

**ORMOND BEACH CITY COMMISSION MEETING
HELD AT CITY HALL COMMISSION CHAMBERS**

June 3, 2008

7:00 p.m.

Present were: Mayor Fred Costello, Lori Gillooly, Troy Kent, Ed Kelley, and Bill Partington, City Manager Isaac Turner, Assistant City Manager Ted MacLeod, City Attorney Randal Hayes, and City Clerk Veronica Patterson.

A G E N D A

- 1) Meeting call to order by Mayor Costello.
- 2) Invocation by Reverend George Hobbs, Alliance Community Church.
- 3) Pledge of Allegiance.
- 4) **PRESENTATIONS:**
 - A) Recognition of Community Emergency Response Team member Alfred “Alfy” Fyock.
 - B) Proclamation in honor of the Ormond Beach Kiwanis Club for the President’s Volunteer Service Award.
- 5) **AUDIENCE REMARKS:**
- 6) **APPROVAL OF THE MINUTES** of the May 21, 2008, meeting.
- 7) **INTERGOVERNMENTAL REPORTS:**
 - A) Metropolitan Planning Organization
 - B) Volusia Council of Governments
 - C) Water Authority of Volusia
- 8) **CONSENT AGENDA:** Resolution No. 2008-112 renewing the 2003 lease agreement between the City and the Civil Air Patrol, United States Air Force Auxiliary, Florida Wing, for the leasing of certain City-owned real property. (\$1 annual rental)
- 9) **PUBLIC HEARING:** Ordinance No. 2008-17 amending Subsection A, Zoning Map, of Section 2-03, Official Zoning Map and Zoning District, of Article I, Establishment of Zoning Districts and Official Zoning Map, of the *Land Development Code*, by amending the Official Zoning Map to rezone certain real property totaling 0.126 acres located at 245 Palm Place from B-4 (General Commercial) to NP (Neighborhood Preservation); authorizing revision of the official zoning map. (Second Reading)
- 10) **SECOND READING OF ORDINANCES:**
 - A) Ordinance No. 2008-25 relative to school concurrency by amending the following chapters of the City of Ormond Beach *Land Development Code*: Chapter 1, General Administration, Article III, Definitions and Acronyms, Section 1-22, Definition of Terms and Words, by amending and adding various definitions, by amending Chapter 1, General Administration, Article V, Concurrency Management, Sections 1-29, Purpose and Intent, through 1-32, Criteria for Determining Capacity.
 - B) Ordinance No. 2008-26 amending Section 7.01, Maximum Height Limits, of Article VII, Building Height Limits and Restrictions, of the Charter of the City of Ormond Beach, Florida, establishing an exception for multi-family and non-residential buildings taller than seventy-five (75) feet that existed on November 14, 2006, and development orders that received final development approval before November 14, 2006, for the construction of multi-family and non-residential buildings over seventy-five (75) feet in height; allowing those buildings to be maintained, repaired, constructed and reconstructed; protecting vested rights of landowners; providing for and calling a Special Referendum Election of the registered electors of the City of Ormond Beach, Florida, to be held November 4, 2008.
- 11) **FIRST READING OF ORDINANCE** No. 2008-27 amending Chapter 20, Traffic, by amending Section 20-13, Parking Prohibited for Certain Purposes.

12) **DISCUSSION ITEMS:**

- A) Presentation by Ann McFall regarding the dates to hold elections; discussion of amendments to the term of office of Commission members.
- B) Leisure Service fees.

13) **REPORTS, SUGGESTIONS, REQUESTS:** Mayor, City Commission, City Manager, City Attorney.

14) **CLOSE THE MEETING.**

Item #1 - Call to Order

Mayor Costello called the meeting to order at 7:05 p.m.

Mayor Costello introduced those on the dais and Mr. Kevin Gray, Environmental Systems Manager, who was greeting citizens coming into the meeting.

Item #2 - Invocation

Reverend George Hobbs, Alliance Community Church, gave the invocation.

Item #3 - Pledge of Allegiance

Mayor Costello led in the Pledge of Allegiance.

Moving Item #12(A)

Mayor Costello reported he would move up Item #12(A) to be heard after Item #7(C), the WAV report, in that the Supervisor of Elections had come from DeLand to speak to the Commission.

Item #4(A) – Community Emergency Response Team member Alfred “Alfy” Fyock

Fire Chief Barry Baker honored Mr. Alfred “Alfy” Fyock and read a letter from Mr. Fyock thanking the City for providing him training through the Community Emergency Response Team (CERT) class. He reported that the letter stated that due to the CERT training, he was able to save his friend who had a motorcycle accident. Chief Baker advised that he pulled the medical report on the accident and was convinced that without Mr. Fyock’s intervention, his friend would have died. He acknowledged Mr. Fyock and the other CERT members, as well as the Ormond Beach firefighters on the CERT team.

Mr. Fyock thanked the Ormond Beach Fire Department for providing him with the training and ability to be able to react appropriately to save his friend. He acknowledged Mr. Brad Isenecker for being by his side helping him in the rescue.

Item #4(B) – President’s Volunteer Service Award for Ormond Beach Kiwanis Club

Mayor Costello proclaimed June 3, 2008, as The Kiwanis Clubs of Volusia and Flagler Counties Day and urged all residents to commend the Kiwanis Clubs of Volusia and Flagler Counties for their many years of valuable service and extending best wishes for continued success in the future.

Mr. Ken Hinkle, Kiwanis Club Vice-President, stated the Ormond Beach club was 40 years old with a long history of helping the community, and it would be continued.

Item #5 - Audience Remarks

Item No. 12(A) Regarding Election Dates

Ms. Rita Press, 875 Wilmette Avenue, asked Mayor Costello to allow audience remarks on Item No. 12(A).

Mayor Costello stated he was hopeful the Commission would be providing staff direction; therefore, he had intended to encourage audience participation.

Travel to Washington, D.C.

Ms. Laura Jones, 59 Amsden Road, thanked Commissioner Kent for providing a detailed report of the trip to Washington, D.C. at the last City Commission meeting. She stated she believed the money was well spent.

Chloramines/Fluoride

Mr. James Schultz, 117 Harvard Drive, spoke about dangers of Chloramines, which would not be filtered out in a reverse osmosis system. He advised he had been asking questions regarding the Chloramines issue for four months, and no response was forthcoming to date. Mr. Schultz reported Chloramines activate the fluorides into a more corrosive substance, and the National Kidney Foundation has officially withdrawn support of fluoridation.

Mayor Costello stated this had to do with concentration, and the community would follow the guidelines of Department of Health, Environmental Protection Agency, and American Medical Association. He noted if there was science that these agencies could support, the Commission would inform the residents. He asked the Public Works Director to investigate the issues Mr. Schultz articulated.

Tennis Center

Mr. Alan Burton, 915 Oceanshore Boulevard, stated the Quality of Life Advisory Board has the authority to make recommendations on all recreation and recreational facilities. He urged placing the two beachside facilities on the Recreation Advisory Board as a user group. Mr. Burton stated the Recreation Facility Fee fund was established more than ten years ago and was a restricted fund for facilities. Mr. Burton urged the Commission to examine the expenditure on page 173 of the budget to determine if that expenditure was congruent with the authority of the resolution.

Mayor Costello requested that staff provide information to the Commission regarding this issue.

Item #6 - Approval of Minutes

Mayor Costello advised the minutes of the May 21, 2008, meeting had been sent to the Commissioners for review and asked if there were any corrections, additions, or omissions.

Mayor Costello stated that the minutes were approved as submitted.

Item #7(A) – Metropolitan Planning Organization and Item #7(B) – Volusia Council of Government

Mayor Costello reported he had no new information on the Metropolitan Planning Organization (MPO) and the Volusia Council of Governments (VCOG) since the last report.

Item #7(C) - Water Authority of Volusia

Commissioner Kelley asked if any Commission members had a concern regarding the resolution from Water Authority of Volusia (WAV) to St. Johns River Water Management District. He noted WAV would meet tomorrow. Commissioner Kelley explained an important issue to be discussed was unfunded mandates. He explained this St. Johns' proposal would create a waste of potable water, punishing the resident for using reclaimed water.

Commissioner Gillooly moved, seconded by Commissioner Partington, to support the resolution from WAV to the St. Johns River Water Management District.

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

Item #12(A) –Election Dates

Ms. Ann McFall, Supervisor of Elections, stated Volusia County was the only county out of 67 counties to have its own legislative act. She reported it took the former Supervisor of Elections, Deanie Lowe, two years to bring all of the cities together in 1994. Ms. McFall stated cities can no longer hold elections 28 days apart due to early voting, extra security, double equipment, and many more reasons. She explained the 10 day contest of election starts when the Commission certifies the election, and any resident or unsuccessful candidate can challenge the race. Ms. McFall stated in that 10 day contest, security was at lockdown in case a court wants

to see the equipment, except if there was a close race and a recount was needed. She pointed out there was not adequate equipment to do two elections. She reported early voting had been as much as 14 days, and in 2007 it was cut to six days. Ms. McFall explained in 2006, a 75-day rule was established where she has 75 days after the last election in the election cycle to report early voting, absentee ballots, and provisional ballots by precinct; and that was changed where the information was required 45 days after each election. She stated there was a new audit rule where a manual audit was required immediately following final certification, which would be effective July 1, 2008. Ms. McFall advised the canvassing board must oversee the audit which shall consist of 2% of the precincts in any given election, which means 16 cities and up to 16 audits with only seven days to complete the audit; therefore, for these reasons elections can not be held 28 days apart.

Ms. McFall advised that the options were to keep the elections in odd numbered years with six or eight weeks between the two, with a September/November election, or to go to the even numbered years on the same ballot as the County. She clarified that on the even numbered years, the County Canvassing Board, consisting of the Chair of the County, a County Judge appointed by the Chief Judge of the Circuit, and the Supervisor of Elections, would do the canvassing. Ms. McFall advised an advantage to that would be much greater turnout in even numbered years with an 80% turnout in 2008 expected. She noted a disadvantage was on city races on a large ballot the City race could get lost.

Ms. Kitty Garber, 1162 Athlone Way, Research Director for Florida Fair Elections, stated this was an extremely complex issue, and a decision should not be made without more study on the effects of such a decision. She reported if the ballots are long in a general election, City elections would not get any coverage from the media; it would be difficult for candidates to obtain funding; and it would push some to run a more partisan campaign. Ms. Garber advised the long ballots could lead to long lines; and many people do not vote on all items, particularly at the end of the ballot. She pointed out just because more people turn out to vote does not mean they would vote in all of the races or that they would be informed about the candidates. Ms. Garber stated she has done a great deal of ballot inspections, and the audit law indicates one randomly selected race must have one to two percent of the precincts audited. She advised this should not take more than two to four hours. Ms. Garber stated the cities should want an audit of its election to know the equipment worked correctly. She noted audits are important tools for improving elections.

Ms. Rita Press, 875 Wilmette Avenue, urged the Commission to stay with a two-year term as the voters indicated in a previous referendum. She stated it was important that the voters look at the record of the Commission members and decide whether or not to re-elect them. Ms. Press stated if an election had a president or governor running, the race would become more partisan; and certain offices should be kept non-partisan. Ms. Press reported an advantage for choosing the even years was the money factor and the higher turnout. She questioned why it was important to have a large turnout of people to vote if they are not informed. Ms. Press suggested saving money in local elections by combining precincts. She pointed out local elections are where people make a difference. Ms. Press noted Ormond Beach issues would be on the bottom of the ballot. She urged the City not to join the even numbered years, and to stay at terms of two years.

Ms. Veronica Patterson, City Clerk, clarified that by the way the City currently holds its elections, Ormond Beach's candidates would not be on a presidential or gubernatorial ballot, although they would be on the primary ballot. She noted the last primary had an 18% turnout. Ms. Patterson pointed out any runoff election would be held on the presidential or gubernatorial ballot in November.

Mayor Costello stated if the Commission should decide to go to even numbered years, they would have to discuss which of the three ways they should choose to handle the election.

Commissioner Gillooly stated everyone was so focused on saving dollars that her first reaction was to go for the savings since the City was asking everyone else in the community to cut back. She noted she did not give any thought to the possibility of partisanship creeping into the race. Commissioner Gillooly asked if the greater turnout would outweigh the fact that many people may not be voting on local issues due to the length of the ballot. She noted uninformed voters were an issue, but it was difficult to measure. Commissioner Gillooly requested clarification regarding the audit.

Commissioner Kelley reported the savings were not the driving force for him, but it was an important issue. He suggested additional study was needed. Commissioner Kelley reported there will always be uninformed voters, and he did not believe races becoming partisan would be a problem. He noted the City would have to compete on an even-year election to get

information out; but if the election was in August, the City would be ahead of the material in an October or November election. Commissioner Kelley urged the City to try to get as many people voting as possible, and it would be up to the candidates to inform the people of what that candidate had done, why they were running, why they sought their votes, and to educate them. He stated the people indicated they wanted four-year terms previously, and then changed in a subsequent election to two-year terms. Commissioner Kelley stated the City had an opportunity to get on the same cycle as the rest of the County, and there was an advantage to have all of the elections in the same year so there would be no political signs the next year.

Commissioner Partington advised he favored the even years due to the cost savings and efficiencies, but he understood the concern of getting lost on the ballot. He noted he would prefer a regular election with the winner taking all and not having a runoff. Commissioner Partington stated he had no strong feelings regarding two or four-year terms and would leave that up to the voters. He recommended changing the beginning of the term to a week or two after the election; however, he was open to other ideas.

Commissioner Kent stated he was excited to save \$30,000 each election. He favored a general election, allowing the voters to decide on a two or four year term.

Mayor Costello stated being last on the ballot could be handled through clever advertising. He noted he believed significantly more voters would vote even after the under-votes were considered. Mayor Costello reported he had been asked if he wanted his party to campaign for him; but he had indicated it was a non-partisan race, and he wanted their support as individuals rather than as a party. He noted the race was as partisan as the candidate chooses to make it. Mayor Costello reported the savings were great, but he preferred that option even if there would be no savings. He stated in the past he has sent information to super voters, and it was likely that this would not be done if the election were on a general election. Mayor Costello noted this might actually help people become more informed. He advised he could support the winner taking all, with the winner taking office at the next meeting after the election. Mayor Costello explained he favored the New Smyrna Beach plan, which was for a four-year staggered term, with the mayor every two years, in that this would keep continuity on the Commission and the people would be voting for three Commission members every two years. He noted with a two year term, the Commission member would participate only one full budget cycle, since the budget would be completed by the time he takes office. Mayor Costello reported voters never had this opportunity previously.

Ms. McFall explained an audit does not take just a few hours in that 2%, or four precincts, had to be audited; it was necessary to go into each of the early voting ballots to select those votes in that precinct; and the same had to be done with the absentee ballots. She advised it took a day of planning and a day and one-half to audit for four precincts. Ms. McFall reported she favored consolidation of precincts but explained that precincts are selected by City zones, congressional districts, and County Council districts. She stated on the 2008 ballot there would be a presidential race, two congressional challenges, and all constitutional officers in Volusia County such as sheriff, property appraiser, clerk, supervisor of elections, and County chair. Ms. McFall explained all County Council, school board, and cities races are non-partisan with the partisanship starting at the state legislature level and above, with the exception of the Clerk of the Court, which was a partisan race. She reported if the City wanted to place something on the ballot, any changes must be made by March 1 of any year; and for this year's ballot, she indicated she would need the language by August 26.

Mayor Costello stated the possible direction the Commission could take was to leave the elections as they were with the initial election being held earlier; leave the election as it was in the odd year with the winner taking all; move to an even year with an early primary and general election in November; or go to the even year with the winner taking all.

Commissioner Kent advised he preferred the even year with the winner taking all.

Mayor Costello noted the Commission unanimously agreed with Commissioner Kent. He asked Ms. Patterson what else was needed in the resolution on which the Commission should decide.

Ms. Patterson explained the Commission cannot change the type of election without having a Charter amendment.

Mr. Randal Hayes, City Attorney, reported the Commission was limited as to what they could do by ordinance without a referendum, and the types of changes indicated would require a referendum election.

Ms. Patterson explained the Commission could go to the even numbered years by ordinance if they opt out by March 1, with an ordinance to change the election to 2010. She reported the Commission could extend their terms to the 2010 date in order to go with the even numbered elections; and at that time or prior to that time, there could be a Charter election to make the other changes discussed. Ms. Patterson clarified this could be accomplished by one of two methods: having an ordinance to extend the terms to have elections with the County in the even-numbered years with the regular election on the County primary ballot and the runoff in November; or holding the election in November and have everything done by referendum.

Mayor Costello clarified the Commission wanted to go to the even numbered year, which would extend the Commission terms to 2010; and at that 2010 election, have the election as usual; and on the runoff in November the referendum could be included to change the procedure for the future.

Mr. Hayes explained the Commission can, by ordinance, move the dates to coincide with a State or national election, move the qualification periods extending the terms of office, and move the organizational meeting date; however, anything else would require a referendum.

Mayor Costello stated the Commission was agreeing to do what Mr. Hayes indicated and to make further amendments on the ballot, whether on the 2009 or 2010 ballot. He reported the Commission would ask the electorate if they supported a winner to take all election in November so they do not have to have a primary when there would be a lower turnout. Mayor Costello advised the Commission wanted the highest turnout possible; therefore, it would be a Charter referendum, but everything else could be done by ordinance.

Ms. Patterson stated that was correct; however, the Commission could not stagger their terms by ordinance.

Mayor Costello clarified that by referendum the Commission could change to winner take all in November, but he asked the Commission if they were interested in giving the voters an opportunity to decide if they would prefer four-year staggered terms for the Commission with two year terms for the mayor, and all agreed they would.

Commissioner Gillooly stated she was not necessarily in favor of the four-year staggered terms for the Commission with two year terms for the mayor, but she was in favor of the voters having the choice.

Mayor Costello summarized one Charter amendment would be for the voters to decide if they wanted the winner to take all at a November election to assure highest turnout, and the second Charter amendment would be for four-year staggered terms for the Commission with two-year terms for the mayor.

Commissioner Partington stated the third Charter amendment would be changing when the new Commission would take office; whereby, the City Attorney advised the new Commission taking office would be consistent with changing the election dates.

Commissioner Kelley asked if the Commission would have to specify which zones would be up for election in the referendum.

Mr. Hayes stated this was done before and it could be done the same again or be reversed.

Mayor Costello recommended reversing what was approved the last time.

Ms. Patterson stated the last time this was done, Zones 1 and 3 were two year terms, and Zones 2 and 4 were four year terms.

Commissioner Kelley noted this did not need to be decided at this time.

Commissioner Gillooly urged placing it on the record why the Commission must have the authority to extend their terms, which was that the City has missed a deadline to include the item on the 2008 ballot in that it would have had to be announced by March 1. She reported this was going to be a cost saving measure.

Ms. McFall stated out of 16 cities, about ten cities have opted to go to even-numbered years, all of which would extend their terms.

Ms. Patterson stated in the last issue election that was run with the County, there was a 58% turnout with a 3% under-vote.

Item #8 - Consent Agenda

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

Commissioner Kent moved, seconded by Commissioner Gillooly, for approval of the Consent Agenda as presented

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

Item #9 – 245 Palm Place

ORDINANCE NO. 2008-17
 AN ORDINANCE AMENDING SUBSECTION A, ZONING MAP, OF SECTION 2-03, OFFICIAL ZONING MAP AND ZONING DISTRICT, OF ARTICLE I, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF THE *LAND DEVELOPMENT CODE*, BY AMENDING THE OFFICIAL ZONING MAP TO REZONE CERTAIN REAL PROPERTY TOTALING 0.126 ACRES LOCATED AT 245 PALM PLACE FROM B-4 (GENERAL COMMERCIAL) TO NP (NEIGHBORHOOD PRESERVATION); AUTHORIZING REVISION OF THE OFFICIAL ZONING MAP; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Kent, to approve Ordinance No. 2008-17, on second reading, as read by title only.

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

Hearing no objection, Mayor Costello closed the public hearing on Item #9.

Item #10(A) – School Concurrency

ORDINANCE NO. 2008-25
 AN ORDINANCE RELATIVE TO SCHOOL CONCURRENCY BY AMENDING THE FOLLOWING CHAPTERS OF THE CITY OF ORMOND BEACH *LAND DEVELOPMENT CODE*: CHAPTER 1, GENERAL ADMINISTRATION, ARTICLE III, DEFINITIONS AND ACRONYMS, SECTION 1-22, DEFINITION OF TERMS AND WORDS, BY AMENDING AND ADDING VARIOUS DEFINITIONS, BY AMENDING CHAPTER 1, GENERAL ADMINISTRATION, ARTICLE V, CONCURRENCY MANAGEMENT, SECTIONS 1-29, PURPOSE AND INTENT, THROUGH 1-32, CRITERIA FOR DETERMINING CAPACITY; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Ordinance No. 2008-25, 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 #10(B) – Special Referendum Election Relative to Building Height Limits

ORDINANCE NO. 2008-26

AN ORDINANCE AMENDING SECTION 7.01, MAXIMUM HEIGHT LIMITS, OF ARTICLE VII, BUILDING HEIGHT LIMITS AND RESTRICTIONS, OF THE CHARTER OF THE CITY OF ORMOND BEACH, FLORIDA, ESTABLISHING AN EXCEPTION FOR MULTI-FAMILY AND NON-RESIDENTIAL BUILDINGS TALLER THAN SEVENTY-FIVE (75) FEET THAT EXISTED ON NOVEMBER 14, 2006, AND DEVELOPMENT ORDERS THAT RECEIVED FINAL DEVELOPMENT APPROVAL BEFORE NOVEMBER 14, 2006, FOR THE CONSTRUCTION OF MULTI-FAMILY AND NON-RESIDENTIAL BUILDINGS OVER SEVENTY-FIVE (75) FEET IN HEIGHT; ALLOWING THOSE BUILDINGS TO BE MAINTAINED, REPAIRED, CONSTRUCTED AND RECONSTRUCTED; PROTECTING VESTED RIGHTS OF LANDOWNERS; PROVIDING FOR AND CALLING A SPECIAL REFERENDUM ELECTION OF THE REGISTERED ELECTORS OF THE CITY OF ORMOND BEACH, FLORIDA, TO BE HELD NOVEMBER 4, 2008; PROVIDING FOR SEVERABILITY; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2008-26, on second reading, as read by title only.

Commissioner Gillooly stated it was vitally important to bring people together on this in that this ordinance addressed a question of the existing citizens' ability to maintain and protect their property. She noted if modifying the language to bring everyone together would be of assistance, she believed it should be done. Commissioner Gillooly cautioned the City not to change any language that may jeopardize any legal position of the City.

Mayor Costello advised he requested Mr. Hayes to prepare a potential substitute ordinance incorporating the valid issues brought to the City's attention by Mr. Norman Lane and the other CAN DO representatives.

Mr. Hayes reported the proposed changes addressed some of the issues CAN DO raised, and it would tighten up the language. He stated the term "and land development regulations" would be deleted from paragraphs (b) and (d). Mr. Hayes stated the vested rights determination would be made by the City Commission rather than the Planning Director, with the appeals to go to the circuit court as opposed to the Board of Adjustment and Appeals. He noted the fourth sentence in the same paragraph was deleted, and the following language would be added: "a landowner may appeal an adverse decision of the City Commission to the Volusia County Circuit Court by filing a petition for writ of certiorari within 30 days of final action by the Commission which shall be the exclusive remedy for appeal." Mr. Hayes reported in paragraph (d), an attempt was made to clarify that the exceptions in paragraph (b) would apply only to structures that were in existence before the amendment; and for development orders that were approved prior to the amendment, he added the following: "as applied to the exceptions described in paragraph (b)." He noted he deleted from that same paragraph the following language: "in land development regulations then in effect" and included: "subject to any other applicable federal, state, and local laws."

Mayor Costello stated one of the only difference Mr. Hayes had with the CAN DO recommendation was that the City would not allow appeals to go back to the Board of Adjustment and Appeals before it would go to circuit court.

Mr. Hayes advised CAN DO also recommended different language for paragraph (b), and they wanted to delete paragraph "d" completely; but he believed this paragraph clarified the issue.

Mr. Norman Lane, 1314 Northside Drive, chairman of CAN DO, advised he did not understand all of the changes and their implications, but it should not take a lawyer to understand what would be on the ballot and possibly in the Charter. He noted what CAN DO objected to in paragraph "d" was that it stated the original resolution did not intend to restrict the property owners' rights other than for the exceptions.

Mayor Costello explained this was indicating the City did not wish to restrict property rights of residents relative to only two specific cases that related to buildings over 75 feet on

November 14, 2006, which were to rebuild only those structures or for those who had a development order approved on that day.

Mr. Lane stated this was a good step in the right direction if the intent was to take into consideration a homeowner who lived in an existing building, allowing then to rebuild in the event of a storm, or if someone had an approved development order at that time. He reported a simple statement of these two exceptions could be made rather than adding the “legalese.”

Mayor Costello stated the Charter amendment was a simple statement that was actually a question; and had the Commission not changed it, there would not be anything in the code, so “simple” does not always work. He noted the Commission requested grandfathering at that time, and the writers of the amendment would not add it. Mayor Costello stated he wanted all sides of the issue represented. He advised all the Commission wanted to do was protect peoples’ rights, that most of the voters did not realize they were taking away by the vote, to be restored.

Mr. Lane stated CAN DO’s goal was to preserve the rights for the people who want the height limit.

Commissioner Gillooly reported she appreciated Mr. Lane’s statement that he did not want to take away the rights of the people who already owned the condos.

Mr. Louis Lumaghi, 1 Cliffside Drive, secretary of CAN DO, requested this not be voted on tonight and asked for more discussion. He stated he believed there were technical issues that have not been fully resolved. Mr. Lumaghi stated in paragraphs “b” and “d” the words “and/or” referenced allowing people to rebuild either under current law or prior law. He questioned if landowners would be bound by the codes of the federal, state, and local governments as of the time they set up their legal claim to build or under the present code rules.

Mr. Hayes stated Mr. Lumaghi’s concern was language that was proposed to be amended out. He explained what was being proposed was a very narrow exception to the height limit applying to two situations only. Mr. Hayes stated the structures could be rebuilt to the same height and to the same building footprint as existed on the date of the Charter amendment subject to any applicable federal, state, and local laws which may involve issues such as setbacks. He reported there may need to be variances granted from the then current codes, not including the height issue, which would have to come back before the Planning Board and the City Commission for an amended development order or an agreement which would qualify under the statutes; however, that would have nothing to do with what was being discussed this evening.

Mr. Lumaghi expressed concern regarding paragraph “c” where the Planning Director would decide if a homeowner could rebuild or if someone with a development order could build over 75 feet.

Mayor Costello advised that provision would be deleted and replaced with language that the City Commission would be making that decision.

Mr. Lumaghi advised Florida Statutes require at least two public hearings.

Mayor Costello reported this was the second reading.

Mr. Hayes stated the statute to which Mr. Lumaghi referred had no application to what was occurring. He explained that was part of a statute entitled “Local Government Land Development Agreement Act,” and the legislative intent was to allow a flexible mechanism by which local governing bodies and developers can enter into agreements for development purposes in order to effectively manage the planning, financial, and building aspect of development projects. He advised it clearly states it was supplemental to any other applicable laws and powers confirmed to the Commission, and it was not mandatory the Commission utilize the procedure under that act, and it does not address the vested rights situation. Mr. Hayes stated under this concept, if there were an existing development order, the property owner could rebuild in accordance with the development order; and if there were certain issues, other than height or building footprint that do not comply with other existing laws, it may be possible the Commission would need to enter into an agreement under this provision which would require two public hearings. He stated that has no application to the proposed Charter amendment. Mr. Hayes advised some of the CAN DO changes were incorporated into a proposed amendment for the Commission to consider. He assured Mr. Lumaghi that the reference to the Planning Director having the authority would be deleted; however, there was nothing inappropriate about the Planning Director making those determinations. Mr. Hayes

reported given the magnitude of the issue, it was important to allow the public the right to participate; and this Commission has allowed that to occur.

Commissioner Kent stated that without the changes the Commission just received, Mr. Lane and Mr. Lumaghi would have no way of knowing about the proposed changes. He advised due to CAN DO's raising these issues, changes would be made. Commissioner Kent reported to Mr. Lane and Mr. Lumaghi that the Commission just received the changes.

Mayor Costello reported he thanked CAN DO earlier for the information they brought forward.

Mr. Hayes stated he also appreciated the comments from CAN DO. He noted he drew up this ordinance with the intent of drawing the exception very nearly. Mr. Hayes stated it was good to have others' ideas, and some were incorporated in the amendment. He pointed out there was a great need to work with CAN DO in order to place this on the ballot and to get it into the Charter. Mr. Hayes explained he took Mr. Lane's concerns, addressing them point-by-point so it would be easier for the Commission to discuss, and incorporated them in an amended ordinance.

Mr. Isaac Turner, City Manager, stated the recommendations from CAN DO representatives came into the City on Monday at 10:30 a.m., and staff has been working on this. He noted the Commission also was reviewing the issue and asking questions today and yesterday.

Ms. Pat Behnke, 15 Malayan Sun Bear Path, stated she could support this and encourage Bear Creak residents to support this with minor changes. She explained her main concern was that in the original letter to Mayor Costello from Mr. Hayes, the term: "so long as any such development order has not lapsed, expired or been terminated," was not included in the ordinance. Ms. Behnke requested that be spelled out in all appropriate areas to make the issues clear.

Mayor Costello stated that phrase was in the ordinance.

Ms. Behnke stated it was only in paragraph "b;" whereby, Mayor Costello noted it was only needed once.

Ms. Behnke reported the language going to the voters should spell out the above-noted phrase.

Mr. Hayes stated there was a limit of 75 words, and it took time to cull the question down to what now existed. He advised the text of the proposed amendment included the verbiage Ms. Behnke requested.

Mayor Costello asked when the development order that was the exception would expire.

Mr. Ric Goss, Planning Director, stated there was only one development order he was aware of, which was the Spinnaker's Floridian that was approved in October 2005 as a Planned Business Development (PBD) with an April 2007 expiration date. He reported before the expiration date, permits were applied for, received, and construction began on the existing building. Mr. Goss stated the PBD was for both the existing and the new building. He advised construction has been slow, but it was moving forward, following the intent of the ordinance.

Commissioner Kent stated if a project is abandoned for two years with no construction activity, the permit would be void and a notice of final plan revocation filed; and before the planned development can be re-established a new development order, it should be reviewed and approved by the Planning Board and the City Commission.

Mr. Goss stated the development order was good to April 2007, and as long as they picked up permits and started work, the Floridian would have upheld the conditions. He stated they did receive permits and started construction prior to April 2007. Mr. Goss advised because the existing and new building was on one development order, it was determined that construction had been moving along.

Mayor Costello explained the building was less than 75 feet, but the elevator shaft pushed it over 75 feet.

Commissioner Kent asked if they would be required, under the 2006 code, to have underground fuel and generator.

Mr. Goss stated it would depend; but they would have to comply, particularly for the new building.

Mr. James Evans, 31 Lake Park Circle, asked why it has taken the City two years to put this proposal on paper in that the desires of the electorate were clear. He noted the proposed amendment specifically mentions the Royal Floridian Hotel as being over 75 feet tall and having a permit to increase the height even further. Mr. Evans stated since this has been formally noted, he questioned why the specifics of the approved changes in height limit were not listed for consideration of the electorate. He stated he believed allowing even one business to increase its height above the limit would create a legal precedent that other developers could use against the City to circumvent the intentions of the citizens. Mr. Evans pointed out the Planning Department indicated they were not aware of any other permits issued prior to November 14 which would allow for buildings higher than 75 feet. He stated the department vested with the right to issue permits should have an accurate accounting of the exact number of outstanding documents to avoid such ambiguous statements. Mr. Evans recommended rewording the proposal to state that no building may be increased above 75 feet with the exception of reconstructing damaged buildings currently in existence. He urged rescinding any permits which allowed new buildings to exceed the height restriction.

Mayor Costello stated there was only one development order, and he advised this Commission has done everything possible to make certain they were being open. He noted the Commission requested the opportunity to include grandfathering in the original Charter amendment, but they were not provided that opportunity. Mayor Costello stated the Commission used public funds to educate the residents on the pros and cons, one of which was the grandfathering issue, which was now being validated.

Mayor Costello called for a break at 9:06 p.m. He reconvened the meeting at 9:12 p.m.

Ms. Elizabeth Robinson, 31 Lake Park Circle, stated she had issues with the current language in paragraph 2(b)(2) which stated: "any development order that received final development approval before November 14, 2006, for the construction of multi-family or non-residential building over 75 feet in height..." She stated that since it has been stated that the only known building covered by this statute was the Royal Floridian resort, it should be clearly stated that it was the only exception. Ms. Robinson advised paragraph 2(c) states: "The Planning Director shall make every reasonable effort to provide a written determination within 60 days of the date the request was made. Any building that has been approved for exemption shall be included on the list of similarly approved buildings that shall be maintained by the Planning Director or his or her designee. The landowner may appeal an adverse determination by the Planning Director to the City Commission and the City Commission shall consider the appeal de novo. An appeal of an adverse determination by the City Commission shall be to the Volusia County Circuit Court by filing a petition for writ of certiorari." She asked what constituted a reasonable effort and noted a time certain should be stated. Ms. Robinson asked why there was not a public place of notice, such as the internet, as to which buildings are determined to be exempt and the reasons for the exemption. She noted being kept in a department gives rise to the opportunity to make the list unavailable except at times and places which are inconvenient to the inquirers. Ms. Robinson asked how someone can appeal a positive but illegal determination of exemption. She stated an appeal should be direct, not de novo, although she understood the Planning Director has been cut out, and it would go directly to the Commission.

Mayor Costello advised the information would be a public record and available if someone would ask for it.

Ms. Robinson stated if the information was on the internet people would not have to ask staff for the information, and it would be readily available any time day or night. She reported according to paragraph (2)(d) the buildings may be constructed under the previous, less restrictive, ordinances and not the current, more restrictive, laws. Ms. Robinson stated the ordinance indicated "multi-residential and business buildings," and she recommended it indicate "all buildings," which would greatly simplify the issue.

Mr. Alan Burton, 915 Oceanshore Boulevard, stated the issue of property rights should be the same for all. He suggested listing the exception or exceptions. Mr. Burton noted since the revisions were made during the last 48 hours, he recommended the Commission consider bringing this back in two weeks with the revisions placed on the internet so all of the issues could be addressed.

Mayor Costello reported it was clear what the Commission was trying to accomplish, and it was not appropriate to name commercial structures in a Charter amendment. He urged people to consider a person living in a condo unaware for 16 years that the architectural embellishment that hides their air conditioner puts the building over 75 feet. Mayor Costello noted if the homeowners were unaware, they would not list their homes; but it was discovered after a

hurricane destroys the air conditioner, and with the current laws, the air conditioner could not be replaced.

Mr. Phil Maroney, 117 Atwood Lane, reported the Daytona Beach Area Association of Realtors appreciated the Commission undertaking this issue. He noted he was very encouraged speaking to some CAN DO representatives that everyone was in agreement that the people currently living in the buildings should be protected. Mr. Maroney thanked Mr. Hayes for putting this wording together in such a short time frame. He stated if the City could incorporate the changes that would not affect the legality of the amendment and make it as simple as possible, it would help the trust factor. Mr. Maroney pointed out that if it should take another meeting to make the changes clear and more people would be comfortable, he could accept the delay, but he did not want to lose sight of the ultimate goal, which was to protect the homeowners.

Mr. John Bornmann, 6 Windsor Drive, questioned if the development order for the Royal Floridian was for two buildings.

Mayor Costello stated the Royal Floridian had a development order for the current building where renovations were being made as well as a second new building, and that development order was approved before the election.

Mr. Bornmann stated the public has not had a chance to study the new language, and he urged the Commission to delay this decision to provide the opportunity for people to see what the Commission was considering.

Mr. Al Szemborski, 395 South Atlantic Avenue in the Tidesfall Condominium, thanked the Commission for attempting to protect him and his fellow condominium owners. He noted he brought this to the attention of his condominium board of directors who did not understand the impact this could have. Mr. Szemborski advised condominium owners were a small minority, but the Commission was charged with oversight over everyone including minorities. He expressed concern as to what would happen if this ordinance does not pass because property owners would have major problems.

Mayor Costello stated it was for this reason that he, and he believed the Commission, was working so hard to try to come to an agreement.

Commissioner Kelley, seconded by Commissioner Partington, moved to amend the ordinance with the language Mr. Hayes offered.

Mayor Costello stated he did not believe there was any need to rush, so he asked if the Commission wished to delay this for two weeks.

Commissioner Kelley advised he was not in favor of a delay and noted there was a motion on the floor.

Mr. Hayes stated if the Commission was inclined to continue this for two weeks, he recommended the Commission vote on the motion to amend so the proper ordinance could be distributed. He requested leaving the underlying motion to be approved in two weeks.

Mayor Costello stated he did not believe there was a need to delay this in that the Commission understood the ordinance, but he encouraged a delay for the citizens to better understand the ordinance.

Commissioner Kent stated Mr. Maroney urged the Commission not to lose the goal; and if would take another meeting, it should be postponed, because he wanted to be able to be 100% supportive. He reported he was excited about CAN DO and their new leadership. Commissioner Kent stated there have been a great deal of changes, and he understood it better; but he was not 100% supportive tonight, although he was more comfortable. He expressed concern regarding the wording of the question: "Shall Section 7.01, Maximum Height Limits, of the City Charter be amended?" Commissioner Kent requested a two week delay to speak to Mr. Hayes and people in the community. He reported he needed to consult with Mr. Hayes regarding what codes would have to be followed should over 50% of the structure be damaged.

Mayor Costello advised this does not have anything to do with set backs or anything other than height.

Ms. Patterson advised the next meeting was in three weeks, not two weeks.

Call Vote on the Amendment:	Commissioner Gillooly	yes
	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
Carried.	Mayor Costello	yes

Commissioner Kent move, seconded by Commissioner Partington, to continue this to the next City Commission meeting.

Commissioner Kelley stated this would simply give the people the right to rebuild their home. He noted he could wait for the next meeting, but he believed it was not necessary.

Mayor Costello stated he agreed he was comfortable voting on it, but this was making an attempt to allow everyone in the community to have an opportunity to digest the information and offer their support.

Commissioner Gillooly stated she wanted to make sure everyone was engaged in this. She noted the valid comments and concerns were addressed. Commissioner Gillooly commended Mr. Hayes for coming up with these amendments. She advised she was hopeful everyone could get together, and additional time to digest the information could be helpful. Commissioner Gillooly questioned the open ended time Mayor Costello discussed when she understood there was a deadline.

Mayor Costello explained a deadline was set, but there was no penalty if the deadline was not met because people may not know their building was over 75 feet until a catastrophe would occur.

Mr. Hayes stated if a lawsuit were to be filed, the court would agree they were vested, and the court order would govern what that property owner was allowed to do; therefore, it was not relevant if this amendment had a date or not. He noted the date was more of a date of encouragement than a deadline.

Call Vote on Postponing the Ordinance:	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Gillooly	yes
Carried.	Mayor Costello	yes

Item #11 – Parking Prohibition

ORDINANCE NO. 2008-27
 AN ORDINANCE AMENDING CHAPTER 20, TRAFFIC, BY AMENDING SECTION 20-13, PARKING PROHIBITED FOR CERTAIN PURPOSES; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kent moved, seconded by Commissioner Kelley, to approve Ordinance No. 2008-27, on first reading, as read by title only.

Commissioner Kelley thanked the citizens who brought this to the Commission's attention and to Commissioner Kent, because this was a problem.

Commissioner Kent thanked Mr. Clark Rohmer for his vigilance and for his suggestions.

Mayor Costello asked if this should be amended to give special events permission now or if it should be addressed prior to special events.

Commissioner Kelley stated during special events was the time this would be violated the most.

Mayor Costello noted he was only suggesting if an amendment were to be made that this may be the time, but he was not advocating the amendment.

Commissioner Kent urged not making the amendment.

Police Chief Michael Longfellow stated this referred to commercial vehicles; therefore, a private trailer would not violate this ordinance.

Commissioner Kent questioned that a private trailer could be parked across from Bennigan's on A1A.

Chief Longfellow replied a private trailer could park there, but for no more than 24 hours. He noted the Deputy City Attorney was very uncomfortable specifying particular areas of the City and tried to make it more universal throughout the City without being overly restrictive.

Mayor Costello stated there was no support for an amendment, so the Planning Director should inform the people of this if they come in seeking an amendment.

Commissioner Gillooly asked if this referenced overnight parking.

Chief Longfellow advised the intent of the ordinance was to prevent parking of commercial vehicles from sunset to sunrise.

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

Item #12(B) – Leisure Service Fees

Mayor Costello asked if there were any questions on this issue. The Commission unanimously supported the 30% increase in Leisure Services user fees plus the 3% annually.

Commissioner Kelley referenced page 48 in the information packet under "Games - doubleheader – each" which was \$225. He noted he assumed this was for each doubleheader rather than each game; whereby, Mr. David Abee, Leisure Services Director, noted Commissioner Kelley was correct.

Commissioner Gillooly referenced the theater surcharge which went from \$1 to \$2 through \$5. She asked if this was based on non-profit use.

Mr. David Abee, Leisure Services Director, stated a number of comments came forward from the theater groups, and all favored having a range so they could give more money back to the Performing Arts Center. He noted they were willing to increase the ticket price to return these funds to the City. Mr. Abee advised this was for both not-for-profit theater groups and commercial. He noted this would provide the autonomy for people to give more if they chose to do so.

Commissioner Kelley questioned the 3% increase each year for someone renting wedding space. He questioned who would count the attendees to know if they should be charged for 100 or 150 people. Commissioner Kelley recommended setting a single fee for a wedding.

Mr. Abee stated weddings occur at various places within the City. He noted Rockefeller Gardens had the highest cost because it had more amenities with a better ambiance. Mr. Abee explained Rockefeller Gardens was divided into thirds: south, middle, and north.

Commissioner Kelley questioned why the charge was \$27.50 and \$55, but was there was no charge extended for this year at Rockefeller Gardens.

Mr. Abee noted staff would investigate that issue.

Commissioner Kelley asked why the City would be charging more per hour for more people.

Commissioner Gillooly offered the reason could be because of the need for additional staff.

Mr. Abee agreed the costs were geared to the number of staff required. He stated the areas would dictate how many people the venue can hold.

Mr. Turner stated there were many issues involved, but the Commission was not being asked to vote on this tonight. He reported staff would bring the Commission an ordinance on July 28 and answers would be provided before that date. Mr. Turner advised that he met with Ms. Siobhan Daly who indicated she was pleased the fee structure was changing and advised him of some of the duties that must be performed for weddings. He noted staff was trying to match the charges to the event and the facility and also to raise more money. Mr. Turner stated the Commission approved some charges when it approved the responses to the request for

proposals (RFP), and rather than providing the only remaining charges, staff provided all of the charges.

Commissioner Kelley stated the Birthplace of Speed Park had a flat fee for up to eight hours while other areas are charged per hour and per the number of people.

Commissioner Gillooly stated she considered these fees extremely reasonable.

Mayor Costello asked Mr. Abee to examine the flat fee versus the fee per hour and the “number of people” charge issue.

Commissioner Kelley reported some fees should be adjusted annually. He advised he appreciated the detail in the report.

Item #13 – Reports, Suggestions, Requests

Civil Air Patrol Agreement

Commissioner Gillooly stated the consent agenda item was to accept the lease of the Civil Air Patrol, and three members of their leadership were present tonight to answer questions if the Commission had any for them. She acknowledged the Civil Air Patrol’s efforts.

Memorial Day Celebration

Commissioner Gillooly stated the Memorial Day celebration was very moving, and there was a great deal of community involvement. She thanked the committee and staff for their efforts.

Civil Air Patrol Agreement

Mayor Costello asked Mr. Turner to send a letter to the Civil Air Patrol leadership noting he was sorry that he was remiss in not inviting them to speak.

Response to Citizen Requests

Commissioner Kent stated Mr. Schultz indicated he was waiting months for information from staff. He urged Mr. Turner to set the record straight when a citizen makes a comment he knows not to be accurate. Commissioner Kent advised he did not want those listening to believe it was common to wait months for a response for information when that was certainly not a common practice.

Height Limit Issue

Commissioner Kent stated what the Commission did tonight regarding the amendment for the height issue relative to holding off the final vote a few weeks was the right thing to do.

World War II Veterans

Commissioner Kent reported he believed there was a plaque of all Ormond Beach veterans who went to war during World War II. He noted he would be interested to learn how many of these veterans were still living and requested the City acknowledge them.

Mayor Costello agreed the City needed to find out about all of the veterans from all of the wars. He noted there was a place in Memorial Gardens where this would be appropriate.

Four-Day Work Week

Commissioner Kelley thanked Mr. Turner for considering his suggestion of a four-day work week. He advised VCOG, Volusia League of Cities, and WAV were going to a four-day work week for the summer.

Budget

Commissioner Kelley thanked Mr. Paul Lane, Finance Director, and Kelly McGuire, Budget Director, for assisting him in better understanding the budget format. He noted he wished to discuss at a focus meeting a method to make the procedure easier and less complicated.

Fire Services

Commissioner Kelley thanked Fire Chief Barry Baker for the discussion he had on fire services and responses.

Unfunded Mandates from the State Legislature

Mr. Turner reported an article cited 471 unfunded mandates cost local governments \$1 billion. He advised the State was dictating the legislation and not providing any funding. Mr. Turner stated they were then reporting they were cutting local governments.

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Four-Day Work Week

Mr. Turner stated Ormond Beach has researched the four-day work week. He noted areas of the Police Department were currently on a four-day work week, and staff was considering it again per Commissioner Kelley's request.

Unfunded Mandates

Mayor Costello stated Ormond Beach paid \$650,000 for roads that until the last year or so would have been out of the question; however, this was a direct result of the MPO getting only 25% of DOT money rather than the 40% they were receiving. He noted the State was keeping 75% rather than the 60% increasing their funding 25% at the expense of local entities. Mayor Costello pointed out the State keeps more money while the cities must invest more money. He stated the City spent the funds to complete the road that would not have been completed without City funds. Mayor Costello urged someone come up with more of these types of issue where the State was no longer funding what they used to fund such as mental health issues, Halifax Habitat for Humanity, and affordable housing.

Item #14 - Close the Meeting

The meeting was adjourned at 10:18 p.m.

APPROVED: _____ June 24, 2008

BY: _____
Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk