

**ORMOND BEACH CITY COMMISSION MEETING
HELD AT CITY HALL COMMISSION CHAMBERS
August 4, 2010 7:00 p.m.**

Present were: Mayor Fred Costello, Commissioner Lori Gillooly, Commissioners Ed Kelley, Troy Kent, and Bill Partington, City Manager Joyce Shanahan, Assistant City Manager Ted MacLeod, City Attorney Randy Hayes, and City Clerk Veronica Patterson.

A G E N D A

- 1) Meeting call to order by Mayor Costello.
- 2) Invocation by Chaplain Dennis Muench, Ormond Beach Police Department Volunteer.

- 3) Pledge of Allegiance.
- 4) **PRESENTATION:** Proclamation honoring Police Department volunteer chaplains.
- 5) **AUDIENCE REMARKS:**
- 6) **APPROVAL OF THE MINUTES** of the July 19, 2010, Budget Workshop, and the July 20, 2010, regular meeting.
- 7) **CONSENT AGENDA:** The action proposed is stated for each item on the Consent Agenda. Unless a City Commissioner removes an item from the Consent Agenda, no discussion on individual items will occur and a single motion will approve all items.
 - A) Resolution No. 2010-102 accepting a bid from Municipal Sales, Inc., for sanitary sewer system root control services under Bid No. 2010-24; authorizing the execution of a contract and payment therefor; rejecting all other bids. (\$35,220) (Public Works Director)
 - B) Resolution No. 2010-103 accepting a bid from R&M Service Solutions, LLC, to provide fire hydrant replacement services under Bid No. 2010-25; authorizing the execution of a contract and payment therefor; rejecting all other bids. (\$138,047.99) (Public Works Director)
 - C) Resolution No. 2010-104 authorizing the execution of a Railroad Reimbursement Agreement between the City, the State of Florida Department of Transportation, and the Florida East Coast Railway. (Acting City Engineer)
 - D) Justice Assistance Grant.

DISPOSITION: Approve as recommended in City Manager memorandum dated July 29, 2010.

- 8) **PUBLIC HEARINGS:**
 - A) Resolution No. 2010-105 of the City Commission, also acting as the Community Redevelopment Agency of the City of Ormond Beach, Florida, authorizing the execution of a Locally Funded Agreement between the City and Florida Department of Transportation regarding the removal and re-installation of brick sidewalk pavers along SR40 from the Granada Bridge to SRA1A. (Downtown Community Redevelopment Area - \$2,214) (Acting City Engineer)
 - B) Resolution No. 2010-106 authorizing the execution and issuance of a Development Order for a Special Exception regarding “Caffeine’s Restaurant” located at 45-49 West Granada Boulevard within the B-4 (Central Business) zoning district and Downtown Overlay District, to allow murals along the northern and western exterior building walls; establishing conditions and expiration date of approval. (Planning Director)
- 9) **SECOND READING OF ORDINANCE** No. 2010-38 amending Chapter 8, Buildings and Construction Regulations, Article I, In General, Section 8-10, Application Processing Fees, Paragraph (P), Surface Water Management Plan, of the *Code of Ordinances* of the City of Ormond Beach, Florida, by establishing a fee schedule for offsite compensating storage. (Planning Director)
- 10) **DISCUSSION ITEMS:**
 - A) Hand Avenue hazard mitigation project.
 - B) Proposed resolutions to be considered at the Florida League of Cities Annual Conference.
- 11) **REPORTS, SUGGESTIONS, REQUESTS:** Mayor, City Commission, City Manager, City Attorney.

12) **CLOSE THE MEETING.**

Item #1 – Meeting Call to Order

The meeting was called to order by Mayor Costello at 7:00 p.m.

Item #2 – Invocation

The invocation was given by Chaplain Dennis Muench, Ormond Beach Police Department Volunteer.

Item #3 – Pledge of Allegiance

The Pledge of Allegiance was led by Mayor Costello.

Item #4 – Presentation Honoring Police Department Volunteer Chaplains

Mayor Costello read a proclamation honoring the Police Department Volunteer Chaplains who, as ordained ministers, offer guidance, direction, advice and assistance for citizens, employees, and volunteers; providing blessings and dedications at city functions, funeral services, and City Commission meetings. He thanked the Volunteer Chaplains for their service.

Item #5 – Audience Remarks

There were no requests from the audience to speak.

Item #6 – Approval of the Minutes

Mayor Costello advised the minutes of the July 19, 2010, Budget Workshop, and July 20, 2010, regular meeting had been sent to the Commission for review and asked for any corrections, additions, or omissions. Mayor Costello stated corrections had been submitted prior to the meeting, and the minutes were approved with the corrections.

Item #7 – Consent Agenda

Mayor Costello advised the action proposed for each item on the Consent Agenda was so stated on the agenda. He asked if any member of the Commission had questions or wished to discuss any item separately.

Commissioner Kelley moved, seconded by Commissioner Partington, for approval of the Consent Agenda.

Call Vote:	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
	Commissioner Kelley	Yes
	Commissioner Partington	Yes
Carried.	Mayor Costello	Yes

Mayor Costello commented on the bid selection for the sanitary sewer system root control services with three bids, rounded out, of \$35,000, \$48,000 and \$154,000. The Mayor stated the \$35,000 bid was from a company the City had dealt with in the past and therefore, was awarded the contract. He pointed out the lower bids were from out of state companies, and the \$154,000 bid came from a company in Edgewater.

Commissioner Gillooly stated the City's request to the Justice Assistance Grant for \$10,734 in funding for the R.E.A.D. Program was not funded, and she suggested staff pursue another funding source for the program.

City Manager Joyce Shanahan stated that would be done.

#8A – Locally Funded Agreement with FDOT

Mayor Costello stated the City Commission served as the Community Redevelopment Agency (CRA), and must review each CRA agenda item and make a recommendation as the CRA prior to the City Commission public hearing; therefore, the City Commission meeting would be recessed and a meeting of the Community Redevelopment Agency convened. He explained that once the recommendations were made, the CRA meeting would be adjourned and the City Commission meeting reconvened to hold the public hearing on each item.

Mayor Costello stated the City Commission meeting was adjourned, and called the meeting of the Community Redevelopment Agency to order.

Mayor Costello stated he had no requests from anyone to speak to the CRA regarding Resolution No. 2010-105 relative to a Locally Funded Agreement with Florida Department of Transportation for the SR40 Resurfacing Project, and asked the CRA members for their recommendation.

Commissioner Partington moved, seconded by Commissioner Gillooly, to recommend approval of Resolution No. 2010-105.

Mayor Costello called for a voice vote which resulted in a unanimous recommendation. The Mayor adjourned the Community Redevelopment Agency meeting and reconvened the City Commission meeting.

RESOLUTION NO. 2010-105

A RESOLUTION OF THE CITY COMMISSION, ALSO ACTING AS THE COMMUNITY REDEVELOPMENT AGENCY, OF THE CITY OF ORMOND BEACH, FLORIDA, AUTHORIZING THE EXECUTION OF A LOCALLY FUNDED AGREEMENT BETWEEN THE CITY AND FLORIDA DEPARTMENT OF TRANSPORTATION, REGARDING THE REMOVAL AND REINSTALLATION OF BRICK PAVERS ALONG SR40 FROM THE GRANADA BRIDGE TO SRA1A; AND SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello stated this was a public hearing regarding a Locally Funded Agreement with the FDOT for replacing brick pavers along SR40, and approval was recommended by the CRA.

Commissioner Gillooly moved, seconded by Commissioner Partington, to approve Resolution No. 2010-105, as read by title only.

Call Vote:	Commissioner Kent	Yes
	Commissioner Kelley	Yes
	Commissioner Partington	Yes
	Commissioner Gillooly	Yes
Carried.	Mayor Costello	Yes

Mayor Costello stated that without objection, the public hearing was closed.

Item #8B – Special Exception Regarding “Caffeine’s Restaurant”

RESOLUTION NO. 2010-106

A RESOLUTION AUTHORIZING THE EXECUTION AND ISSUANCE OF A DEVELOPMENT ORDER FOR A SPECIAL EXCEPTION REGARDING “CAFFEINE’S RESTAURANT” LOCATED AT 45-49 WEST GRANADA BOULEVARD, WITHIN THE B-4 (CENTRAL BUSINESS) ZONING DISTRICT AND DOWNTOWN OVERLAY DISTRICT, TO ALLOW MURALS ALONG THE NORTHERN AND WESTERN EXTERIOR BUILDING WALLS; ESTABLISHING CONDITIONS AND EXPIRATION DATE OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello stated this was a public hearing for the Special Exception of the Development Order to allow murals at the Caffeine’s Restaurant. The Mayor stated there were two requests to speak, if the Commission needed them to speak.

Commissioner Gillooly stated it was difficult to find an equitable solution for this situation. She stated there were two issues, the special exception for the applicant and the general issues of murals. Commissioner Gillooly stated that the applicant, by circumventing the permitting process, including review by the Planning Board, Quality of Life Board, and staff, had eliminated the necessary public discourse with input from The Chamber, Main Street and the citizens. Commissioner Gillooly commented that Caffeine’s Restaurant had enjoyed the City’s matching grant program for \$50,000.

City Manager Shanahan clarified the funds were a property improvement grant, and staff advised the maximum was \$50,000, which Caffeine’s Restaurant had received.

Commissioner Gillooly stated the amount of funds was a separate issue, but the partnering with the City was not a separate issue. She stated there was a specific procedure for businesses to follow, and the applicant should have been aware of the procedure after all the development they had done. She stated she could not approve the special exception because the process was not followed, when another applicant had followed the process, but was denied a mural.

She stated the standards should be fairly applied to everyone, although she was willing to discuss changing the standards.

Mayor Costello reported the Planning Board supported approval of the special exception four to two, as well as the neighbors, Brian Hansen and the Ormond Main Street Design Committee.

Dorian Burt, 203 Pine Cone Trail, Project Coordinator for Highlander Corp., clarified the Caffeine's Restaurant had received \$4,000 in TIF funds with matching grant funds for awnings and had not applied for any other grants. She agreed the rules should be followed, but there was no rule against murals in the Land Development Code. She stated the only permit they could have applied for would be a paint permit for the colors. She stated that since the LDC stands silent on the issue of murals, she took issue that they had done something wrong. She stated they had worked hard to rectify the situation, and the Highlander Corp. did not do anything without going to the Planning Board. She pointed out that the murals were not visible from the street and would be part of an enclosed courtyard.

Planning Director Ric Goss apologized to Commissioner Gillooly and City Manager Shanahan stating he had confused the Caffeine's Restaurant with The Boulevard when stating the amount of grant funds provided to the Caffeine's Restaurant. He stated that up until his interpretation of the LDC, murals were treated as signs; therefore to paint a sign on a building; a permit would have been needed. He stated the definition of a sign contained five factors, but this mural did not meet any of the factors; there was no definition for mural in the LDC. He stated had the City not wanted murals, the LDC should have stated that murals were not permitted in the City; there was nothing regarding murals, either one way or the other.

Commissioner Gillooly expressed concern that the staff recommendation to the Planning Board was for denial, although the report to the Commission did not include a staff recommendation, but included the Planning Board's recommendation to approve the special exception.

Mr. Goss stated the staff recommendation to the Planning Board was for denial because his interpretation stated this was a mural, and therefore, would need to be considered a special exception; but it should not be assumed that it would be automatically approved, due to the bold colors not prescribed for the Downtown.

Commissioner Gillooly inquired of the Planning Director about criteria for the standards relative to murals, and she suggested the aesthetics of art would be difficult to craft into the LDC.

Planning Director Goss stated a number of cities had the same issues, using non-profit art museums to do the screening, to allow the city to eliminate the content-neutral issue. He suggested a possibility would be to set the guidelines with the Art Museum doing the screening. He reported that Portland, Oregon, established standards but had an Arts Committee to review the submittals. He stated it could be done with careful crafting to find acceptable standards with all the diverse elements in the community.

Mayor Costello requested the Commission address the special exception, as well as murals in general. He stated this special exception would not set a precedent, according to the Planning Director.

Commissioner Kelley asked the City Attorney if the City had ever allowed special exceptions after the fact.

City Attorney Hayes stated it had happened on rare occasions; administratively, it had been only one or two instances.

Commissioner Kelley commented that sometimes additions onto houses were handled after the fact, before the Board of Adjustment and Appeals.

Planning Director Goss reported on occasion staff became aware of work being done without a permit; and although staff did not require the work to be torn down, the people doing the work were told to get a permit which, at that point, was triple the normal fee.

Commissioner Kelley summarized the issue before the Commission was regarding the issuance of a special exception after the fact. He stated in 2000, the parrot mural was turned down because it was considered a sign due to its relationship to the business' logo, and the business was required to paint over the mural. He stated the current mural was a different classification; it could not be seen from the street, and therefore, he had no problem with approving the special exception request.

Commissioner Partington stated he agreed with Commissioner Kelley; it could not be seen from street, and no precedent would be set. He stated he did want to consider what suggestions Main Street would have, and he wanted to discuss murals, in general, to set some guidelines to allow murals.

Commissioner Kent stated Commissioner Gillooly was right, but he had a different opinion. He stated he did not think of this as a mural. He stated it could not be seen from the street, because it was in a courtyard. He stated as a special exception request, it did not set a precedent, and he was okay with the mural.

Commissioner Gillooly expressed appreciation for the investment the company had made in Downtown, but this was setting a precedent, possibly not legally or technically, but this was setting one ethically, morally and fairly. She stated that to be a business-friendly City, the rules had to be applied fairly to everyone. She stated it was problematic to treat a company with large landholding differently from other businesses. She stated this was a professional company that should have followed the procedure; and she would not have had a problem with the mural, if the procedure had been followed.

Mayor Costello stated that the mural was in an enclosed courtyard; and therefore, he would support the special exception request.

Commissioner Gillooly stated the new criteria should come from public discourse, including The Chamber and Main Street.

Mayor Costello agreed and favored more discussion before the criteria for murals was established.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve the Special Exception Request of Resolution No. 2010-106, as read by title only.

Call Vote:	Commissioner Kelley	Yes
	Commissioner Partington	Yes
	Commissioner Gillooly	No
	Commissioner Kent	Yes
Carried.	Mayor Costello	Yes

Mayor Costello stated that without objection, the public hearing was closed.

Mayor Costello asked the Commission their opinions of allowing murals. He expressed support for murals in the Downtown with recommendations for criteria coming from the Ormond Art Museum, The Chamber, Main Street, and the Quality of Life Board.

Commissioner Gillooly stated she would support starting to allow murals in the Main Street area, after Main Street and the Art Museum submitted a proposal for standards to the Commission for discussion. She stated this would allow public input on the issue.

Commissioner Kelley stated he would support setting a bit of a parameter for criteria of a special exception to the LDC.

Mayor Costello suggested a proposal be brought to the Commission for consideration. He stated there was consensus by the Commission to encourage Main Street to submit a proposal for recommendations regarding murals, which could include input from The Chamber and others in the Downtown area. He stated the Commission could review the public input before approving a LDC amendment.

Item #9 – Payment in lieu of Compensatory Storage Fee

ORDINANCE NO. 2010-38

AN ORDINANCE AMENDING CHAPTER 8, BUILDINGS AND CONSTRUCTION REGULATIONS, ARTICLE I, IN GENERAL, SECTION 8-10, APPLICATION PROCESSING FEES, PARAGRAPH (P), SURFACE WATER MANAGEMENT PLAN, OF THE CODE OF ORDINANCES OF THE CITY OF ORMOND BEACH, FLORIDA, BY ESTABLISHING A FEE SCHEDULE FOR OFFSITE COMPENSATORY STORAGE; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2010-38 on second reading, as read by title only.

Call Vote:	Commissioner Partington	Yes
	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
	Commissioner Kelley	Yes
Carried.	Mayor Costello	Yes

Item #10A – Hand Avenue Hazard Mitigation Grant Project

Acting City Engineer John Noble announced that FEMA had indicated they would no longer require that the City complete the design and permitting of the additional components of the Hand Avenue grant before the City moved forward with the projects. He stated the Senate approved the war bill in late July, which provided \$5.1 billion to FEMA for the disaster relief effort, which released the freeze on the grant review, thereby allowing FEMA to approve the grant funding for the project.

Commissioner Gillooly commended Mr. Noble and CDM, the consultants, for their efforts on this project.

Acting City Engineer Noble stated the design consultant for the Hand Avenue project was Zev Cohen and Associates, who had put a lot of effort and time into this project.

Mayor Costello stated that for approximately \$4 million of City funds, the entire project could be completed with stormwater and road reconstruction.

Item #10B – Florida League of Cities' Proposed Resolutions

Mayor Costello reminded the Commission that Commissioner Kelley would be representing the City at the Florida League of Cities' Annual Conference.

Commissioner Kelley asked if anyone had any objection to any of the proposed resolutions. He stated he found only one questionable.

Commissioner Gillooly stated she favored all of the resolutions but had a question about Resolution 2010-09 regarding expediting FEMA reimbursements, which stated, "the cost of monitoring debris removal based on a current proposal costs a local government from \$2,000 to \$2,560 per hour."

City Manager Shanahan stated there were requirements for debris removal, especially following hurricanes. She explained that during the storms of 2004, when there were several hurricanes, FEMA changed regulations as to what was eligible for removal reimbursement by FEMA and established a specific monitoring procedure for oversight of the removal process, which was extraordinarily costly for local governments.

Commissioner Kelley commented he watched them remove the debris from his street after the hurricanes; the contractors had to stack the branches with leaves still on them in the trailers, and could not use a chipper, because the contractors were paid by volume, not by weight. He stated the situation constituted fraud.

Mayor Costello remarked that the City of DeLand had been notified by FEMA to reimburse \$500,000 due to disputed funds from 2004.

City Manager Shanahan stated debris removal was the biggest cost involved after hurricanes.

Mayor Costello summarized the Commission supported the Florida League of Cities proposed resolutions.

Item #11 - Reports, Suggestions, Requests

National Night Out

Commissioner Gillooly stated National Night Out was a fantastic event. She remarked that particularly with this economy, the give-aways for the children were substantial and related to safety and household issues. She thanked Leisure Services and the Police Department, particularly Officers Cornelius and Stokes, for the event.

Commissioner Kent thanked staff for a wonderful event that his family really enjoyed.

Commissioner Kelley remarked that the D.A.R.E. car was awesome; the bicycle inspections were great for the children. He stated everyone did a great job, and the give-aways were phenomenal. He suggested the attendance would have been even better except it was the same night as Pop Warner Football practice, and next year, staff would notify Pop Warner in an attempt to avoid a conflict in scheduling.

Commissioner Partington agreed that it was an awesome event. He stated his daughter did the bike rodeo and got a free helmet. He offered congratulations to Police Chief Osterkamp and all of staff who were involved.

City Manager Shanahan commended Police Chief Osterkamp, and in particular, Officers Lloyd Cornelius and Greg Stokes who work year round raising funds and donations for the event.

Mayor Costello stated the D.A.R.E. car was great, and his grandson, Joey, had his face painted like a tiger. He stated it was a wonderful event for the community.

Beach Patrol

Commissioner Kent stated he received a response from the County, and he and City Manager Shanahan had met with a couple of County representatives. He stated he had shared the response with his neighbors that were involved, but they did not agree with the County findings.

Commissioner Partington was not surprised by the outcome, but he stated it was important to bring the issue to the public.

Police Explorers

Commissioner Partington stated the City's Police Explorers competed at a state event where they competed against larger cities with larger programs that funded officers to work specifically on the Police Explorer program. He stated the City's program was handled by dedicated volunteers, and asked the Mayor to issue a proclamation honoring the Explorers and volunteers.

Sign Workshop

City Manager Shanahan advised that staff was arranging a sign code workshop for September 7 before the regular Commission meeting.

Team Volusia

City Manager Shanahan reported that she and Joe Mannerino had participated in a meeting for Team Volusia, which was the economic development corporation to establish a public/private partnership, allowing the City to leverage its dollars toward economic growth.

Item #12 – Close the Meeting

The meeting was adjourned at 8:14 p.m.

APPROVED: August 17, 2010

BY: Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk