and hardware for the doors to become a part of the Mashburn contract and not a responsibility for the City; the Committee agreed with the realignment of these expenses. The Committee decided to submit the following prioritized list of projects to CTC for funding:

1. The 54th to 57th Avenue Drainage project;
2. Improvement to and beautification of the 41st Avenue bike path; and
3. Island parking study to be divided into three (3) zones.

The Public Safety Committee reviewed the draft ordinance for regulating radio communications in large commercial buildings; the ordinance was sent to Council for consideration. On the subject of radios, there was a discussion of the ongoing issues with the new radio system. It was announced that the annual ALS Race would be held on Saturday, May 30, 2009.

Administrator Tucker stated that Council members could receive communications from residents related to actions at 25th Avenue; historically, actions taken by Council at that location have generated both positive and negative feedback. Additionally, she mentioned that the Committee had discussed the value of having a dedicated Livability Officer, and the Committee expressed continued support for a full time Livability Officer. Since the position has been vacant for several months, the Administrator and Chief Buckhannon thought it prudent to discuss the issue at the Committee level before filling it.

C. Public Works Committee

Chairman Bettelli informed Council that Bev Ballow had told the Committee that she was developing a website dedicated to ways that people could reduce residential trash and had asked that the Committee communicate any ideas they might have on the subject. Director Pitts had explained that the City had experienced problems with the sign shop at Charleston County relative to which party was to provide the materials for signs; the Chair has learned, since the meeting, that Charleston County was responsible and the signs have been started. In the report on key drainage areas, the

Director reported that Eadies had cleaned and re-cut the ditch between 20th and 21st Avenue. The update on the debris removal RFP was that it had been advertised, responses from vendors were to be submitted by January 30 and the bid opening would be March 4, 2009.

As voted on earlier, the Committee acted on the proposal to contract with Eadies to clean the ditch between the large parking lot on Front Beach and 14th and Ocean Boulevard. Arrangements have been made with Charleston County to have another Hazardous Household Materials Collection from 9 a.m. until noon on Saturday, March 14, 2009; as before, residents can bring their items to the large parking lot on Pavilion. In conclusion, the Committee discussed projects to be put forward to CTC for consideration; the Public Works Committee's prioritized list was as follows:

1. the 54th to 57th Avenue Drainage project,
2. Lauden Street drainage project;
3. 41st Avenue bike path and beautification;
4. 41st to 57th Avenue bike path; and
5. island parking study to be divided into three (3) zones.

D. Recreation Committee

Chairwoman Rice reported that following the departmental report, the Committee had discussed how great the annual tree lighting had been and ways to improve it. On the subject of Christmas events, Administrator Tucker reported that there had been a request for the City to re-schedule the tree lighting, which has traditionally been held on the first Thursday in December. The Committee discussed options ranging from moving the time back or forward to a change in the date; in the end, the Committee agreed that to change the time or date created conflicts with other events or a hardship on those participating, so there would be no change. Chairwoman Rice noted that February was going to be a busy month for the Recreation Department with the following events taking place:

- The Lowcountry Blues Bash on Saturday and Sunday, February 7 and 8;
- Productions of "Alice in Wonderland" will be held at 7 p.m. on February 19-21; tickets are \$5.00 in advance as space is limited; and
- "Doggie Day at the Rec" will be held on Saturday, February 28.

E. Personnel Committee

Chairman Piening announced that the floating holiday for 2009 was set for December 24; based on an employee survey done in December 2008, this was the preferred date. The primary issue before the Personnel Committee for this year will be establishing criteria for a "pay for performance" method of awarding pay increases to City employees. The goal is to have the plan in place by October 2009 allowing

Department Heads time to acquaint themselves and their personnel with the elements of the new policy and to implement it in January 2010. Concluding his report, Chairman Piening stated that Pfc Gerardo Chavez had been selected "Employee of the Month" for January for the actions he took to disarm a subject who was attempting to inflict serious bodily damage to herself.

6. Reports from City Officers, Boards and Commissions

- 1. Board of Zoning Appeals** – minutes unavailable when packets prepared
- 2. Planning Commission** – minutes unavailable when packets prepared

Councilman Duffy asked why the minutes for the Board of Zoning Appeals and the Planning Commission were "unavailable;" Administrator Tucker explained that the Building Director who serves as secretary to these committees was on paternity leave. Councilman Duffy questioned why the Chair of the Committees could not assume that duty until the Building Director returned from leave. Mayor Pro Tem Rice assured Councilman Duffy that the minutes from the January meetings of the Planning Commission and the Board of Zoning Appeals would be provided to members of City Council as soon as possible.

3. Real Property Advisory Committee

Chairman Cronin reported that the meeting began with an update on the bulkhead replacement project and a discussion of the relocation of the electrical junction box, that was approved earlier. There were other issues related to the project, but the Committee did not feel that they had sufficient information to proceed with them. Chairman Cronin noted that there had been an extended dialogue on the one (1) bid received for the Front Beach parking lot contract and the options open to the City. Ultimately, the Committee had requested that the City Administrator enter into further negotiations with the bidder in hopes of coming to an agreement that would be good for both parties. He related that the City Administrator had suggested that the Real Property Advisory Committee assume responsibility for overseeing the Beach Restoration Project, which would provide Committee study and recommendations prior to being presented at Ways and Means. Following the marina report, Marina Manager Berrigan had asked to be allowed to renovate the dock office, install a laundry and remove two (2) unattached pilings at the north end of the feeder docks at his expense; the Committee approved his request. Chairman Cronin reported that Carla Pope of the Morgan Creek Grill and Manager Berrigan had reminded the Committee that 2009 is the tenth year that the City has owned the marina and that the marina tenants wanted to have a celebration on this tenth anniversary; as plans unfold, Council will be kept informed.

7. Reports from Special or Joint Committees

Accommodations Tax Advisory Committee – minutes attached

8. **Petitions Received, Referred or Disposed of - None**

9. **Bills Already in Possession of Council - None**

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

A. First Reading of Ordinance 2009-01, by title only, An Ordinance Amending section 1-3-31 of the City of Isle of Palms Code of Ordinances to Create a Standing Committee Known as the Real Property Committee.

Administrator Tucker stated that, based on the importance of the matters that come before the Real Property Committee, conversations had taken place over the past year that the Committee should become a standing committee of Council; therefore, this ordinance is before the Council.

MOTION: Councilman Taylor moved to approve Ordinance 2009-01 for first reading; Councilman Bettelli seconded and the motion PASSED UNANIMOUSLY.

B. First Reading of Ordinance 2009-02, by title only, An Ordinance Amending Section 5-4-58 of the City of Isle of Palms Code of Ordinances Relating to the Granting of Variances.

C. First Reading of Ordinance 2009-03, by title only, An Ordinance Amending Sections 5-4-2 and 5-4-12 of the City of Isle of Palms Code of Ordinances relating to the Height of a Structure.

Administrator Tucker asked permission of the Chair to take Ordinances 2009-02 and 2009-03 together because they are companion ordinances. They are the result of a discussion at the November Council meeting that centered on height variances granted for elevator shafts by the Board of Zoning Appeals. She recalled that, after that meeting, she had sent an email to all members of Council detailing the options available to Council on the subject; the modification of the existing code was one (1) of the options listed. The two (2) sentences added to Ordinance 2009-02 are as follows:

- A claim of unnecessary hardship cannot be based on conditions created by the applicant.
- A claim of unnecessary hardship cannot be based on financial hardship of the applicant.

The changes to Ordinance 2009-03 alter, by reduction of language, the means by which there would be consideration for an exemption. The elevator shafts were being allowed by an interpretation by the Board of Zoning Appeals to specific language in the existing

ordinance. The legal opinion is that through, re-wording and deletion of other words, the gap has been closed, but Council must keep in mind that ultimately the decision would be subject to an interpretation by the Board of Zoning Appeals at the time that they were considering one of these situations.

Administrator Tucker referred to her email that, in any new ordinance, there could be unintended consequences. She cautioned the Council that, if this ordinance were to be ratified, there would be a number of non-conforming structures on the Isle of Palms. If any of these buildings were to be damaged more than fifty percent (50%), when the owners wanted to re-build, those structures would require relief from this ordinance in order to be constructed exactly as they had been. A decision would be based on the new ordinance, not the code in place when the structures were originally built; examples were the height of a church steeple, existing elevator shafts, etc.

Administrator Tucker commented that she did not believe that she was given a clear directive by City Council in the November meeting to bring these ordinances forward, but she did sense an intensity of concern about the height variances. Based on that concern, she took action to get these two (2) ordinances written.

Councilman Taylor stated that he was one of the Council members who was surprised to see these ordinances on the agenda; he noted that, in the past, ordinances had been created because the majority of Council had requested it. He recalled that three (3) members of Council had spoken about the height variances, but it was not a majority of Council. The City had incurred substantial costs to have these ordinances written – that of the City Administrator and Building Director, as well as the City Attorney. Councilman Taylor indicated that the Administrator must be given clearer direction in the future even if it passage of a motion to guide her.

MOTION: Councilman Taylor moved to send Ordinance 2009-02 and 2009-03 to the Planning Commission for review prior to first reading; Councilman Buckhannon seconded and the motion PASSED UNANIMOUSLY.

D. First Reading of Ordinance 2009-04, by title only, An Ordinance Amending Title 5, Chapter 16 to Require Minimum Standards to Ensure a Reasonable Degree of Reliability for Radio Communications to the City's Public Safety Emergency Services.

Administrator Tucker stated that this ordinance has come as a result of study and reading about how other municipalities have handled the problem of radio communications in large steel and concrete structures; the typical "fix" has been to require that these things to be taken care of when buildings are constructed so that public safety agencies do not have the expense. The City has borne the expense of

resolving communication problems in Phase 1 of The Village when the Fire and Police Departments learned they could not communicate by radio within the structure.

MOTION: Councilman Loftus moved to approve First Reading of Ordinance 2009-04; Councilman Betteli seconded.

Councilman Cronin questioned why this was not a part of the building codes to protect municipalities. Administrator Tucker answered that Director Kerr had contacted the Building Code Congress for South Carolina when the issue was first discussed; he was led to believe that action was coming, eventually. The City Attorney and the Building Director believed this was the best course of action for the City's protection.

Councilman Loftus stated that it appeared to him that the ordinance covered both residential and commercial structures; Administrator Tucker confirmed his understanding.

Call for the Question: The motion to approve Ordinance 2009-04 for First Reading was APPROVED UNANIMOUSLY.

11. Miscellaneous Business

Administrator Tucker reported to the City Council that she has requested a meeting between Chief Buckhannon, Chief Graham, a representative from Wild Dunes, the project consultant and herself on the restoration of the Ben Sawyer Bridge. After this initial meeting, she has asked that a presentation be made to Council relative to the bridge work and the effect to traffic on Isle of Palms; the Administrator added that she has also requested public meetings. In conversations with the consultants, she has emphasized that Isle of Palms would probably experience the greatest impact from traffic diversion of the entities involved, but the City needs to know what to expect and to be prepared.

12. Executive Session to receive legal advice related to Zoning: Definition of Family

MOTION: At 8:28 p.m., Councilman Bettelli moved to go into Executive Session to receive legal advice; Councilman Cronin seconded and the motion PASSED UNANIMOUSLY.

Mayor Pro Tem Rice announced that there had been no votes cast and no action taken in Executive Session when Council returned to regular session at 9:16 p.m.

13. Adjourn

MOTION: Councilman Taylor moved to adjourn the meeting at 9:18 p.m.; Councilman Buckhannon seconded and the motion PASSED UNANIMOUSLY.