

MINUTES
CITY COUNCIL MEETING
May 23, 2017
3048 S. Atlantic Ave. Daytona Beach Shores, FL 32118

Present: Council Member Lorraine Geiger, CouncilMember Mel Lindauer, CouncilMember Richard Bryan, Mayor Harry Jennings, Vice Mayor Peggy Rice. *Staff: City Manager Michael Booker, Executive Secretary Janice McMahan, City Attorney Lonnie Groot, Community Services Director Fred Hiatt, Finance Director Steve Whitmer, and Public Safety Director Stephan Dembinsky.*

1. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:
Employee Service Awards

Director Hiatt presented a five-year service award to Andy Hyatt.
Director Dembinsky presented a five-year service award to Officer Vincent Castellano.

Director Dembinsky commented on the events of May 22nd and advised it was a very difficult situation, but was handled in the best way possible. No one was hurt and the person in question would receive help. He was sorry that some residents were inconvenienced.

2. APPROVAL OF THE MINUTES: May 9, 2017 City Council Meeting

CMBR RICE moved, seconded by CMBR GEIGER to approve the minutes of May 9, 2017.

Vote: Motion carried by unanimous roll call vote (**summary: Yes = 5**).

Yes: Council Member Lorraine Geiger, CouncilMember Mel Lindauer, CouncilMember Richard Bryan, Mayor Harry Jennings, Vice Mayor Peggy Rice.

3. CONSENT AGENDA:

- Monthly Departmental Reports
- Monthly Financial Reports

CMBR GEIGER moved, seconded by CMBR RICE to approve the consent agenda.

Vote: Motion carried by unanimous roll call vote (**summary: Yes = 5**).

Yes: Council Member Lorraine Geiger, CouncilMember Mel Lindauer, CouncilMember Richard Bryan, Mayor Harry Jennings, Vice Mayor Peggy Rice.

4. REPORTS OF THE CITY ATTORNEY:

Attorney Groot spoke on the sunshine law and digital meetings as well as the proposal to have an ongoing blog, which is in the nature of a digital meeting. The city would need to have someone present to oversee the IT system and computers made available by the city. He

referenced the legal issues in terms of implementing of a digital meeting. CMBR Rice advised that she didn't see the need for this since the city was five miles long and anyone wishing to attend a meeting could do so. She also expressed concerns with this meeting the Sunshine Law requirements. CMBR Bryan commented that he saw no technical problems in implementing it; it would allow members to put their thoughts down in writing, but if it was against the law perhaps the law needed to be changed. Attorney Groot advised that Sunshine Law experts have been consulted in depth about the issue. The public must have access and there can be no technical defects; IT would have to monitor the entirety of the event to ensure the computers and screens were always working. If the electronic stream were stopped that would present a Sunshine problem.

Attorney Groot also related information about a past case in Martin County re comp plan consistency. A resident challenged a developer that his building was not consistent with the comprehensive plan and the Florida Supreme Court upheld the challenger and the Court made the developer take down the building because it was found to be inconsistent.

5. REPORTS OF THE CITY MANAGER: None.

OLD BUSINESS: None.

NEW BUSINESS:

6. Ordinance 2017-03 AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO APPEALS AND SUBSTANTIALLY REVISING AND AMENDING SECTION 2-27 OF THE CODE OF ORDINANCES OF THE CITY; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR AN APPEAL PROCESS RELATIVE TO CITY ACTIONS AND ACTIVITIES; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. First Reading.

City Attorney Groot explained that the proposed Ordinance takes the current code provision that states appeals go from staff to the City Manager and then to the City Council and establishes provisions for appeals to provide for certain policies and procedures.

CMBR Lindauer would have liked an executive summary to provide an explanation on this item. He inquired why the appeal wouldn't go to the Board of Adjustments. It was explained that a past Ordinance already removed that provision in 2016. The normative process would be for a staff decision to be appealed to the City Manager. Attorney Groot reviewed the current appeal process if the Board of Adjustments were to deny a variance. CMBR Lindauer still had concerns that decisions were being made by one person versus a five-member board. Attorney Groot stated that was how administration worked in government. Mayor Jennings stated that he did not have an issue with the proposed ordinance and that the City Manager can always defer the appeal to the City Council if he desired. After some discussion, members of the council would like the ordinance changed to state the following: if the City Manager agreed with staff

decision the process ended, if he overruled staff decision the item would automatically go before the City Council.

Michael Rodriguez, Assistant County Attorney, explained that the county had a pending appeal of its site plan denial for the two properties on the basis of inconsistency with the city's comprehensive plan. The county filed an appeal pursuant to Section 14-70 in the code but has now learned that was repealed by Ordinance 2016-12. He asked why that was not codified and updated in MuniCode. He asked for a clarification for the appeal. Attorney Groot explained the appeal would be heard by the City Manager and his decision (depending the outcome) could be appealed to the City Council.

Mayor Jennings instructed the City Attorney to make the amendment for second reading to include that if the City Manager overruled a staff decision, it would automatically go to the City Council.

CMBR RICE moved, seconded by CMBR GEIGER to approve Ordinance 2017-03 on first reading.

Vote: Motion carried by unanimous roll call vote (**summary: Yes = 5**).

Yes: Council Member Lorraine Geiger, CouncilMember Mel Lindauer, CouncilMember Richard Bryan, Mayor Harry Jennings, Vice Mayor Peggy Rice.

7. Ordinance 2017-04 AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO PARKING IN THE P-PUBLIC/QUASI PUBLIC ZONING DISTRICT AND PARKING AS A SPECIAL EXCEPTION USE; AMENDING THE *MUNICIPAL CODE OF ORDINANCES, LAND DEVELOPMENT CODE*; AMENDING APPENDIX "G", AMENDING CHAPTER 14 ENTITLED "ZONING REGULATIONS," BY AMENDING SECTION 14-26 ENTITLED "P-PUBLIC/QUASI PUBLIC" TO PROVIDE FOR PROHIBITIONS AND SPECIAL DEVELOPMENT CONDITIONS; AND AMENDING SECTION 14-58 ENTITLED "SPECIAL EXCEPTIONS AND CONDITIONAL USES" TO AMEND SPECIAL EXCEPTION PARKING REGULATIONS AND LOCATIONS PERMITTED IN THE CITY"; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. First Reading.

City Planner Stewart Cruz stated that all due public notice requirements had been met. The proposed ordinance would amend the LDC to establish parking standards on the west side of S. Atlantic Avenue and implement the policies regarding east side parking to be consistent with the city's comprehensive plan. Director Hiatt further explained this referred to off-beach parking and parks.

Audience member Chuck Pula thanked the staff for moving quickly on this matter. He felt the city should always look for the highest and best use for a property. He was not fond of the county trying to change the rules after making their purchase.

Clay Ervin, Growth & Resource Manager for Volusia County, stated he was given direction by the County Council, to come and object to this ordinance. Their main concern pertained to several different issues with the first and foremost being the elimination of the permitted use on the east side of S. Atlantic Avenue to have a public park and parking lot. The county has acquired two properties for development of a park and parking lot. They felt since joint ventures between the city and county already existed there would not be a problem. The other aspect that ties in with Mr. Pula's comments, is that the county is following a voter initiated, voter approved management responsibility of the county's beaches. We need to make sure we provide sufficient and adequate public access for all residents of Volusia County. The County Council hoped we can resolve the difference of opinion and respectfully requests that you not follow through with this ordinance.

CMBR Bryan felt the city should take the time to speak with the county on the issue and work out the details. Mayor Jennings informed him that the city had been speaking with the county and their ideas were dismissed by the county.

CMBR LINDAUER moved, seconded by CMBR GEIGER to approve Ordinance 2017-04 on first reading.

VOTE: motion approved by roll call vote (**summary: Yes = 3 No = 2**)

Yes: Mayor Harry Jennings, Councilmember Mel Lindauer, Councilmember Lorraine Geiger.

No: Councilmember Peggy Rice, Councilmember Richard Bryan.

8. APPROVAL FOR SIGN GRANT TO SUNGLOW PIER/CRABBY JOES

CMBR GEIGER moved, seconded by CMBR RICE to approve the sign grant for Sunglow Pier/Crabby Joes in the amount of \$6,500.

Vote: Motion carried by unanimous roll call vote (**summary: Yes = 5**).

Yes: Council Member Lorraine Geiger, CouncilMember Mel Lindauer, CouncilMember Richard Bryan, Mayor Harry Jennings, Vice Mayor Peggy Rice.

9. DISCUSSION ON INVESTMENT POLICY

CMBR Bryan suggested a subcommittee of two council members be formed to investigate investment tactics. He was advised that a subcommittee would violate sunshine law. It was decided that a special meeting would be scheduled in the future to discuss this issue.

10. DISCUSSION ON TERM LIMITS DRAFTS

CMBR Lindauer felt the two drafts were very similar and with a few adjustments, they could be merged into a final document. He felt the wording appointed or elected should be included. CMBR Bryan stated there were still differences between the two. One being the potential number of years an official could serve. The range was from 6-10 years versus 8-12 years. Another point was the definition of a partial term; is it two years or three years. After some discussion, the City Attorney was instructed to bring another draft back to the council for review.

11. COUNCIL COMMENTS: The council thanked the Director of Public Safety for both his actions during the incident on May 22nd and the department's involvement with the Armed Forces Day celebration. CMBR Geiger reminded the audience of the free concert by Debbie and Tony on Friday night.

12. AUDIENCE REMARKS/PUBLIC COMMENTS:

Cheryl Getz thanked the Public Safety Department for their amazing job during yesterday's incident. She inquired if the city was responsible for replacing the windows that were broken from the incident. City staff explained they would look into any possible insurance coverage but did not feel they assumed responsibility to cover damages.

Tony Caballero spoke on restricting building heights. He is not in favor of removing the height restriction as he doesn't want a large building constructed next to his condominium.

Wyc Woodfin commented that the new community center should be named after Don Large for the many years he had served the City.

Sean O'Brien spoke against changing the building heights. He questioned the additional revenue adding more condominium units would create.

Rosana Scaccia spoke on changing the term limit language in the Charter. She again recommended the language used in the 22nd Amendment in the US Constitution.

13. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

Amendment to the Comprehensive Plan to eliminate the building height.

14. ADJOURNMENT: The meeting ended at 8:46 pm.

**MAYOR
HARRY H. JENNINGS**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB