

**PUBLIC SAFETY COMMITTEE**  
9:30 a.m., Wednesday, January 7, 2015  
Public Safety Building Training Room

The regular meeting of the Real Property Committee was held at 9:30 a.m., Wednesday, January 7, 2015 in the Training Room of the Public Safety Building, 30 J.C. Long Boulevard, Isle of Palms, South Carolina. Attending the meeting were Councilmembers Bergwerf, Bettelli and Carroll, City Administrator Tucker, Attorney Halversen, Assistant Administrator Dziuban, Fire Chief Graham, Police Captain Usry and Clerk Copeland; a quorum was present to conduct business.

1. Administrator Tucker called the meeting to order acknowledged that the press and public had been duly notified of the meeting in accordance with the Freedom of Information Act.

**2. Election of Chair and Vice Chair**

Councilmember Bergwerf nominated Councilmember Bettelli for Chair; Councilmember Carroll seconded and Councilmember Bettelli was voted unanimously to serve as Chair.

Councilmember Bettelli nominated Councilmember Bergwerf as Vice Chair; Councilmember Carroll seconded; the vote for Vice Chair was unanimous in favor of Councilmember Bergwerf.

**3. Approval of Previous Meeting's Minutes**

**MOTION: Councilmember Carroll moved to approve the minutes of the regular meeting of November 6, 2014 as submitted; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.**

4. **Citizens' Comments – None**

5. **Old Business**

**A. Consideration of Amendments to the City's Noise Ordinance**

Administrator Tucker noted that the current discussions of the noise ordinance were relative to the complaints the City has received from residents about amplified music emanating from the outdoor stage at Morgan Creek Grill (MCG).

**MOTION: Councilmember Carroll moved to reorder the Agenda to hold the Executive Session at this juncture in the meeting; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.**

9. **Executive Session** to receive legal advice related to potential claims concerning the City noise ordinance.

**MOTION: Chair Bettelli moved to go into Executive Session at 9:36 a.m. to receive legal advice about potential claims related to the City's noise ordinance; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.**

The Committee came back to regular session at 10:12 a.m.; Chair Bettelli announced that the Committee had not taken a vote or any action while in Executive Session.

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Chair Bettelli stated that he has mixed feelings about amending the noise ordinance; he acknowledged that the City is not treating Morgan Creek Grill the same as other businesses on the island because it is located in a residential area. In his opinion, the City should give its utmost consideration to what will and will not be allowed at Morgan Creek Grill.

Councilmember Bergwerf commented that the complaints were coming from residents who have been suffering, but she also heard complaints about the noise from Morgan Creek Grill when she was campaigning for Council. Residents told her they could not use their decks because of the noise. In her opinion, solving this problem was almost impossible because, if outside music is to be allowed, it will annoy the surrounding residents, especially at 10:00 p.m.

Councilmember Carroll indicated that he agreed with Councilmember Bergwerf about hearing the same kind of complaints from residents. Not only is the time important, but he thought that a consideration should also be given to a smaller radius of sound. He suggested that the City talk with the other businesses to inform them that the City is considering changes to the noise ordinance and possibly get some input from them. Both the local businesses and those affected by the noise at Morgan Creek Grill need to know that the City is trying to work with everybody.

Attorney Halversen reviewed the suggestions for changes to the existing noise ordinance as follows:

- A definition section at the beginning of the ordinance to define the terms used throughout the ordinance;
- A clarification in §9-2-5 a.(3) for enforcement purposes by adding the words “outdoor” and “owned or under control” lessening the determination of whether the marina is a public place or not;

Councilmember Carroll recalled that a City-sponsored music event was held at the Recreation Center that was well-attended, and the musicians did have small amplifiers attached to their instruments. He, therefore, stated that the City must be careful that, whatever the City decides, it would have far-reaching implications.

According to Administrator Tucker, there is a provision in the Code that the Police Department can give permission for events like that and the street festival.

Councilmember Carroll asked Captain Usry if the Police Department received complaints from neighbors to the Front Beach area on the weekends. The Captain acknowledged that such calls do come in and that the “Dinghy” has begun to generate complaints about their outside music.

Captain Usry explained that the officer first responds to the person who generated the complaint to determine, from their standpoint, what they are hearing from inside their residence; once substantiated, the officer would go to the business. The Captain noted that residents often do not want to become that involved and will not allow the officer into their home.

Councilmember Bergwerf asked if tickets were ever issued on the first complaint and the Captain said that a ticket is rare on a first complaint; more often, the ticket would be issued on the second complaint.

Responding to a question about, hypothetically, receiving ten (10) complaints in one (1) evening about a particular business, Captain Usry said it would be shutdown.

Councilmember Carroll commented that more and more businesses are venturing into outdoor music, so now is the time for the City to make a stance.

Since the issue is outdoor music, Chair Bettelli suggested turning the issue to the Planning Commission.

Administrator Tucker stated that she was getting mixed messages. Putting herself in the position of the owner/manager of one of these business, she would argue that the patrons of the venue like the music and that they would have a difficult time sustaining their business without it; the music offering is a substantial draw for the business. The Administrator indicated that outdoor music has not been discouraged until this time, provided it is done within the confines of the Code.

If the City does wish to discourage it, then other sections of the City Code, to include zoning sections, would need review that could limit it for future establishments. The Administrator opined that the City could not “squeeze-down” the businesses that have been providing outdoor music for a long time.

Councilmember Carroll suggested staying with the public piece; it would give the community the knowledge that Council hears its residents and wants the island’s businesses to thrive, but the primary concern is the residents.

Attorney Halversen continued with §9-2-5 a.(5) directed at radios, phonographs, televisions, etc. and recommends adding the words “use, operation or playing of or permitting the use, operation of playing” . . . to make it stronger. The Attorney noted that enforcement of the noise ordinance typically falls under §9-2-5 A. (3) and (5) of the City Code.

As an alternative to adding amplified music to §9-2-5 a.(5), the City could adopt §9-2-5c that solely addresses amplified music; in it, amplified music has set hours when it will be acceptable. In the Folly Beach ordinance, an extension of the ending time is allowed for indoor music.

In §9-2-5g, Attorney Halversen suggests the enforcement procedure for the Police Department can be tweaked by the Police Department if needed. As presented, the ordinance talks to a second complaint within two (2) hours of the first, from the same residence and for the same source of music.

The last section focuses on enforcement factors; this may need to be changed by the Police Department; the Attorney said that she thought these factors give the Police Department a bit more flexibility and more defenses when they are constructing the citations.

Administrator Tucker asked Captain Usry to explain who receives a ticket when a complaint is lodged, the performer or the entity that hired them. The Captain replied that the entity would be cited, not the performer. The Captain further explained that, when a complaint is filed on a rental property, the property-owner would receive the ticket, not the people who are generating the noise.

Administrator Tucker posed another situation to Captain Usry – if a party were being held at one of the pools in Wide Dunes and there are multiple complaints requiring a police response, who would get the ticket. According to Captain Usry, someone is typically assigned to manage the event, and the officer(s) seek out this person or locate the manager that is on duty.

Along the same subject, Councilmember Carroll remarked that he has friends who live near Grand Pavilion who are not very happy; he asked how many complaints the police receive about noise emanating from Grand Pavilion. Since Wild Dunes has hired off-duty officers during the summer months, there have been fewer complaints; the visibility of the officers appears to keep the noise down.

In earlier discussions, a decibel-based regulation was suggested; Attorney Halversen advised that, in the Coconut Joe's litigation, the Court said that the total ban on amplification would not be allowed. The City could go to a regulation based on time and place or decibel-based regulations; the City could chose a time and place regulation. The Attorney voiced the opinion that the decibel-based regulation would be hard for the Police Department to enforce; she explained that there was an infinite number of points where one (1) can measure and the equipment must be certified, calibrated and updated each year.

Attorney Halversen noted that the decibel count could be added, and she referred the Committee members to the ordinances from Myrtle Beach and Columbia as examples. In her opinion, the decibel count could be an issue for law enforcement, would be more complicated and would require more research.

In another noise ordinance, Attorney Halversen saw a watt-based regulation where the wattage is measured at the point of amplification, meaning that the amplifier could only be turned up to a specific number of watts; this was easier to enforce because the officer simply goes to the machine and taking the readings. Although the Courts have approved this method, to-date, Attorney Halversen has not found a good example; in addition, the Courts said that the local government must determine what is reasonable.

Some of the ordinances that the Attorney researched state a fine for the first offense of the noise ordinance and that the party would be assigned to the municipal judge for subsequent offenses. Beaufort has established a Nighttime Music District overlay with different restrictions from other commercial districts. At Folly Beach the noise ordinance establishes hours for amplified music on deck and porches versus indoors.

The final suggestion was to define violation of the noise ordinance as a nuisance; the City could suspend or revoke a business license based on the nuisance. The City's business license states that a business license can be suspended or revoked based on a nuisance that is occurring or

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has been allowed to occur at an establishment; Attorney Halversen was of the opinion that this would give the City a much stronger position than imposing a fine.

Based on the modifications Attorney Halversen has made to the City's noise ordinance, amplified music will be prohibited at Morgan Creek Grill; other modifications made relate to enforcement in general.

Chair Bettelli said that he could not see taking amplified music totally away from Morgan Creek Grill, but wanted to find an area when it can be allowed within reasonable limits.

In addition to time to absorb the information provided, Councilmember Carroll would like Councilmembers to talk to the businesses to let them know that the City is doing its best to help them stay in business with music and, at the same time, explain to them that the residents come first.

As far as the other businesses on the island offering amplified music, Administrator Tucker commented that the only thing to say to them is that the City is considering modifications to the noise ordinance and that they may want to be involved and to provide input if it may affect their business in some way.

When Councilmember Bergwerf asked what the next step was, Administrator Tucker stated that the item could stay on the Public Safety Committee for further discussion in February or the versions discussed could be added to the Council Agenda for First Reading and consideration.

Councilmember Carroll suggested sending the revised ordinance to City Council for consideration, but to send it well in advance to allow study time.

Both Administrator Tucker and Attorney Halversen agreed that the revision should be added to the Council Agenda for the purpose of discussion, not First Reading.

**MOTION: Councilmember Carroll moved to forward the modified version of noise ordinance to the City Council Agenda for discussion, not for First Reading; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.**

#### **B. Status of RFB on the Fire Truck**

Chief Graham reported that the RFB had been sent directly to seven (7) vendors and was on the City's website. Questions on the RFB had to be submitted by January 12, 2015 and the bid opening is set for Tuesday, February 3, 2015.

Councilmember Carroll asked whether any changes had been made for this version of the RFB; Chief Graham replied that the trade-in was taken out of this version to make it easier for bidders.

Negotiations for the sale or trade-in of the truck being replaced will take place at an unspecified time in the future.

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### **C. Update on Golf Carts**

Administrator Tucker remarked that the copy of a proposed change to state law was included in the meeting packet; the legislation was drawn up by Senator Campsen at the City's request. The hope is that the changes will go through because they would allow for an interpretation of the golf cart code that would make it possible for someone to get from the 21<sup>st</sup> Avenue end of the island to the Breach Inlet end of the island via the right-of-way along Palm Boulevard.

The stipulations of the change are that, if the local government allows it, SCDOT will allow it as long as there is four feet (4 ft.) of right-of-way or greater or a curb providing a safety separation between the golf carts and the primary road.

The Administrator stated that golf cart law changes have not been very successful in the past, but should not bother the association that govern eighteen-wheelers (18 wheelers) and large vehicles that would be driving on primary roads. Since this change to the law would have golf carts off the main thoroughfare, the hope is that no objections will be raised.

When Councilmember Carroll said that the change would only affect the area from 21<sup>st</sup> Avenue to the shopping center, the Administrator commented that she has not evaluated the entire island to see whether there are other areas on the island affected.

### **D. Review of Kennel Usage**

Captain Usry noted that the schedule has been updated to include the last two (2) months of 2014; for the year, sixty-three (63) animals were housed in the kennel for some period of time.

Councilmember Carroll reported that he has made a trip to the PSB to see the kennels and thought that they looked good and were well maintained.

Chair Bettelli suggested having a heater to be activated on cold days and to take temperature readings.

## **6. New Business**

### **Discussion of Goat Island Noise Complaints**

As stated before, the City does not have jurisdiction over Goat Island; therefore, when a noise complaint is called to the IOP Police Department, officers will respond to the complainant, but the City has no ability to respond to Goat Island. Goat Island is under the jurisdiction of

Charleston County, and their officer(s) would be dispatched for a noise complaint there. The City's officer can respond to the caller, take the information and write an incident report to facilitate the County's officer(s).

Administrator Tucker informed the Committee that she has reached out to the entity on Goat Island who arranges events as a courtesy and told him that the City has received noise complaints; the Administrator also sent him a copy of Charleston County's noise ordinance.

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IOP officers are trying to get the phone number for the person who arranges the events so that they try to notify him that a complaint has been made.

## **7. Highlights of Departmental Reports**

### Fire Department – Chief Graham

Chief Graham reported that on November 30<sup>th</sup>, personnel responded to a structure fire on Merritt Boulevard where someone had left a pot on the stove; although there was minimal damage, personnel had to cut a hole in the roof that they patched before leaving. In the month of November, personnel responded to fifty (50) calls and twenty (20) calls were for EMS. Six (6) pre-incident surveys and twenty-five (25) fire inspections were performed. In the month, personnel led a number of tours and helped people up and down stairs; in addition, Captain Eagle and Engineer Puckhaber held a CPR class that was attended by fourteen (14) residents of Wild Dunes.

On December 23<sup>rd</sup>, personnel responded to an elevator rescue involving one (1) person; once the person was removed from the elevator, personnel advised the homeowner to have the unit serviced before using it again. Personnel responded to a total of sixty (60) calls in the month and twenty-five (25) calls were for EMS; eleven hundred thirty-two (1,132) incident reports were produced in 2014. Six (6) residential fire inspections were done in December; twenty-eight (28) re-inspections revealed eighty-eight (88) violations. An average of thirty-six point nine (36.9) hours of training for personnel in December.

Councilmember Carroll asked whether firefighters are required to have a specified number of training hours each year. Chief Graham replied that the training requirement is twenty (20) hours per month. Repairs to the radiator for the ladder truck are expected to be in the neighborhood of four thousand dollars (\$4,000). Again, personnel led a number of tours and helped several people up and down stairs.

The annual Safety Audit was submitted online and the score has not come in, but Chief Graham is confident that it will exceed one hundred percent (100%).

Councilmember Carroll described the City's participation in the funeral for former Mayor Carmen Bunch as "phenomenal."

### Police Department – Captain Usry

In the month of December, officers had nine (9) DUI arrests; on December 2<sup>nd</sup>, a theft from a motor vehicle was reported; someone entered the unlocked vehicle and stole a handgun. The owner had the gun's serial number which has been entered into NCIC. On December 19<sup>th</sup>, an alarm activation sent officers to an address on the four hundred (400) block of Palm Boulevard; a door had been forced open and officers found that a TV had been stolen and there was evidence that they had tried to remove a TV from the wall. In processing the scene, Sergeant Swain succeeded in getting some very good prints; officers are waiting for SLED and North Charleston's AFIS to give the City some suspects. On December 20<sup>th</sup>, officers responded to a noise complaint

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and discovered a number of minors gathered around a fire on an empty lot in the three hundred (300) block of Palm Boulevard; twenty-two (22) youths were charged with alcohol violations. In the month of December, dispatchers received five thousand eight hundred twelve (5,812) calls; five thousand three hundred three (5,303) were for the IOP Police Department. Officers made four hundred eighty-two (482) traffic stops that resulted in one hundred forty-eight (148) tickets. From the Livability Report, Captain Usry stated that seven (7) noise complaints were filed for the month and five (5) complaints for barking dogs were filed; officers wrote two (2) warnings and one (1) citation.

Referring to past problems, Councilmember Carroll noted that checks and balances have now in place for the Police Department.

Captain Usry reported that a bar code system has been implemented for evidentiary property that goes into the evidence room; in addition, more frequent audits of the evidence room are being conducted by personnel from the evidence room at the City of Charleston. The last such audit was performed in mid-December and the City will receive the report soon.

## **8. Miscellaneous Business**

Administrator Tucker said that the City gets notifications periodically from the various entities that re-surface roads; they include Transportation Sales Taxes (TST), the County Transportation Committee (CTC) and SCDOT. Transportation Sales Tax will be re-surfacing 2<sup>nd</sup> and 3<sup>rd</sup> Avenues; in addition there will be some re-surfacing of Ocean Boulevard from another entity at the County. Still slated to be done by the County Transportation Committee is Palm Boulevard from 41<sup>st</sup> to 57<sup>th</sup> Avenues that is scheduled to be done in the off-season.

Chair Bettelli reminded those present about the Polar Plunge to benefit Special Olympics will take place behind the Windjammer on Saturday, February 28<sup>th</sup>.

Next Meeting Date: 9:30 a.m., Tuesday, February 10<sup>th</sup> in the Conference Room.

Councilmember Carroll referred the Committee to the minutes of the November 4<sup>th</sup>, 2014 meeting; on page 6, paragraph 2, words are missing that make the sentence unreadable.

Chair Bettelli announced that Friday, January 9<sup>th</sup> will be National Law Enforcement Appreciation Day.



9. **Executive Session** – not needed

10. **Adjourn**

**MOTION: Councilmember Carroll moved to adjourn the meeting at 11:28 a.m.; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.**

Respectfully submitted:

Marie Copeland, City Clerk