



**CITY OF PUNTA GORDA, FLORIDA
REGULAR CITY COUNCIL MEETING MINUTES
WEDNESDAY, OCTOBER 20, 2010 9:00 A.M.**

COUNCILMEMBERS PRESENT: Goldberg, Albers, Wallace, Friedman, McCormick

CITY EMPLOYEES PRESENT: Dave Drury, Finance; Rick Keeney, Public Works; Tom Jackson, Utilities; Phil Wickstrom, Human Resources; Dennis Murphy, Growth Management; Butch Arenal, Police; Robert Hancock, Fire; City Attorney Levin; City Manager Kunik; City Clerk Foster

Mayor Goldberg called the meeting to order at 9:01 a.m.

Invocation was given by Mr. John Burrage, followed by the Pledge of Allegiance.

PROCLAMATION/PRESENTATIONS

Be a Hero Month

Councilmember Albers presented the proclamation to Ms. Tammy Forit.

Florida City Government Week

Mayor Goldberg presented the proclamation to City Manager Kunik.

10 Year Service Award - Linda Ward, Police Department

City Manager Kunik presented the award to Ms. Linda Ward.

Police Chief Butch Arenal spoke of Ms. Ward's years with the City.

Mayor Goldberg then presented a plaque to Councilmember McCormick as this was his last meeting while a member of City Council.

PUBLIC HEARINGS

ZA-16-10 - An Ordinance of the City of Punta Gorda, Florida, amending Chapter 26 of the City Code of Ordinances known as "The Land Development Regulations", Article 3, Regulating Districts, Section 3,13, SRO, Special Residential Overlay District, Subsection (s) Real Estate Signs, and amending Article 11, Sign Standards, Section 11.3, Permitted Signs, Subsection (I), Real Estate Directional Signs, extending the provisions for off-premises open house signs on developed private property; providing for conflict and severability; and providing an effective date.

FIRST READING

City Attorney Levin read the ordinance by title.

Ms. Teri Tubbs, Zoning Official, explained City Council had adopted an ordinance to allow off premise open house signs on private property which was due to sunset on November 5, 2010, adding the proposed ordinance would extend same for a two year period based upon the current economy.

Councilmember Friedman inquired if anyone had availed themselves of the ordinance. Ms. Tubbs expressed uncertainty.

Mayor Goldberg called three times for public comment.

Councilmember Wallace **MOVED** to close the public hearing, **SECONDED** by Councilmember Albers.

MOTION UNANIMOUSLY CARRIED.

Councilmember Wallace **MOVED** approval, **SECONDED** by Councilmember Albers.

MOTION UNANIMOUSLY CARRIED.

ZA-17-10 - An Ordinance of the City of Punta Gorda, Florida amending Chapter 26, Code of Ordinances, City of Punta Gorda, Florida, known as "The Land Development Regulations", amending Article 19, Section 19.3, "Definitions" to provide a new definition for the term "Restaurant" and renumbering accordingly; amending Article 3, Regulating Districts, Section 3-9, CC, City Center District, Section 3.9(c), uses permitted with conditions, adding Subsections (12)(13)(14) and (15) to include permanent non-seating public food service establishments, convenience stores with limited food service, convenience stores with significant food service and food outlets with limited food services; thereby allowing certain restaurants to be located within 200 feet from a Neighborhood Residential Zoning District boundary; Amending Article 4, "Uses Permitted with Conditions", adding new Sections 4.35, 4.36, 4.37 and 4.38 to provide conditions for permanent non-seating public food service establishments, convenience stores with limited food service, convenience stores with significant food service and food outlets with limited food services to be located within 200 feet from a Neighborhood Residential Zoning District boundary; providing for conflict and severability and providing an effective date.

FIRST READING

Continuance Requested by Planning Commission

City Attorney Levin read the ordinance by title, noting a request by the Planning Commission to continue same to November 3, 2010.

Ms. Tubbs stated the Planning Commission had made the following recommendations: simplification of the definition by elimination of specific food types, allow for other types of tables such as picnic tables, appropriate size for the location; define the permitted location for such tables as being within a certain number of feet from the

entrance and clarify size and type of trash receptacle permitted. She further noted the Planning Commission had recommended a continuance to the November 3, 2010 Council meeting to provide for further discussion by the Commission.

City Attorney Levin advised the definitions were drafted pursuant to State regulatory agencies which regulated food services so as to comply with same.

Councilmember Albers stated he agreed with the Planning Commission as the proposed amendment was far too complex, suggesting food establishments come to staff for approval by the City Manager rather than adopting the proposed ordinance. He stated he also concurred with comments made with regard to requiring matching furniture.

Councilmember Friedman stated he felt the above mentioned proposal made sense, inquiring if doing so would require a different ordinance.

City Attorney Levin explained the existing code utilized terms to differentiate the various uses such as convenience store and deli, which required a definition of same so as to denote what uses would be allowed for each establishment. He noted criteria would be necessary for consideration of applications, so as to be enforceable, adding same was the reason for copying the language used by the State regulatory agencies. He further advised it may be possible to reduce the length of definitions without readvertising the ordinance; however, if the desire was to take a different direction, a new ordinance would be required.

Councilmember McCormick stated an ordinance would be necessary in order to enforce the regulations, such as requiring matching furniture.

Mayor Goldberg suggested the ordinance be continued to allow the Planning Commission further discussion.

Councilmember Friedman voiced uncertainty as to whether any other establishments would desire outside tables, suggesting in this case, the one establishment which presently had tables be allowed to do so without enforcement of the current code to determine if there were any other establishments desiring same.

City Attorney Levin reminded members of a former convenience store which in essence turned into a night club where the ordinances did not have sufficient tools for staff to combat same. He pointed out any ordinance written must apply to all locations equally.

Councilmember Friedman reiterated the City Center (CC) zoning district was a small area with limited establishments of this type, thus he did not feel there would be a proliferation of requests for outside tables.

Ms. Tubbs provided a brief background of the present business and considerations which had been given during drafting of the proposed ordinance. She advised the definitions would be helpful throughout the City.

City Manager Kunik recalled previous discussions related to the possibility of a restaurant opening within the Historic District where a neighborhood meeting was held in that residents did not want the impacts of a restaurant. He explained the code was then amended in such a way which had unintended consequences, adding residents did not oppose the convenience store.

Councilmember Albers suggested a less onerous ordinance to allow the tables upon approval by the City Manager.

Mayor Goldberg confirmed the definitions would still be necessary.

Councilmember McCormick opined an ordinance would be required to provide for definitions and approval criteria.

Councilmember Friedman **MOVED** to continue ZA-17-10 to November 17, 2010, **SECONDED** by Councilmember Wallace.

MOTION UNANIMOUSLY CARRIED.

ORDINANCE/RESOLUTION

No Public Hearing Required

ZA-12-10 – An Ordinance of the City of Punta Gorda, Florida, repealing Ordinance 1610-09; and amending Chapter 26, Article 11, “Sign Standards”, Code of Ordinances, City of Punta Gorda, Florida; amending Chapter 26, Article 11, Section 11.3, “Permitted Signs”, Code of Ordinances, City of Punta Gorda, Florida, adding a new Subsection 11.3 (r), relating to portable signs; providing for portable signs within commercially zoned districts; providing standards for the location, design, use and maintenance of portable signs; providing for the discontinuance and removal of nonconforming portable signs; amending Chapter 26, Article 11, Section 11.4, “CC Signage”, subsection 11.4(e)(5), Code of Ordinances, City of Punta Gorda, Florida deleting references to portable signs, deleting the sunset provision and allowing the installation of a wall mounted menu sign; providing for conflict and severability and providing an effective date. **SECOND READING**

City Attorney Levin read the ordinance by title.

Councilmember Albers **MOVED** approval, **SECONDED** by Councilmember Friedman.

MOTION UNANIMOUSLY CARRIED.

CONSENT AGENDA

Councilmember Wallace **MOVED** approval of the consent agenda, **SECONDED** by Councilmember Friedman.

MOTION UNANIMOUSLY CARRIED.

A. City Clerk's Department

1. Approval of Minutes: Regular Meeting Minutes of October 6, 2010

B. City Manager's Department

1. Police Officers Bargaining Unit Memorandum of Understanding

C. Legal Department

1. Invoice of Allen, Norton & Blue, P.A. for services rendered in September 2010
2. Invoices of the Farr Law Firm for services rendered in Sept 2010

UNFINISHED BUSINESS

Attorney General Opinion regarding the imposition of the Local Business Tax

City Attorney Levin stated the City had requested an opinion as to the implementation of the Local Business Tax Act relating to taxation of licensed professionals, in which the Attorney General (AG) had opined that all professionals must be taxed as were licensed businesses, adding an amendment to the City's ordinance would be required to eliminate the exclusion to those individuals. He further explained other questions were posed with the AG advising a majority plus one vote would not be required to correct the error, that a differential rate could not be established for the individual and that an Equity Study Commission (ESC) would not be required to enact the amended ordinance.

Mayor Goldberg stated he felt there was no alternative other than to bring the ordinance into compliance with Florida Statute; however, based upon the magnitude of implementation on the business community, he felt an ESC should be established to review the current ordinance.

Councilmember Wallace supported the ESC if the tax was not eliminated in total, adding he was inclined to eliminate the tax.

Councilmember McCormick questioned the amount of lost revenue.

City Manager Kunik responded in excess of \$80,000 in revenue would be lost; however, the City utilized the business tax process for regulatory reasons.

City Attorney Levin advised the City did not regulate the businesses; however, the process provided the ability to ensure that State required regulations were adhered to prior to a business operating within the City. He referenced a listing of same, as delineated in the agenda material.

Councilmember McCormick questioned the additional revenue to be gained.

Mayor Goldberg responded same would be contingent on the outcome of any recommendations made by the ESC. He maintained he did not find this a matter of revenue, but rather the other services provided to City residents by the taxing process.

Councilmember Friedman recalled the previous discussion wherein the City Attorney's opinion was questioned, pointing out the opinion of the City Attorney had been upheld by the AG. He then stated the services provided through the taxing process were strong argument to not eliminate the tax itself. He mentioned surrounding areas were levying the tax in the manner which the Statute required, thus

he felt the ESC should be established to determine what recommendations they may make to amend the ordinance to comply with the law. He stated the City Clerk could begin the groundwork in order to levy the tax upon licensed individuals.

Mayor Goldberg suggested an ESC be established, the City Clerk work toward identifying the individuals to levy the tax at the April 1st date which provided for a prorated tax as per the current ordinance and the following year's tax be based upon the ESC recommendation.

Councilmember Friedman inquired if City Council would be bound to the ESC recommendation, or if revisions could be made.

City Attorney Levin stated the Statute did not require the Council to accept the ESC recommendation, thus same could be modified.

Mayor Goldberg pointed out the ESC would consider all classifications to provide an equitable taxing level.

Discussion ensued with regard to various aspects that could be reviewed by the ESC and implementation of an amended ordinance.

Consensus of members was to consider the amended ordinance and to begin the process of establishing an ESC.

Ms. Sue Vanhorn, Punta Gorda Chamber of Commerce (PGCC) voiced support of an ESC, requesting a PGCC member be allowed to sit on the Commission.

City Attorney Levin pointed out the meetings would be open to the public.

Consensus of members was to request ESC applicants by November 5, 2010.

Application to the Florida Department of Environmental Protection (FDEP) for an exemption from the Total Dissolved Solids (TDS) limit pursuant to 62-560.520 Florida Administrative Code (FAC)

City Manager Kunik explained following discussions with the Department of Environmental Protection (DEP), it was determined that an exemption application would better suit the City's situation than an extension to the current variance. He drew members' attention to the application, as delineated in the agenda material, requesting approval to submit same.

Councilmember Wallace **MOVED** approval, **SECONDED** by Councilmember Friedman.

VOTING AYE: Friedman, Albers, Wallace, Goldberg.

VOTING NAY: McCormick.

MOTION CARRIED.

NEW BUSINESS

False Alarm Reduction and Management

Mr. Troy Bettencourt, Police Department, displayed a PowerPoint presentation, as delineated in the agenda material, providing a detailed description of the Lean Six Sigma project analysis.

NOTE: Councilmember Wallace left the meeting at 10:13 a.m.

Mr. Bettencourt stated a false alarm was one not based on a true potential crime or cause of concern, adding responding to same resulted in approximately 583 man hours which equated to \$20,417 annually.

NOTE: Councilmember Wallace returned to the meeting at 10:16 a.m.

Mr. Bettencourt pointed out this cost was currently shared by all tax payers within the City, explaining the goal was to shift that cost to those who caused same. He advised the proposed policy was aligned with national and state model policy and similar to surrounding jurisdictions as follows: Adjusted fine structure and mandatory registration of all alarm users in the City, providing a detailed explanation of same, as delineated in the agenda material. He stated an ordinance amendment and method of collection for delinquent fees would be necessary. He then provided information on the cost benefit analysis as denoted within the agenda material. He then provided a listing of estimated revenues from the proposed registration fee, adding either a full or part time records clerk would need to be hired to administer same, providing a listing of the remaining revenue.

Councilmember Albers inquired if the fines would be levied on the schools as well.

Mr. Bettencourt responded affirmatively.

Mayor Goldberg asked if there had been consideration with regard to utilizing the Police Department volunteers in lieu of hiring an additional employee.

Mr. Bettencourt responded most of the volunteers did not work as many hours as would be necessary to administer the program.

Mayor Goldberg stated job sharing may be possible, opining same was worth pursuing.

Discussion ensued with regard to current revenue gained from fines.

Councilmember Wallace questioned the cost avoidance if the schools were not included.

Mr. Bettencourt responded the schools amounted to 15% of the total annual costs.

Councilmember Wallace stated he did not support additional fees at this time.

Mr. Bettencourt responded same was to Council's discretion, adding registration could be required with no cost associated with same.

Councilmember Friedman maintained there was no cost avoidance, but rather it was a lower work load.

Discussion ensued with regard to estimated revenues from annual registration fees. City Manager Kunik explained if no fee was charged for registration, no funds would exist for the necessary employee to manage same.

Councilmember McCormick voiced support of an annual registration fee of \$50 and inclusion of the schools in the fine structure as same would gain attention of those who may not do so otherwise.

Councilmember Friedman stated he viewed same as the provision of a service, which had an associated cost.

Consensus of members was to direct staff to draft an ordinance to amend the code and to provide for a registration fee, while accepting the Lean Six Sigma recommendations.

City Clerk Annual Performance Evaluation

Mayor Goldberg drew members' attention to the evaluation forms, thanking City Clerk Foster for her service.

Councilmember Albers **MOVED** approval, **SECONDED** by Councilmember McCormick.

MOTION UNANIMOUSLY CARRIED.

City Manager Annual Performance Evaluation

Councilmember Albers **MOVED** approval, **SECONDED** by Councilmember McCormick.

Mayor Goldberg complimented City Manager Kunik, noting he would work toward improving certain areas.

MOTION UNANIMOUSLY CARRIED.

FY 2011 City Manager & Department Objectives

City Manager Kunik drew members' attention to the list, as delineated in the agenda material.

Councilmember Albers **MOVED** approval, **SECONDED** by Councilmember Friedman.

MOTION UNANIMOUSLY CARRIED.

RECOMMENDATION FROM CITY OFFICERS

CITY ATTORNEY

City Attorney Levin advised at a municipal law conference he recently attended, code enforcement entailed a major discussion related to the possible liabilities of some, adding it had been mentioned that there was a possibility to utilize retired attorneys to represent the Code Enforcement Board (CEB) in light of rising legal costs. He noted the Florida Bar would require them to be attorneys in good standing with the Bar, expressing uncertainty as to the number in this area. He requested authorization for staff to put out a request for volunteers for same.

Consensus of members was to approve.

City Attorney Levin then stated he had contacted the attorney for Ms. Gerda Craig toward an agreement with regard to the respective cases, to which he had a response. He then advised members of his desire to obtain their advice in private under the provisions of Florida Statute, thus he would like to schedule same to immediately follow the November 3, 2010 Council meeting, with all members, himself, the City Manager and a Court Reporter in attendance.

Councilmember Albers **MOVED** approval, **SECONDED** by Councilmember Friedman.

MOTION UNANIMOUSLY CARRIED.

CITY CLERK

City Election - November 2, 2010

Approval of Ballot

City Clerk Foster drew members' attention to the list of qualified candidates to appear on the ballot, as delineated in the agenda material.

Councilmember Friedman **MOVED** approval, **SECONDED** by Councilmember Albers.

MOTION UNANIMOUSLY CARRIED.

City Election - November 2, 2010

Proclamation Calling for Election

City Clerk Foster drew members' attention to the proclamation, detailing the polling locations for City precincts, as delineated in the agenda material.

Councilmember Albers **MOVED** approval, **SECONDED** by Councilmember Friedman.

MOTION UNANIMOUSLY CARRIED.

City Election - November 2, 2010

Approval of Pollworkers

City Clerk Foster drew members' attention to the listing of workers, as delineated in the agenda material.

Councilmember Albers **MOVED** approval, **SECONDED** by Councilmember Friedman.

MOTION UNANIMOUSLY CARRIED.

BOARDS AND COMMITTEES

Announcement of Vacancies

Historic Preservation Advisory Board (3)

City Clerk Foster announced the vacancies.

Historic Preservation Advisory Board Alternate (2)

City Clerk Foster announced the vacancies.

Utility Advisory Board

City Clerk Foster announced the vacancy.

Nominations

Building Board Alternate

Councilmember Friedman **MOVED** to nominate and appoint Mr. Grossman, **SECONDED** by Councilmember Albers.

MOTION UNANIMOUSLY CARRIED.

Burnt Store Isles Canal Advisory Committee (2)

Councilmember Albers **MOVED** to nominate and reappoint Messrs. Ashworth and Totten, **SECONDED** by Councilmember Friedman.

MOTION UNANIMOUSLY CARRIED.

Appointments

Board of Zoning Appeals Alternate

Voting forms were distributed.

City Attorney Levin announced Mr. Midolo had received the most votes and was therefore appointed to the Board of Zoning Appeals (BZA).

Police Officers' Pension Board

Voting forms were distributed.

City Attorney Levin announced Mr. Ford had received the most votes and was therefore reappointed to the Police Officers' Pension Board.

POLICY AND LEGISLATION

WALLACE: Wished Councilmember McCormick well.

MCCORMICK: Stated it had been a pleasure to serve, noting the reason he would no longer serve was due to the fact that the Councilmembers performed their jobs so well, and that he felt he would have been needed more at the County level, thus his campaign for that seat. He then requested members' support as a sponsor for the Charlotte Harbor National Estuary Program's Nature Festival to be held in Port Charlotte.

Councilmember Wallace voiced support.

Councilmember Albers pointed out the City had stopped donating money to various causes, adding he did not agree with doing so at this time, specifically since the event was not in the City.

Mayor Goldberg asked for a vote.

Councilmember McCormick **MOVED** to donate \$1,000, **SECONDED** by Councilmember Wallace.

Councilmember Friedman stated he had previously served on the board; however, as the event was not held in Punta Gorda, he did not support the contribution.

VOTING AYE: McCormick.

VOTING NAY: Friedman, Albers, Wallace, Goldberg.

MOTION CARRIED.

CITIZENS' COMMENTS

Mr. Steve Fabian mentioned the annual Halloween event in the Historic District, noting he would be providing the City Manager with candy for same.

Mr. Tom Carroll voiced support of the Police Department's attempt to improve efficiencies; however, he questioned why the costs being avoided by less calls being made to false alarms were not used to fund the additional employee.

Councilmember Friedman explained less false alarm calls would not provide for additional funds, but rather free up an employee to perform other functions.

Discussion ensued with regard to cost avoidance as presented this date.

Mr. Bill Hughes thanked Councilmember McCormick and other members for their service.

The meeting was adjourned at 11:09 a.m.

Mayor

City Clerk