

**CITY OF VERO BEACH, FLORIDA**  
**JUNE 2, 2009 9:30 A.M.**  
**REGULAR CITY COUNCIL MINUTES**  
**CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**1. CALL TO ORDER**

**A. Roll Call**

Mayor Sabin Abell, present; Vice Mayor Tom White, present; Councilmember Debra Fromang, present; Councilmember Bill Fish, present and Councilmember Kevin Sawnick, present. **Also Present:** James Gabbard, City Manager; Charles Vitunac, City Attorney and Tammy Vock, City Clerk

**B. Invocation**

The invocation was given by Reverend Diego Flores of Asbury United Methodist Church.

**C. Pledge of Allegiance**

The audience and the Council joined together in the Pledge of Allegiance to the flag.

**2. PRELIMINARY MATTERS**

**A. Agenda Additions, Deletions, and Adoption**

Mr. White made a motion to adopt the agenda as presented. Mr. Sawnick seconded the motion and it passed unanimously.

**B. Proclamations**

None

**C. Public Comment**

Mrs. Linda Hillman thanked Council for the neighborhood plans that she received in the mail. She wanted to know what the time frame is to go over the plans.

Mr. Tim McGarry, Planning and Development Director, stated that there is no set time frame. He said they (City staff) will be meeting with the neighborhoods in a couple of weeks and then the plans will be taken to the Planning and Zoning Board.

Mrs. Hillman expressed her concerns about vacant homes and foreclosed properties. She hoped that in case there was a hurricane that the banks would be held responsible for these homes that are empty.

Mr. James Gabbard, City Manager, announced that staff would be holding a meeting to discuss the City's hurricane plan and he will bring this up at that meeting.

Ms. Kim Klaas, Community Relations Associate for Harvest Food & Outreach Center, invited Council to come and tour this new facility located at 1360 28<sup>th</sup> Street. She briefly went over the services that the facility offers.

Mr. Charlie Wilson asked if this was the appropriate time to talk about red lights. He was told that it was. He has reviewed the contract and had some comments to make on it. He questioned if this had to do with safety or revenue. He said that if you want to stop red light accidents there are a lot of ways to do that. The contract outlines giving out tickets for speeding, incorrect tags, etc. He said that they need to be careful or they could end up handing out hundreds of tickets and that is an extremely hazardous place to put the residents of Indian River County in. He appreciates the hard work that has been done on this and would like to have the opportunity to speak after the Police Chief spoke on this later in the meeting.

Mr. Brian Heady started his speech by saying liars, cheats and thieves should not be in charge of governing agencies. He said that the City violates his civil rights every time they haul him out of the Council Chambers and one of these days he is going to sue them for that. He briefly discussed the proposed health clinic and was told by the City Attorney that his three minutes were up.

#### **D. Adoption of Consent Agenda**

- 1. Regular City Council Minutes – May 19, 2009**
- 2. Lease Termination Agreement between the City of Vero Beach and Madison Aviation Centers LLC**
- 3. Automated Electronic Citation System**

Mr. Fish made a motion to adopt the consent agenda. Mr. White seconded the motion and it passed unanimously.

#### **3. PUBLIC HEARINGS**

- A) An Ordinance of the City of Vero Beach, Florida, amending Sections 2-346, 2-347, 2348 and 2-351 of Division 2, "Purchasing Procedure," of Article VIII, "Purchasing and Contracts," of Chapter 2, "Administration," of the Code of the City of Vero Beach, Florida, by increasing the City Manager's authority to purchase or contract for supplies, materials, equipment or services from \$25,000 to \$50,000; providing for an effective date.**

Mayor Abell read the Ordinance by title only.

Mr. Charles Vitunac, City Attorney explained that by enacting this Ordinance it will increase the City Manager's authority to purchase or contract for supplies, materials equipment or services from \$25,000 to \$50,000.

Mayor Abell opened and closed the public hearing at 9:49 a.m., with no one wishing to be heard.

Mr. Fish made a motion to approve the Ordinance. Mrs. Fromang seconded the motion and it passed 5-0 with Mr. Sawnick voting yes, Mr. Fish yes, Mrs. Fromang yes, Mr. White yes, and Mayor Abell yes.

**B) A Resolution of the City Council of the City of Vero Beach, Florida, changing Monthly Water Rates for Customers inside and outside the City limits; providing an effective date.**

Mayor Abell read the Resolution by title only.

Mr. Rob Bolton, Water & Sewer Director, stated that this is a change in water rates reducing the top tier down to the second tier level for multi-family users. He said that these users have reduced their water usage drastically. However, there is a rate increase for the heavy users (over 30,000 gallons).

Mayor Abell opened and closed the public hearing at 9:51 a.m., with no one wishing to be heard.

Mr. Fish made a motion to approve the Resolution. Mr. White seconded the motion and it passed 5-0 with Mr. Sawnick voting yes, Mr. Fish yes, Mrs. Fromang yes, Mr. White yes, and Mayor Abell yes.

**4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING**

**A) A Resolution of the City of Vero Beach, Florida, adopting Policies and Procedures regarding Annexation of Property into the City.**

Mayor Abell read the Resolution by title only.

Mr. Tim McGarry, Planning and Development Director, told Council that at their last meeting he gave them a brief overview of the policies and procedures for annexing property into the City. He recommended approval of the Resolution.

Mayor Abell referred to page 5, item 6, where it reads "If the City Council decides to proceed, it shall pass a resolution directing the City Clerk and City Manager to proceed with the annexation steps as set forth in these policies and the Florida Statutes." He suggested that the City Attorney also be included.

Mr. White brought up the interlocal agreement and asked if any of the other municipalities in their County were passing a similar Resolution.

Mr. Vitunac was not aware that anyone else is doing one. But felt that it was a good idea to have some policies and procedures in place.

Mr. White made a motion to approve the Resolution as amended (adding City Attorney to item 6 on page 5). Mr. Fish seconded the motion and it passed 5-0 with Mr. Sawnick voting yes, Mr. Fish yes, Mrs. Fromang yes, Mr. White yes and Mayor Abell yes.

## **5. FIRST READINGS BY TITLE FOR ORDINANCES AND RESOLUTIONS THAT REQUIRE A FUTURE PUBLIC HEARING**

- A) An Ordinance of the City of Vero Beach, Florida, amending the Text of the Capital Improvements Element and Intergovernmental Coordination Element, and Adopting a New Public School Facilities Element of the City of Vero Beach Comprehensive Plan; providing for an effective date.**

Mayor Abell read the Ordinance by title only.

Mr. McGarry explained that in 2005, the Florida Legislature passed Senate Bill 360, which added public school concurrency requirements. The law initially required local governments to adopt school concurrency provisions as part of its comprehensive plans by the end of 2008. He said that recent legislation will extend the deadline. To comply with school concurrency requirements, local governments are required to adopt a public school facilities element, enter into an interlocal agreement with the School Board, amend appropriate sections of its Intergovernmental Coordination Element and amend appropriate sections of its capital improvements element. He said what Council would be doing today is to hear the Ordinance on first reading and then hold a transmittal public hearing on July 21, 2009. Once this Ordinance is approved by Council, it will be transmitted to the Florida Department of Community Affairs (DCA) for review. Subsequent to review and comments by DCA, City Council will then take action to adopt the proposed amendment with or without revisions at an adoption public hearing.

Mr. White commented that our City is 97% built out and he doesn't think they will be building any new schools in the City. He wondered if it was important to have that as a factor.

Mr. McGarry explained that as part of the agreement they (City of Vero Beach) are involved with the entire school district boundaries.

Mr. White made a motion to approve the Ordinance on first reading and set the transmittal public hearing for July 21, 2009. Mrs. Fromang seconded the motion and it passed 5-0 with Mr. Sawnick voting yes, Mr. Fish yes, Mrs. Fromang yes, Mr. White yes, and Mayor Abell yes.

- B) A Resolution of the City of Vero Beach, Florida, approving the transmittal to the State of Florida Department of Community Affairs of a proposed City of Vero Beach Comprehensive Plan amendment to amend the text of the Capital Improvements Element and Intergovernmental Coordination Element, and adopting a new Public School Facilities Element; providing for an effective date.**

Mayor Abell read the Resolution by title only.

Mr. White made a motion to approve the Resolution on first reading and set the transmittal public hearing for July 21, 2009. Mr. Fish seconded the motion and it passed 5-0 with Mr. Sawnick voting yes, Mr. Fish yes, Mrs. Fromang yes, Mr. White yes, and Mayor Abell yes.

## **6. CITY CLERK'S MATTERS**

None

## **7. CITY MANAGER'S MATTERS**

### **A) Professional Services Agreement between the City of Vero Beach and American Traffic Solutions (ATS)**

Chief Don Dappen wanted to address Mr. Charlie Wilson's fears as far as speeding goes. He said that speeding is not addressed in the contract at all. He reported that a Selection Committee was formed to review the two proposals that the City received from red light camera companies. The Committee unanimously recommended that they purchased the red light services of American Traffic Solutions (ATS). ATS is U.S. based and has been in the photo enforcement industry for 17 years. They currently have 33 contracts and 27 of them are in Florida. Additionally, ATS has systems in New York City, Washington D.C., and Philadelphia. ATS has multiple field service crews in Florida on call on a 24/7 basis as well as two planned Florida offices. Chief Dappen expressed the reason for wanting to have these red light cameras installed is for safety. It will mean some revenue will be received by the City. However, by having these cameras installed it will help prevent and reduce the number of traffic accidents. He said that when traffic tickets are issued, the citation fee is \$208.00 and out of that \$208.00 the City gets \$2.00. Chief Dappen expressed that when these cameras are in place that there is no citation issued if a person is under the light and it turns yellow. However, if someone runs a red light then yes they will get a ticket.

Mrs. Fromang referred to page 8 of the contract (copy of contract attached to the minutes), Section 1.3, 1.3.1, where it states that ATS shall provide the customer with an optional one time warning period up to 30 days in length at the outset of the program. She wondered if the 30 days could be changed to 45 days.

Chief Dappen did not have a problem with making that change.

Mr. Wayne Coment, Assistant City Attorney, explained that during the first 30 days of operation the letters mailed would be warnings and no tickets would be issued.

Mrs. Fromang referred to 1.3.9 on page 8, where it talks about if required by the court or prosecutor, ATS shall provide the customer with, or train a local expert witness able to testify in Court on matters relating to the accuracy, technical operations, and effectiveness of the Aaxis system until judicial notice is taken. She asked have they taken any judicial notice.

Mr. Coment explained that it would be their Code Enforcement Board right now if someone wanted to appeal a citation. He said that this is an Ordinance violation and not a State Statue violation. If someone appeals a decision of the Code Enforcement Board, then it goes to the Circuit Court Appellant Division.

Mr. White asked if the State passed the law to approve red light cameras.

Chief Dappen explained that the Senate passed a bill and the House passed a separate one. He said that they couldn't come up with a bill to divvy up the fines.

At this time in the meeting, Mrs. Fromang asked some questions about the service fee schedule (page 11 of the contract).

Chief Dappen went over some of the benefits for having these cameras in place. He gave an example that if there was a robbery and the car used in the robbery was to go through one of the intersections that had a camera, that the cameras are positioned to go back as far as two months.

Mrs. Fromang referred to page 7, 1.2.5, where it states that ATS will operate each Camera System on a 24-hour basis, barring downtime for maintenance and normal servicing activities. She noted that at night some red lights turn to blinking lights in the City.

Chief Dappen agreed that the majority of lights in the City go to blinking yellow in one direction and blinking red in the other direction from midnight until 6:00 a.m. He said that the reason for that is because there is little traffic on the road at that time. With the blinking red light a person would still need to stop before proceeding to go through the intersection.

Mr. Fish said that he has high respect for Chief Dappen and his department. He said that there are two types of red light runners. The ones that know they are running a red light and the ones that don't know they are doing it. He also pointed out that the speed limits in the City are lower than the County speed limits.

Chief Dappen realizes that some people don't understand how this system is going to work. He said that until you have entered the intersection and the light is not red then there is no infraction.

Mr. Sawnick would like to see the revenue that is received be used towards safety training programs for the City.

Chief Dappen expressed that the money goes into the General Fund and not to the Police Department. That would be up to the City Manager and City Council as to what you want to use the money for. He agreed it would be a good idea to use the money for safety programs.

Mr. Gabbard said that City Council can direct staff on how to spend those dollars.

Mrs. Fromang commented that when this first came up she was dead set against it. But after talking to the residents of this community, they would like to see the cameras installed because they are tired of people continuously running red lights.

Mayor Abell pointed out that page 1 of the contract outlines why Mr. Wilson had the concerns that he does. He said that the definition of "violation" as outlined in the contract says that it means failure to obey an applicable traffic law or regulation, including, without limitation, failure to obey a traffic signal, operating a motor vehicle in excess of the posted speed limit, and operating a motor vehicle without displaying a valid license plate.

Mr. Wilson agreed that was the paragraph he was referring to.

Chief Dappen explained that this is just boiler plate language and that could be taken out.

Mr. Coment stated that Council could strike anything from the contract that they would like to see removed, but ATS would have to agree to it. However, he would be glad to make any changes to the contract that Council wants and resubmit it to ATS.

Mr. White wanted to make sure that they were covered for when ambulances, fire trucks, police vehicles (emergency vehicles) have to go through a red light.

Mr. Coment explained that is in their Ordinance.

Mr. White then asked if there was an opt-out clause in the contract.

Mr. Coment explained that the only way they could opt-out is if there is a breach of contract between the different parties. He said that they couldn't do it just because they decided they wanted to get out of the contract. The reason for that is because this is a five year contract and the company would like to recoup some of their money they have spent installing the cameras.

Mr. White felt by having these cameras in place that it will help keep accidents down and make people aware of traffic lights, even the traffic lights that don't have cameras. He expressed that it is against the law to run a red light. He was in support of approving this contract.

There were some questions as to where the cameras were going to be located. Chief Dappen explained that they will be installed based on the findings of where the most accidents occur.

The Council agreed that the contract should be brought back to them for approval after five years. The issue of how ATS should be paid was brought up and Chief Dappen recommended using Schedule 1, Option B – Tiered fee per paid citation and they would change the public awareness campaign from 30 days to 45 days (each Councilmember verbally agreed that the contract should be changed to read 45 days).

Mr. Coment referred to page 5 and asked Council would they want to execute the ATS DMV Subscriber Services Agreement (Schedule 2). Council agreed that should be executed by the Chief of Police.

Mr. Wilson thanked Council for taking a look at the definition section. They have relieved him of the negative concerns that he had by changing that definition. He referred to the fee schedule and noted that the number of tickets issued is based per camera. He also pointed out that the opt out clause is without cause. He believed that this same company is acting as a collection agency and will get 30%. The last thing he noted was that the cameras are positioned so they take a picture of the license tag and not the driver. People will get tickets on a car that they may not be driving.

Mrs. Fromang explained that an affidavit could be sent in saying that someone else was driving the car and the citation would be given to the driver of the car.

Mr. Gabbard guaranteed that the police officer assigned to review the videos will not put himself or his career in jeopardy in order to get more money for the Police Department. He reiterated that the police officer (or Police Department) does not receive any money from these citations unless Council decides that they should.

Chief Dappen suggested that Mr. Wilson read the Ordinance outlining the red light cameras. He again expressed that they want to have these cameras in place because of safety reasons. The citations mailed out to violators will indicate that they are from the City of Vero Beach.

Mr. Pete Curcerio, Senior Representative for APS, explained that the fee schedule chosen will include one incident per camera and there will be an average of three a day. He said that the more volume of traffic accidents, the more revenue that comes back to the City. He said that because this is all about safety the second year of revenue will be less, but will meet the thresholds outlined in the contract.

Mrs. Fromang asked him what have you been experiencing in other cities as far as compliance goes.

Mr. Curcerio said that the City of Apopka had a 72% compliance rate one year later.

Mr. White made a motion to approve the contract with the amendments made. Mr. Sawnick seconded the motion and it passed unanimously.

## **8. CITY ATTORNEY'S MATTERS**

None

## **9. CITY COUNCIL MATTERS**

### **A. Old Business**

None

### **B. New Business**

Mr. Sawnick asked Council if they had any problems with allowing the public to speak when they discuss the proposed health clinic if it is going to be done at a Special Call meeting. Council did not have any problems with doing that. The Clerk was instructed to put public comments on the agenda.

Mrs. Fromang mentioned that she will be unable to attend the Treasure Coast Council of Local Government's (TCCOLG) meeting tomorrow morning and that there is not an alternate from this Council on that Committee.

Mr. Fish noted that he will be at the meeting and would have no problem being the alternate from this Council to that Committee.

Mayor Abell made a motion to nominate Mr. Fish as the alternate member on the Treasure Coast Council of Local Governments. Mr. White seconded the motion and it passed unanimously.

Mr. White commented that they probably should also have an alternate on the Treasure Coast League of Cities. The Clerk will find out who is interested in that position and bring it up at their next meeting.

## **10. INDIVIDUAL COUNCILMEMBERS' MATTERS**

### **A. Mayor Sabin Abell's Matters**

- 1. Correspondence**
- 2. Committee Reports**

Mayor Abell reported that he met with Kurt Gehring, of the Gehring Group, signed the Minor League Baseball agreement, and attended the Memorial Day Ceremony. He asked with the Memorial Day Ceremony if there was any way that a tent could be put up next year to get some protection from the sun. He continued by saying that he also attended the Volunteer Commission Banquet and was present yesterday for the Special Call meeting held where they discussed the proposed health clinic.

**3. Comments**

**B. Vice Mayor Tom White's Matters**

- 1. Correspondence**
- 2. Committee Reports**

Mr. White met with Kurt Gehring, he attended the Memorial Day Ceremony, and the Special Call meeting held yesterday. He mentioned that they set the next meeting date to discuss the proposed health clinic for June 22, 2009. He understands now that Mr. Fish will be unable to attend that meeting. He felt that it was important that they have a full Council present when this item is discussed.

**3. Comments**

**C. Councilmember Debra Fromang's Matters**

- 1. Correspondence**
- 2. Committee Reports**

Mrs. Fromang also attended the Memorial Day Ceremony and agreed that was a very hot time of the day to hold it. She realizes that there is some opposition from the Veterans Council to hold it earlier in the day, but asked the City Manager if he would talk to them about moving the time of the ceremony. There also needs to be a tent put up for the speakers and a tent for some people in the audience.

Mr. Gabbard commented that he has talked to the Veterans Council for the last twenty years trying to get them to hold the service earlier in the day and they choose not to move the time. He will mention it to them again, but it is their call. He said that they would try to have more water available next year. He said that they could have tents put up, but to rent them there is a cost associated with it.

Mrs. Fromang reported on the Tourist Tax Committee meeting that she attended.

**3. Comments**

**D. Councilmember Bill Fish's Matters**

- 1. Correspondence**
- 2. Committee Reports**

Mr. Fish reported that he attended the Memorial Day Ceremony, the Volunteer Commission Banquet and met with Kurt Gehring.

**3. Comments**

**E. Councilmember Kevin Sawnick's Matters**

- 1. Correspondence**
- 2. Committee Reports**

Mr. Sawnick reported that he talked to Kurt Gehring and would be attending the unveiling of the banners downtown on Thursday morning.

**3. Comments**

Mr. Gabbard brought up the budget and said that they still anticipate having a short fall in excess of a million dollars.

**11. ADJOURNMENT**

Mr. White made a motion to adjourn today's meeting at 11:18 a.m. Mr. Sawnick seconded the motion and it passed unanimously.

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