



**CITY OF PUNTA GORDA, FLORIDA  
REGULAR CITY COUNCIL MEETING MINUTES  
WEDNESDAY, NOVEMBER 17, 2010 9:00 A.M.**

**COUNCILMEMBERS PRESENT:** Goldberg, Albers, Wallace, Friedman, Keesling

**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 9:00 a.m.

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

**PROCLAMATION/PRESENTATIONS**

**Shop Charlotte Month**

Mayor Goldberg presented the proclamation to Mr. Tom Latolli, Charlotte County Chamber of Commerce President.

**15 Year Service Award - Ramona Peters, Utilities Department**

City Manager Kunik presented the award to Ms. Ramona Peters.

Mr. Tom Jackson, Utility Director spoke of Ms. Peters' years with the City.

**PUBLIC HEARINGS**

**GA-20-10 - An Ordinance of the City of Punta Gorda, Florida, amending Chapter 12 of the City Code of Ordinances, "Business Tax Act"; amending Section 12-1 relating to the imposition of a business tax; amending Section 12-2 relating to definitions; amending Section 12-3 relating to business tax receipts; amending Section 12-5 relating to the application for a business tax receipt; amending Section 12-6 relating to inspections; amending Section 12-7 relating to receipts for each location; amending Section 12-10 relating to display of tax receipt; amending Section 12-11 relating to duties of the City Clerk; deleting Section 12-13 relating to professionals and adding a new Section 12-13 relating to evidence of engaging in business; amending Section 12-14 relating to the revocation of a business tax receipt; amending Section 12-15 relating to exemptions; amending Section 12-17 relating to vending and amusement machines; amending Section 12-**

18 relating to flea markets; requiring 14 day's public notice between ordinance readings; providing for severability; providing for conflicts; and providing an effective date.

FIRST READING

City Attorney Levin read the ordinance by title.

**Mayor Goldberg** called three times for public comment.

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

**MOTION UNANIMOUSLY CARRIED.**

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

**Councilmember Wallace** stated he agreed with the need for the local business tax; however, he disagreed with the verbiage indicating the tax was for the privilege of doing business in the City as he felt the City was privileged to have those businesses.

City Attorney Levin explained the language was required by the Statutes.

**Mayor Goldberg** reminded those in attendance of the upcoming Equity Study Commission to review the tax.

**VOTING AYE:** Friedman, Albers, Keesling, Goldberg.

**VOTING NAY:** Wallace.

**MOTION 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

Continued from October 20, 2010

City Attorney Levin read the ordinance by title.

**Mayor Goldberg** called three times for public comment.

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

**MOTION UNANIMOUSLY CARRIED.**

Ms. Teri Tubbs, Zoning Official, noted the Planning Commission had reviewed the proposed ordinance and had made the following recommendations: simplification of definitions by elimination of specific types of foods; combination of the number of seats in the third and fourth definitions; allowance for other types of tables such as picnic tables which were appropriate for the location and size; clarification of the permitted location for tables such as within a certain number of feet from the entrance and clarification of the size and type of trash receptacle permitted, with same required to be covered. She concluded staff concurred with the recommended changes with the exception of combining the number of seat definitions as same would eliminate the definition of a small restaurant within the 200' district, adding an amended ordinance had been prepared for members' consideration.

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

**MOTION UNANIMOUSLY CARRIED.**

**Councilmember Albers** commented he questioned whether the amount of time required to draft this amendment was necessary or whether the situation could have been handled in a different manner.

Councilmember Albers **MOVED** approval of staff's recommendation, **SECONDED** by Councilmember Friedman.

**MOTION UNANIMOUSLY CARRIED.**

**An Ordinance of the City of Punta Gorda, Florida adopting an amendment to the City of Punta Gorda Comprehensive Plan 2025 for the purpose of amending the Capital Improvement Element to update and revise text including the Five-Year Capital Improvements Program as required annually by State Statute; providing for conflict and severability; and providing an effective date.**

City Attorney Levin read the ordinance by title.

**Mayor Goldberg** called three times for public comment.

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

**MOTION UNANIMOUSLY CARRIED.**

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

**MOTION UNANIMOUSLY CARRIED.**

**QUASI-JUDICIAL PUBLIC HEARINGS**

City Clerk Foster swore in all participants.

**V-06-10 – Request for a variance to the City of Punta Gorda Land Development Regulations pursuant to Chapter 26, Section 26-16.10, Code of Ordinances, City of Punta Gorda, Florida, to allow an existing four (4) foot wide paver sidewalk that is located parallel to and within six feet of the seawall to remain instead of requiring 6 feet of sod as is required per Chapter 26, Section 26-3.13(e) Code of Ordinances, City of Punta Gorda, Florida. LEGAL: Block 77, Lots, 36, 37 and 38, Punta Gorda Isles Section Seven as recorded in Plat Book 7, pages 48A through 48F of the Public Records of Charlotte County, Florida. A/K/A: 1323 Mediterranean Drive, Punta Gorda, Florida.**

City Attorney Levin presented the variance request.

Ms. Tubbs displayed an overhead of the location, as delineated in the agenda material, stating this request came to staff as a result of discovering the sidewalk after the Certificate of Occupancy (CO) had been issued. She explained the sidewalk was non-compliant with City Code which required a minimum of six feet of sod adjacent to the seawall. She noted the current property owner had purchased the property out of foreclosure, adding the original developer was no longer involved. She clarified the current owner had assumed the sidewalk was approved. She advised an initial inspection of the seawalls by the Canal Maintenance Division showed same to be in good condition; however, a waterward inspection done since that time revealed the seawalls must be replaced. She stated the applicant had submitted a letter to the Canal Maintenance Division expressing their acceptance of full financial responsibility for the removal and replacement of the pavers if any work to the seawall was needed in the future. She concluded the Punta Gorda Isles Canal Advisory Committee (PGI CAC) had reviewed V-06-10 as had the Board of Zoning Appeals (BZA) with both recommending denial.

**Councilmember Wallace** inquired when the building was constructed.

Ms. Tubbs responded same was constructed after 2004.

Discussion ensued with regard to when the sidewalk may have been constructed.

Mr. Jack Basarab, Mediterranean Condominium Association, advised the new owners were unaware the sidewalk had not been permitted, adding they discussed with staff the various remedies and decided to apply for a variance. He pointed out the limited space between the buildings and the dock which was sloped, adding if the sidewalk was moved, a retaining wall would be necessary. He mentioned the palm trees that

would require relocation or location of the sidewalk directly behind the unit's lanais. He mentioned many pedestrians walked along the seawall, adding residents would not wish this to occur outside their lanai. He stated the pavers provided handicap access from the other walkways on the property. He then mentioned the financial burden which would be involved with relocating the pavers as an engineering study and retaining wall would be necessary. He stated the Association had agreed to absorb the cost of removing the pavers for seawall repair and replacing them in the same location. He stated they had believed the Code Compliance staff was supportive of the variance request; however, subsequent board reviews had demonstrated disfavor with the request. He noted the two concerns were related to insurance against falls and potential harm to the seawall, adding they had provided information indicating liability insurance was in place. He stated he had discussed the seawall with several engineers who were unwilling to testify, adding a Sarasota engineer had viewed the property and opined the pavers were not detrimental to the seawall. He asserted the City had provided a tacit approval by issuing the CO, maintaining the pavers had not shifted in four years. He reiterated the owners had purchased the property with the paver walkway in place, adding same enhanced the property.

**Councilmember Wallace** questioned why the engineer's report could not be included. City Attorney Levin responded same was admissible, but was considered hearsay as the author was not available for questions.

**Councilmember Friedman** referenced the two alternatives mentioned this date, adding he felt another alternative existed where a flat strip of grass could be located in the area where the pavers were. He mentioned many properties had grass which was as functional as the pavers. He stated the question was whether there was a valid reason for the six foot setback, adding if it were determined not to be valid, walkways should be allowed throughout the district.

Mr. Basarab stated the reason was cost in that the Canal Maintenance Division did not want to remove and replace the pavers as same was time consuming and costly. He stated the six foot area was needed to remove the wall during replacement. He noted the variance would remain on the property's title, requiring the Association to remove the pavers if seawall maintenance was necessary.

**Councilmember Friedman** countered cost was not the reason, but rather the integrity of the seawall was. He pointed out the City was never bound to replace structures or pavers following maintenance.

Mr. James Hoffman stated he resided in the neighborhood and had written a letter in support which was not allowed in the previous hearings, adding he felt the pavers

enhanced the property as they provided better water runoff into the canal and prevented sinkholes. He stated he felt the City was at fault by approving the walkway initially, opining the property owner should not suffer the cost of the City's mistake. He concluded the variance should be approved and the codes changed to allow for alternatives that were proven not to be detrimental.

**Councilmember Albers** pointed out the situation was different as the walkway was not on the initial plans which were approved.

Ms. Tubbs concurred, adding the walkway was shown on the as-built plans which were required on all properties following inspection.

Discussion ensued with regard to the permitting and inspection process.

**Mayor Goldberg** requested an opinion from Public Works.

Mr. Rick Keeney, Public Works Director, stated he had viewed the property, adding the six foot setback was necessary for seawall maintenance. He acknowledged that water standing behind the seawall was detrimental; however, grass provided natural filtration for pollutants. He pointed out the dirt standing on the walkway, as delineated in the agenda material, stating same would be filtered by grass.

**Mayor Goldberg** inquired if artificial turf was allowed within the setback.

Mr. Keeney responded there were some test sites; however, he was unsure of the results.

Ms. Tubbs responded artificial turf was permitted; however, a certain quality was required to allow for the filtration that was necessary.

**Mayor Goldberg** confirmed the setback requirement was not based solely on cost.

Mr. Keeney responded affirmatively, reiterating same was based on the maintenance and water runoff needs.

**Councilmember Friedman** confirmed the City would not be responsible to remove the pavers, thus the cost was not the City's.

Mr. Keeney responded affirmatively.

**Mayor Goldberg** inquired if the City would pay the cost of sod if the pavers were removed for repair and not replaced.

Mr. Keeney responded the City placed sod after seawall maintenance as they did disrupt the area behind the seawall.

Mr. Basarab pointed out the original developer was no longer involved, adding the new owners were requesting the variance in order to maintain the property as it was currently. He maintained there were less sink holes with the pavers, reiterating the pavers had not shifted in over four years. He stated allowing the Association to replace the pavers would save the City the cost of sod.

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

**MOTION UNANIMOUSLY CARRIED.**

**Councilmember Albers** pointed out the City owned and maintained the seawall which was not done in many other municipalities, thus the need for the regulations. He expressed sympathy toward the new owners; however, he couldn't support the request based on the possibility of damage to the seawall.

**Mayor Goldberg** mentioned the property was attractive. He referenced the comments related to no sink holes, stating same was due to the ground being compressed over the years; however, same would not be in existence after the seawall was replaced.

**Councilmember Keesling** voiced concern granting the variance could be precedent setting as the City would be allowing the owner to replace a nonconforming structure with another nonconforming structure once seawall repairs were completed.

**Councilmember Friedman** recalled other instances when nonconforming structure were required to be removed by the property owner. He opined the existing ordinance was valid, thus the property should conform to same.

Councilmember Friedman **MOVED** denial based up criteria #1, #2, #3, #4, #6 and #7, as denoted in the agenda material, **SECONDED** by Councilmember Albers.

**MOTION UNANIMOUSLY CARRIED.**

#### ORDINANCE/RESOLUTION

#### **No Public Hearing Required**

**GA-15-10 - An Ordinance of the City of Punta Gorda, Florida, amending Chapter 23, Traffic, Code of Ordinances, City of Punta Gorda, Florida, adding a new Section 23-21 prohibiting the parking of vehicles with signs, graphics, or printing which are used primarily for advertising; amending Section 23-14(a) relating to penalties; amending Section 23-14(c) relating to citation contests; amending Section 23-19 holding registered owners responsible for violations; providing for conflict and severability; and providing an effective date.**

**SECOND READING**

City Attorney Levin read the ordinance by title.

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

**Mayor Goldberg** inquired what information would be provided to business owners to make them aware of the amended ordinance.

Ms. Tubbs stated printed information would be provided by Code Compliance during courtesy visits.

**MOTION UNANIMOUSLY CARRIED.**

#### CONSENT AGENDA

**Councilmember Keesling** pulled item F-1, recalling the previous discussion regarding requirements to sell the property which had been reviewed by the City Attorney who indicated same were not required. She questioned whether in light of same, members wished to consider selling the property.

City Manager Kunik recalled members had indicated they felt it prudent to lease the property in light of the depressed real estate market.

**Councilmember Friedman** stated he felt it best not to sell the property as same was in a location which may be more valuable as the downtown area grew.

City Attorney Levin advised his opinion related to the number of appraisals.

**Councilmember Keesling** referenced comments made by Councilmember Albers with regard to having realtors provide a market appraisal.

**Councilmember Albers** acknowledged he had suggested same; however, after the discussion he agreed leasing was more appropriate at this time.

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

**MOTION UNANIMOUSLY CARRIED.**

**A. City Clerk's Department**

1. Approval of Minutes: Regular Meeting of November 3, 2010

**B. City Manager's Department**

1. Revised Release Agreement with Hammer Construction

**C. Finance Department**

1. Bank of America Linking Authorization Contract to piggyback Hillsborough County Purchasing Card Program and approval of the City's Procurement Card Policy.
2. A Resolution of the City Council of the City of Punta Gorda, Florida, declaring the City's official intent to seek reimbursement for certain capital expenditures to be made with respect to the acquisition, construction, renovation, equipping and expansion of certain facilities, related to the City's Water and Sewer Utility System from the proceeds of its not to exceed \$10,000,000 Utility System Subordinate Revenue Notes and providing for an effective date.

**D. Growth Management Department**

1. Modification of existing Impact Fee Installment Plan with Bernice A. Russell Community Development Corporation.

**E. Police Department**

1. 2010 Byrne/JAG Direct Grant – Patrol Rifle Locks

**F. Public Works Department**

1. Lease of Surplus City-Owned Property

## UNFINISHED BUSINESS

### Ring Around The City Funding Status Report

City Manager Kunik displayed a listing of projects and the associated costs, as delineated in the agenda material, stating the estimated total funds were \$12,000,000, which may or may not change. He then displayed a listing of projects that had been completed, followed by projects where funds had been allocated but not totally expended at this time, providing a brief review of each. He recalled a question had been made as to what funds were remaining to complete the ring around the City, stating \$4,953,500 remained. He stated funds had been allocated for Linear Park phases 2 and 3; however, there was a possibility in gaining grant funds in 2015 if members decided to delay the project. He then listed projects which were proposed to be eliminated or funded otherwise to provide the \$4,953,500, adding there were also projects with no funding, as delineated in the agenda material. He stated if the proposed eliminated projects were not undertaken, funds would be available for the Best Western portion and the boat launch area of the west Harborwalk.

**Councilmember Wallace** stated members did not know what had been expended on the individual projects to date, thus it was difficult to determine which projects they wished to move forward with.

City Manager Kunik drew members' attention to the information included in the agenda material which denoted expended funds, allocated funds and the associated time line. He recalled the initial priority was connectivity, stating members must determine if same was still the priority. He stated with the available funds some of the projects must be scaled down.

**Councilmember Friedman** then displayed a chart, as delineated in the agenda material, which denoted the projects which had been agreed upon to provide connectivity and the projected funds. He then listed projects not associated with the ring around the City that were high priority and projects connected to the ring around the City that had not been anticipated such as the Best Western portion of the west Harborwalk. He projected \$1,000,000 would remain for a portion of the west Harborwalk, noting a potential shortfall of approximately \$3,000,000 would exist if no changes to the project list were made.

Mr. Dennis Murphy, Growth Management Director, stated the City had the Linear Park 2 and 3 projects added to the Metropolitan Planning Organization (MPO) work program, adding if approved same would be funded in 2015. He noted if other projects prior to that time were not commenced, the funding may be available sooner.

**Mayor Goldberg** voiced concern with waiting four years to provide connectivity.

Mr. Murphy stated the Shreve Street Multi-Use Recreational Trail (MURT) project would provide a connection, along with Linear Park 3.

**Councilmember Friedman** stated the timing of the grant would depend on the economy as same may be delayed or removed from the work program if funds were not available. He then asked if it was possible to fund a scaled down walkway to provide connectivity and add the extras when grant funding became available.

Mr. Murphy responded negatively stated if the connectivity was existent, he did not feel they would grant future funds.

**Councilmember Friedman** suggested the MPO be approached to see if they would be willing to allow the City to fund same at this time to be reimbursed in 2015 when funds became available.

**Councilmember Albers** asked if it was possible to construct Linear Park 3 with City funds and delay Linear Park 2 until grant funds were available, adding doing so would allow a full plan to be constructed rather than a basic walkway.

Discussion ensued with regard to possible means of providing connectivity in the most expedient manner.

**Councilmember Albers** requested an estimate for Linear Park 3 and the Shreve Street MURT.

**Councilmember Friedman** suggested it be ascertained if an upgraded plan for Linear Park 2 would be acceptable for grant funding.

City Manager Kunik confirmed staff would explore funding for Linear Park 2 and 3, adding if not approved, Linear Park 2 would not be undertaken at this time. He inquired as to members' desires with regard to the west Harborwalk, confirming members wished to commence the Best Western area and the boat launch area immediately.

Consensus of members was to do so.

**Councilmember Albers** pointed out the remainder of the west Harborwalk was planned for outlying years, adding when the market improved, the former Public Works Campus site could be sold and would provide adequate funds for same.

**Mayor Goldberg** stated some of the projects such as the Carmalita Intersection project and phase 2 of the downtown flooding mitigation may occur in later years based upon grant funding.

Discussion ensued with regard to prioritization of future projects and associated funding.

City Manager Kunik stated if bidding was successful, members would be presented with a construction contract for the east Harborwalk and Martin Luther King (MLK) improvements next month.

**Councilmember Albers** recommended the projects that had been proposed to be eliminated be removed from the list.

Consensus of members was to agree.

**Councilmember Friedman** then suggested they discuss the other projects on the list such as the 800mz radio system and determine if the projected costs were still accurate and if members wished to keep them on the list.

Fire Chief Rob Hancock explained Charlotte County had intended to replace their radio system, which would make several of the City's radios obsolete, adding the County had delayed their replacement, as denoted in the list. He stated staff would verify with the County if their timeline was still as they had indicated previously.

City Manager Kunik concluded with a summarization of projects to be commenced in the near future.

#### **NEW BUSINESS**

##### **2011 Charlotte County Legislative Delegation Requests**

City Manager Kunik reported staff had suggested the City's report on Total Dissolved Solids (TDS) be provided to the delegation.

##### **Discussion of agenda items for December 10, 2010 Joint Meeting with the Charlotte County Board of County Commissioners**

City Manager Kunik advised discussions of the South County Overlay update, shortened version of the partnership presentation for Team Punta Gorda, continuation of the City/County quarterly pairings had been suggested, asking members for other topics.

**Councilmember Friedman** suggested an update on the Interconnect, if it was possible for the County to provide same.

#### **RECOMMENDATION FROM CITY OFFICERS**

##### **CITY ATTORNEY**

City Attorney Levin reported a counter offer had been received related to the Gerda Craig case, requested members approve a shade meeting on December, 1, 2010 immediately following the regular meeting.

**Councilmember Albers** stated he felt they were clear in what the offer would be following the previous shade meeting; however, if City Attorney Levin felt a shade meeting was necessary, he was fine with it.

City Attorney Levin stated it was up to Council as to whether to entertain any counter proposals.

**Councilmember Albers** stated he understood they had agreed at the last meeting that no counter proposals would be considered.

Consensus of members was to concur.

#### CITY CLERK

#### Council Appointment to Various Boards and Committees

City Clerk Foster drew members' attention to the listing of boards, as delineated in the agenda material, stating all members had expressed a desire to maintain the same appointments as in the past year. She requested a motion approving same, advising the respective boards would then be notified of the appointments.

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

**MOTION UNANIMOUSLY CARRIED.**

#### Discussion of Equity Study Commission

City Clerk Foster recalled members' request to present applicants for the upcoming seven member Equity Study Commission, reporting only five applications had been received at the time the agenda was prepared, four of them from licensed professionals. She noted at this time, eight applications had been received with five of same being from licensed professionals. She requested direction as to how to proceed with same, commenting the request for applications had been well noticed.

Consensus of members was to continue accepting application until the preparation of the next agenda, at which time membership would be appointed.

#### BOARDS AND COMMITTEES

##### **Announcement of Vacancies**

Board of Zoning Appeals

City Clerk Foster announced the vacancy.

Building Board Alternate

City Clerk Foster announced the vacancy.

Historic Preservation Advisory Board Alternate

City Clerk Foster announced the vacancy.

Utility Advisory Board

City Clerk Foster announced the vacancy.

Waterfront Development Advisory Committee

City Clerk Foster announced the vacancy.

##### **Nominations**

Historic Preservation Advisory Board Alternate

Councilmember Friedman **MOVED** to nominate and appoint Ms. Jan Sidebottom, **SECONDED** by Councilmember Keesling.

**MOTION UNANIMOUSLY CARRIED.**

**POLICY AND LEGISLATION**

**KEESLING:** Commented she had attended the Energy Options Conference, which provided much interesting information. She noted much of the information was available on line and would most likely be included on the Charlotte County website.

**GOLDBERG:** Stated he had attended the graduation of the Entrepreneurial Academy graduation the previous evening, noting many new businesses would be in the area. He stated same was a great cooperative effort of local organizations.

The meeting was adjourned at 11:42 a.m.

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Mayor

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City Clerk