

CITY COUNCIL OF EDGEWATER  
REGULAR MEETING  
FEBRUARY 4, 2008  
7:00 P.M.  
COMMUNITY CENTER

MINUTES

1. CALL TO ORDER

Mayor Thomas called the Regular Meeting to order at 7:00 p.m. in the Community Center.

**ROLL CALL**

Mayor Michael Thomas	Present
Councilwoman Debra Rogers	Present
Councilwoman Gigi Bennington	Present
Councilwoman Harriet Rhodes	Present
Councilman Ted Cooper	Present
Acting City Manager Tracey Barlow	Present
Interim City Clerk Lisa Bloomer	Present
City Attorney Carolyn Ansay	Present

**PLEDGE OF ALLEGIANCE, INVOCATION**

There was a silent invocation and pledge of allegiance to the Flag.

2. APPROVAL OF MINUTES

There were no minutes to be approved at this time.

3. PRESENTATIONS/PROCLAMATIONS/PLAQUES/CERTIFICATES/DONATIONS

- A. Presentation/Update by Ann McFall, Supervisor of Elections on election issues as a result of the 2005 Legislative changes/requirements to City Elections

Ann McFall, Supervisor of Elections, thanked the Council for the invitation to come tonight. She presented Council with a copy of Chapter 95-462 and the Powerpoint that was presented to the City Clerks at the City Clerks meeting on January 14<sup>th</sup>.

She again thanked the Council for allowing her to come tonight. Chapter 95-462 is the legislative change that was made back in 1995. It was amended in 1998. All 16 Volusia County cities abide by Chapter 95-462. It was to Deanie Lowe's credit that she

brought all the cities together. All 16 cities were having elections just about on a monthly basis. They were never not having elections. She felt it was an overload. It was a crazy time in Volusia County. In 1994 Ms. Lowe started having meetings with the City Clerks. She brought all of the cities together and it took a couple of years to do it. One of the trickiest parts of bringing all the cities together for uniform elections was to make sure the change over to the new schedule didn't cut any city Commissioners or Councilmembers term short. In almost all cases when the changes were made, it lengthened the terms of sitting commissioners, some as much as a year. The Legislative delegation sponsored it as a local bill. It went right through. Every City sent a letter of support for this original change. Some did so with the understanding they could opt out to being with. There is an opt out clause in Chapter 95-462. To this day, any opt out or any changes to Chapter 95-462 must be done by March 1st of each year. The idea started with four cities and it took two or three years for all 16 cities to join.

Ms. McFall stated the key to Chapter 95-462, which is a killer for the Department of Elections these days is having elections 28 days apart in October & November. It was very difficult to do in 2007. She would venture to say if all 16 cities had an election in October and November it couldn't have been done because of the law changes in 2005. They had 10 cities in October and 10 cities in November. They didn't have all 16 within 28 days of each other. The first election designated for municipalities shall be held, according to Chapter 95-462, 28 days prior to the first Tuesday after the first Monday in November, which would be a General Election. Some of the cities have that as a run off election. Right now Elections are 28 days apart. She commented on there being difficulties they are facing. In 2007 they faced it. There is such a thing as a 10-day contest of election. That is when any member of the public or any unsuccessful candidate can challenge an election. The 10 days starts after certification, not Election night. The City Commissions have to get back together and meet and certify that election. That is when the 10-day contest of election starts. She mentioned Deltona being the last to certify and them certifying the Monday after the Election Day. Then the ten days start. She locks down everything for 10 days in case there is a contest. That includes all memory cards, all of the optical scan units, all of the touch screen units, and all of the paperwork. Everything is locked down for 10 days. Early voting starts by law for counties 14 days ahead of any election. Already they are overlapping.

Ms. McFall then commented on the logic and accuracy testing that has to be done on every piece of equipment, every piece of media and every media card for every election. There are 179

precincts. They have 210 optical scan units, 210 touch screen units. They all have to be tested. They have about 600 to 700 memory cards that have to be tested. Every ballot has to be tested. Ballot ordering for the November election must be made the day after the October election. Lord only knows what would happen if they didn't know who won in October. That order gets faxed to City Clerk's office the day after the October Election is over. All poll workers must come in for three hour training before each Election. She was training poll workers before she knew which cities had elections. Port Orange didn't have any elections. They were training poll workers for all of the precincts. They have 1,200 poll workers they have to train for every election. In September they were training 1,200 for October and in October they were training 1,200 for November. The same 1,200 got trained for the Election from last week.

Ms. McFall stated by 5 p.m. on the last day of qualifying she sends to the City Clerk a ballot proof. She sends it back to her initialed approving it that evening. She needs it by 8 a.m. the next morning because the ballot order goes the next day after qualifying. We all know of the situations where someone qualifies and all of a sudden they found out their friend qualified and they don't want to be on the ballot anymore. They have to because the ballot order has already gone. That has been a big issue. It is bound to happen. It has happened before. There is a close Election in October. They don't know who goes on the November ballot. All the ballot orders are put on hold for all 16 cities. They had a recount in the Orange City Mayor's race this past year because it was so close. If that would have happened in October Edgewater's ballot order would have been on hold until they knew who to put on the ballot. They do one ballot order, not 16 different cities. There used to be a 75-day rule, which meant everyone who voted early or voted absentee and provisional, she had 75 days to post that in the individual precincts. They can't post it by line anymore. That 75 days turned to 35 days. Now she has 35 days to do that posting. It's really interesting. It's a lot of overtime, a lot of Saturdays & Sundays that they work after elections. The killer is they could have accomplished everything up until the audit requirement. Beginning July 1, 2008, immediately following certification so when the City Council meets to certify the election, the next day she needs the Canvassing Board at her office to camp out with her because the audit, which she is now required to do by law, shall consist of randomly selected precincts. Between 1% and 2% of the precincts for most cities. If they take 1% of the precincts, it is going to be at least one full precinct in every City. It's going to be a bigger audit than County elections. She spoke of there being 16 precincts minimal that they have to do audit on. The cities can't relinquish the authority to the Department of

Elections. The City Canvassing Board has to do the audit. The State Legislature planned it where it was within the 10-day contest of election. Any unsuccessful candidate or member of the public can use this audit for or against the election they are contesting. Within 15 days they have to file a report with the Division of Elections. This is huge. The Administrative Rule hasn't even been written for this year and it goes into effect in August. It starts July 1<sup>st</sup>.

Ms. McFall stated whatever the City Council wants to do, she will bend over backwards to assist them with that rather than having elections within 28 days of each other. There were some scenarios they came up with at the City Clerks meetings, which consisted of all of the City Clerks, most of the City Attorneys or their representatives and most of the City Managers. They came up with several scenarios. The first choice was to have the first election the same as in even numbered years but have it in odd numbers. The time span in even numbered years is 9 weeks. Scenario 2 is to schedule it in even numbered years and be on the same ballot as everything else. The Pros are there would be a much better turnout in City elections. The Cons are cities sometimes think they get lost in the shuffle because everything is on the ballot. It doesn't cost the City anything to be on even numbered years ballots. In talking to other cities and City Clerks who are speaking to their City Commissions, the City Commissions are a bit apprehensive about getting lost. Scenario 3 is to have the first election the same as in even numbered years and to assign the canvassing activities to the County Canvassing Board. According to the County Attorney Dan Eckert, this will recognize the Election as one election and not 16 elections. They aren't having 16 audits. They are having one audit of Election Day. That's the positive on that. As a result of the City Clerks meeting, two more suggestions came up. Continue to hold elections in odd numbered years and amend each City Charter to use the County Canvassing Board to canvass as opposed to amending Chapter 95-462. Scenario 5 is to lengthen time between the two elections in odd numbered years. The suggestion was as little as six weeks and as long as two months.

Ms. McFall informed Council she would be glad to answer questions they may have and that she understood this was just fact finding.

Mayor Thomas asked Council if they had any questions for Ms. McFall.

Mayor Thomas asked Ms. McFall what is going to be easier on her? Ms. McFall stated even numbered years. The very least is to maybe have two months between the elections if it is odd numbered years. The idea of the County Canvassing Board, as good as it

sounds, she would have to have every City change their Charter for that. She felt that would be hard to do. She wouldn't mind it. It would be easy. Anyone who has seen the Canvassing Board on Election night knows it's organized chaos at best. Mayor Thomas stated he is all for streamlining things.

Councilwoman Rhodes asked if any other cities have waited on this. Ms. McFall is going to have to have every city do the same thing. Ms. McFall stated pretty much the same thing. Councilwoman Rhodes asked her if she saw a problem with that because she does. Ms. McFall stated it happened in 1994 when all the cities came together. Ponce Inlet is going to have an election every November. They have one election a year and it is in November. If five people are running for Mayor, the winner takes all in one election. She didn't think they were going to change their Charter because they don't have the Primary to worry about. There are changes like that and quirky things. They want the city to have independence to have elections. She knows at the very least every City is going to have to change the first election. Councilwoman Rhodes didn't see a problem with that. She felt it didn't seem that huge a deal. She wasn't seeing a real downside to it. She doesn't know why every city wouldn't get on board with that. Ms. McFall stated in looking at the history of when Chapter 95-462 was developed, the cities did a bit of protesting because they wanted their own date for their City. They didn't want their candidates to be caught up in any other negative from any other city. It never happened but it could have. She is trying to weigh independence of what the City wants and the uniformity of what they need.

Councilwoman Rogers stated Ms. McFall made mention that it doesn't cost the City any funds for us to be in numbered years verses odd numbered years. She asked what kind of savings that would be to the City. Ms. McFall stated there are two fees the City pays. They have a contract with each City. The City pays directly any poll workers and any rent on any polling places. She wasn't sure what Edgewater's election cost was but estimated it to be around \$10,000. Daytona Beach pays about \$50,000 to have each election. She stated for her to open all 179 of the precincts for even numbered years it is probably at a half a million dollars.

Councilman Cooper stated if everybody were to go to even numbered years is what she would like to see, that gives her the number 3 scenario where it works out better for everything that has to be checked and the time frame. We are all odd numbered years. If they were to adopt the even numbered years, by the time they get this to referendum and voted on they would be in the middle of next year again. Ms. McFall stated that would be a transition

they would have to write up in an ordinance or Charter change. All the cities don't have to go to even numbered years. Even if one or two cities did that would be great. Ms. McFall commented on the January 29<sup>th</sup> Election, Deland had two Charter changes. They had a very high turnout. Everything passed. Everyone was happy and it didn't cost them a dime. Councilman Cooper stated they would have to extend the current offices by that year. Ms. McFall stated just as was done in 1995. Councilman Cooper asked if she has run into a scenario where individuals don't want to be extended and then they have a scenario where they do, how do you deal with that. Ms. McFall stated New Smyrna Beach almost did that this past year and decided not to because of an outcry from the public. It is nothing she would have to deal with. It is something the City would have to deal with.

Councilwoman Rhodes stated it sounds like a logistical nightmare. Councilwoman Bennington stated they changed their dates once before. They used to have an election every two years. Ms. McFall stated everyone did in 1995. Councilwoman Rhodes felt the simplest thing to do would be to extend between the Primary and the Election. Ms. McFall stated it is the simplest but in doing that it is going to change the qualification for candidates. It will move it up into June or July. Councilwoman Bennington mentioned having extended campaigning.

Councilman Cooper stated she needs determination relatively quickly. Ms. McFall stated it is too late to change March 1<sup>st</sup> of this year. The elections this year are August 26<sup>th</sup> and November 4<sup>th</sup> to put something on those ballots. It wouldn't cost the City anything to put those charter changes on. She thought Deltona was shooting for November for their Charter changes.

Councilwoman Rhodes confirmed they needed a Charter change to extend the time period between the Primary and General election. Ms. McFall stated felt they could change Chapter 95-462 by ordinance. Councilwoman Rhodes stated she didn't think that was in the Charter. Ms. McFall explained it had to be changed by March 1<sup>st</sup> of each year. City Attorney Ansay stated the Charter provides that they are conducted in accordance with the schedule.

Councilman Cooper asked how that affects their term limit fiasco. City Attorney Ansay stated that is definitely an issue. She felt to be clear they have an issue with term limits. They faced that last year when they were dealing with the change in terms. They were all rejoicing because they would never face this issue again. She suggested if they were going to even numbered years is a choice and they do it by Charter change that they could go in at the same time and make it clear that the term limit restrictions don't apply in this scenario. That should have been

done on the first go around to prevent the situation they had with the former Councilwoman who had that issue. They could do that to resolve it here and now if that were a problem. She didn't feel this was a big issue.

Councilwoman Rhodes stated it would be up to voters to decide if they wanted to go to even numbered years or not.

Mayor Thomas asked if they should take care of business tonight. City Attorney Ansay asked if any of the other cities have taken action yet. Ms. McFall stated Ormond Beach had it on their agenda this week. South Daytona is going to schedule it at their last meeting in February. She presented to them a week ago. She has three cities this week and three more to talk to next week. They are still balancing the books from January 29<sup>th</sup>. She can come back any time. Councilwoman Bennington wanted some time to digest this.

Acting City Manager Barlow asked if they decide to go with the November ballot when Ms. McFall needs the language? Ms. McFall informed him August 26<sup>th</sup>.

Mayor Thomas thanked Ms. McFall for making the trip.

Councilman Cooper was wondering if Ms. McFall had any examples of the Charter change language. That would be the next thing they are going to look at. They are about to put together a Charter Review Committee and it would be nice if they could handle everything at one shot. Ms. McFall didn't but would get some research together. Councilman Cooper felt if they were going to try and hash it out anything would help.

B. Presentation by A. Shawn Collins of Ghyabi & Associates summarizing the recently completed Southeast Regional Transportation Study

**A. Shawn Collins**, Ghyabi & Associates, made a presentation regarding the Southeast Regional Transportation Study that was recently completed.

Mayor Thomas asked if anyone had any questions or comments. Councilwoman Rogers stated no money.

Councilman Cooper questioned this being an adopted program and this being written in stone. He questioned if this is the just projection. He mentioned money being squashed everywhere. When he looked at what they just got down to in the last FDOT thing, they have two projects for Edgewater. Money has probably disappeared since they have done the study. He asked Mr. Collins

to fill them in on what it really means as far as anything being adopted. Mr. Collins explained it is different than what the MPO does. When the MPO adopts a plan, it is a federally funded document and it has to be consistent with all the local comprehensive plans and capital improvement projects. This is unique. Nothing like this has ever happened before. In essence it is kind of written in pencil right now. The City can provide the teeth it needs. It will be locally funded. To his knowledge the MPO has never passed a long-range plan that had financially feasible projects that were funded by private developers. All their funds have to be a tax generated revenue source. The VGMC didn't go that step further to say once they come up with a plan for the regional impacts for improvements, where do you go next? The resolution says they need to coordinate and put together a game plan on what kind of improvements are needed. The problem is that some of the communities just wanted to get to this point to have a picture in mind

Councilwoman Rhodes stated the point is to get those people that are making the impact to pay for the impact. She mentioned Edgewater not paying anything for Venetian Bay in New Smyrna Beach. Councilman Cooper stated nor did they get anything out of it. Councilwoman Rhodes stated she uses that road all the time. This would be that they all come to the table and say the impact on this community is going to be this amount of money. When you have something like Venetian Bay or Restorations that goes into a community and everybody comes to the table and Edgewater says they need to pay a certain amount of money. The developer says no, they don't want to pay that money. They will give it to New Smyrna Beach but not Edgewater. How do they keep all the players? How does New Smyrna Beach say they won't let them do this project unless they pay Edgewater?

Mr. Collins stated that is the fascia ordinance they are talking about. He commented on the model fascia ordinance.

Councilman Cooper confirmed Mr. Collins was saying the fair share ordinance if it is adopted by all three cities, would be a law. Everybody has to pony up. Ms. Collins stated yes.

City Attorney Ansay had concerns that maybe an ordinance wouldn't be enough and that there would also potentially have to be an interlocal agreement. Mr. Collins stated yes. City Attorney Ansay stated what would prevent one city, perhaps one night while approving, passing the ordinance to approve a particular project could also pass an ordinance that would repeal the fair share ordinance in order to get the project approved. If they have been playing by those rules for several years and all of a sudden New Smyrna Beach has a developer that doesn't want to pay for the

impacts in Edgewater. She asked if anybody has drafted those documents yet. Mr. Collins commented on being part of the first project that the Volusia Growth Management Commission adopted. They had an interlocal agreement as a part of the Comprehensive Plan Amendment with regard to the Lady Cadaver project in Daytona Beach Shores. He commented on there being recent precedent for interlocal agreements that are locked down. He commented on another project he is involved with in Osteen.

Councilman Cooper stated it is surprising to him that they haven't somehow formed a meeting where all three cities together to get exactly what City Attorney Ansay brings up. Development might be good over here and have to go along with program. None of it works if one city bails out. Councilwoman Bennington asked what is the next step. Councilman Cooper asked where they are going. Mr. Collins stated they are putting together the projected revenues to handle that and also the model ordinance. The Volusia Growth Management Commission is using the stick of not finding the Comprehensive Plan Amendments in compliance and requiring these long-range regional studies to take place. It will be a working document because unless they put a moratorium on development, it is going to be used. Councilwoman Bennington stated that could be a big stick if it is used right. Mr. Collins stated from what he has seen it will be.

Councilwoman Rhodes stated they used to have meetings with Port Orange, Edgewater, New Smyrna Beach and Oak Hill was always invited twice a year. Acting City Manager Barlow stated Steve Dennis used to moderate that. Councilwoman Rhodes stated so they could all be on the same page.

Councilman Cooper asked Mr. Collins what he was looking for tonight. Mr. Collins stated this was just a presentation to give them a status report. The study has been going on since the summer 2006. Councilwoman Bennington asked if this was presented to other cities. Mr. Collins informed her yes. They would see him again later this month at the MPO. On the 26<sup>th</sup> he will be in Port Orange. New Smyrna Beach already did an internal presentation. He has been meeting with the County for last two weeks.

Councilman Cooper asked Mr. Collins if his organization would take the lead on what they are discussing as far as coordinating between the three cities or will the approach be to each City individually. Mr. Collins stated the financial answer is no. Councilman Cooper stated not so much financial as the overall planning. Mr. Collins stated if the partners want him involved in that he has no problem with that.

Councilman Cooper stated when the study was done and the roads were looked upon and they did the traffic counts and employment, he was curious as to know why they didn't look at basic corridors where roads connect. How do they get involved with suggesting to his organization what other areas they might have wanted to look at? Mr. Collins stated there are no limitations on which project, whether it's a new project or an extension or widening of an existing facility, there are no limitations on it. There is no reason why. It just wasn't chosen as an alternative. Councilwoman Rhodes stated these are seen as the most critical.

Mr. Collins presented an example on how easy it is to make suggestions on this. They are never going to have an ideal list. They may recommend something today and down the road another Council may have another list. He has always told the members they can only go so far technically. The final decision rests in the Council's hands. Councilwoman Rhodes stated if the three cities meet they will decide. Councilwoman Bennington stated they are just giving us a guideline. Councilwoman Rhodes felt it was a good guideline. She likes it being all in one place. She felt it was helpful in prioritizing.

Mayor Thomas thanked Mr. Collins.

Mayor Thomas called a ten-minute recess at this time. The meeting recessed at 8:00 p.m. and reconvened at 8:10 p.m.

#### **4. CITIZEN COMMENTS**

There were no Citizen Comments at this time.

#### **5. CITY COUNCIL REPORTS**

Councilwoman Bennington had nothing at this time

Councilwoman Rhodes would like to have something added to Other Business on the agenda. General Employees Pension Board met and they have sent the Amendment to Council for their approval or denial.

Mayor Thomas stated they would just add it. He felt they could take care of it.

Councilman Cooper reported on the Volusia State County Address from Volusia County Chairman Frank Bruno. (Attached)

Councilman Cooper presented his report by reading it into the record. (Attached)

Mayor Thomas had nothing at this time.

Councilwoman Rogers had nothing at this time.

## 6. CONSENT AGENDA

- A. Edward Byrne Memorial Justice Assistance Grant - staff recommending acceptance of the "Grant" in the amount of \$8,159.00 to purchase a Duplex ID Card Printer & Fingerprint Capture and Stinger LED Flashlights

Acting Police Chief Bennett made a staff presentation.

Councilwoman Bennington had a comment about the ID. That is the best idea. As a member of CAPS they have to all schedule everybody to go to New Smyrna Beach and wait there. If somebody misses it they don't get the ID. She feels it is the best thing suggested in a long time especially allowing all City employees to have the official ID. It's great.

Councilwoman Bennington asked how many flashlights they were talking about. Acting Police Chief Bennett informed her 35. One for each officer on the street at the time they applied for this.

Mayor Thomas asked what the flashlight was. Acting Police Chief Bennett described the flashlight. Councilwoman Rhodes stated Daytona Beach doesn't provide those. Her husband got birthday money one year and that was the first thing he did was buy one of those flashlights. Acting Police Chief Bennett stated the larger flashlights they have are the mag flashlights and they can't carry those around 24/7. The idea is so they can carry them on their duty belt and have that light source available to them.

Councilman Cooper asked if this was a 100% grant. Acting Police Chief Bennett informed him he was correct. Councilman Cooper felt this was a no brainer.

Mayor Thomas asked what kind they are using now. Acting Police Chief Bennett stated they have a rechargeable mag lite, which is larger and heavier. Mayor Thomas asked if that was in their cars. Acting Police Chief Bennett informed him that was correct. It's not something they can carry on their duty belt 24/7. Councilwoman Bennington stated if somebody goes to use it and it's not charged it goes out. They have had that problem too. Acting Police Chief Bennett explained this flashlight is pretty much state of the art. All police officers like it.

Councilman Cooper asked if the ID card machine could be expanded to use as a personal ID card such as for health reasons for

seniors. Could they expand the use? He asked if they could punch in different categories. Acting Police Chief Bennett informed him they could put anything on that card. Councilwoman Bennington stated she uses her ID for anything. It has their picture and everything they could want on it. Acting Police Chief Bennett stated the quality of the card they use right now for City employees, they don't have access to the system that they have access to in New Smyrna Beach. This is an upgrade they want to expand to the entire City. Acting City Manager Barlow stated the system is very similar to New Smyrna Beach. They have went out and bought different colored card stock and used for their disaster management areas. It has a lot of opportunities. Councilman Cooper thought they could make this work a lot of ways.

**Councilman Cooper made a motion to approve the Consent Agenda, second by Councilwoman Bennington.**

**The MOTION CARRIED 5-0.**

## **7. PUBLIC HEARINGS, ORDINANCES AND RESOLUTIONS**

- A. Public Hearing, Richard Stonecipher, Earthquake Magoon's, 132 W. Park Avenue, requesting a Special Activity Permit for an Annual Bike Week Oyster Roast to be held on March 7, 2008

Development Services Director Darren Lear made a staff presentation.

Mayor Thomas confirmed they haven't had any problems.

The applicant was available to answer any questions. Councilwoman Rhodes thought No Name was out of the bike business.

Mayor Thomas entertained a motion.

**Councilwoman Bennington moved to accept the Special Activity Permit for an Annual Bike Week Oyster Roast to be held on March 7, 2008 at Earthquake Magoon's, second by Councilwoman Rogers.**

**The MOTION CARRIED 5-0.**

## **8. BOARD APPOINTMENTS**

- A. Animal Control Board - nomination by Councilwoman Rhodes to fill a vacant seat due to the expired term of Jamie Young, who seeks reappointment

Councilwoman Rhodes moved to reappoint Jamie Young, second by Councilman Cooper.

The MOTION CARRIED 5-0.

- B. Oversight Committee for Public School Facility Planning - nomination by City Staff for Councilwoman Bennington to be appointed to the Committee

Councilwoman Rhodes made a motion to appoint Councilwoman Bennington, second by Councilwoman Rogers.

The MOTION CARRIED 5-0.

## 9. OTHER BUSINESS

- A. Animal Shelter Facility - staff recommending rejection of all proposals relating to the Animal Shelter for the Public Safety Boulevard location and authorization for proposals on the Mango Tree Site for both the Animal Shelter and the replacement building for Wastewater Collections

Councilwoman Bennington moved to reject all proposals relating to the Animal Shelter for the Public Safety Boulevard location and authorize for proposals on the Mango Tree Site for both the Animal Shelter and the replacement building for Wastewater Collections, second by Councilwoman Rogers.

The MOTION CARRIED 5-0.

- B. General Employee Pension Board - Pension amendment. Amendment that Principal wrote in order to alleviate some of the cost that the City bears for the Pension. Cuts cost this year from \$1.2 million to \$746,000.

Councilwoman Rhodes stated the Board voted to send this Amendment to Council with no recommendation. Leave it up to Council and let them decide what they want to do.

Councilwoman Bennington asked if the Board voted to accept this. Councilwoman Rhodes stated the Board voted to send this Amendment to Council to be approved or denied by Council. They did not make a determination. If they had their choice, they would like it left the way it is.

Councilwoman Rhodes stated this Amendment stops the accruals.

Right now people can collect and work and continue to accrue. This amendment stops that. They will still be able to work and collect but it will not accrue. They will have to go into the Defined Contribution Plan or there are several options they can take advantage of.

Councilman Cooper read his comments into the record. (Attached)

Councilwoman Rhodes stated they are not going to lose one pension dollar. Mayor Thomas stated they are just going to stop accruing benefits after they retire. Councilwoman Rhodes stated they are going to retire or they are not going to retire. If they choose to retire they are going to collect pension their from that plan. Not one dollar has been taken away from them. They are just not going to be able to accrue more pension benefits while they are working. While they are working they are going to collect every pension dollar and their money is going to go into another plan, which they will have use of that. There is a difference between retiring and leaving. Many of them retire and continue to work and they will still be able to do that. They will not lose any money.

Councilwoman Rogers wanted to clarify when they are continuing to work they are getting a salary and getting a pension. When they physically leave the job this will prevent that pension to then be paid out at a higher rate because the accruals have stopped. Councilwoman Rhodes stated they would receive the contribution they put into the other pension plan while they were working and collecting their pension. They will walk away with that as well. Councilwoman Bennington stated so they are walking away technically with two pensions. Councilwoman Rhodes stated yes. Councilman Cooper stated there are three electives on there. They can elect to join the other pension plan on one of the electives. Not all of them may do that. Councilwoman Rhodes stated but it is their choice. Councilman Cooper stated the reason they are doing this is because there was a tremendous shortfall and because so many people decided to pony up and go into their pension. It's a good deal.

Councilwoman Bennington asked how many employees they were talking about. Councilwoman Rhodes informed her 57, about a quarter of the work force in the City.

Councilman Cooper stated even in the latest actuarial it doesn't talk about expiration of the plan. It doesn't talk about what's the next shortfall, which will be here in six months. What benefit are they going to take away then? Are they going to go after something else at that time? They have not addressed how to fix this plan. Councilwoman Rhodes stated they haven't taken

any benefit away. Councilman Cooper stated so you want to pay into a pension for the next ten years and it doesn't accrue just like your Social Security, where you get a raise every year and cost of living but they will not get this. Mayor Thomas stated they are accruing until they retire. Councilman Cooper stated the minute they exercise their right the accruals end. The way it reads right now accruals continue. Councilwoman Rhodes stated yes. Councilman Cooper stated don't tell me they are not losing a benefit. They are. They are losing those accruals. If he were to retire right now and work ten more years they continue to pay into this pension but it would not go up one penny if he started drawing monies on it no matter what the cost of living goes up. No matter what gasoline will cost you in five years. None of those things will ever accrue. It was never meant to be that way. He understands it is a very lucrative plan but it is a plan that was adopted in 1978. He believed if they did a little more hard looking at the corporation that has done the investment of this money. Where they haven't made any return on this money. It has been very small. They may be able to turn around and generate the money needed so the City's Outlay isn't so large. That needs to be addressed. They pay a ridiculous fee as a management fee. That needs to be addressed. None of these things they are voting on tonight address any of that. He believed the Board could not come to the decision. After sitting in six meetings, they feel that the questions they need to ask are not being asked and they don't believe it has been investigated enough. He didn't believe this Council had the right to reach in and take people's pensions unless they have investigated every possibility and then go after their benefits. Councilwoman Rhodes stated for the last year and even further back they have sat here, had Pension Board meetings, had every person in the Pension Board in here. They have discussed this in Council. They have been discussing this for two years. The reason it went up so high because the Board asked them to use a different assumption. When they used it went up that high. They thought their assumption was wrong. Councilman Cooper stated that was a mistake by the Board again. Councilwoman Rhodes stated the right decision was to ask them to use a different assumption and that assumption cost the City a half a million dollars doing that.

Councilman Cooper stated all he was saying was there are so many other avenues here that are laying out there that need to be addressed that generate hundreds of thousands of dollars that they might be able to save the plan in its entirety before they attack it. He feels before they make a vote to cut a benefit after that many years of being implemented they really need to exercise all options. If they come back in a week and they are still stuck with the same thing then vote on it. Until they have

addressed different agencies. We have an agency we paid \$20,000 to to advise them on these pension boards. Nobody has taken their advice. He knows they work another pension in the City where they showed them a return this past year of 23%. This pension paid a 5% return for \$2 million less money. He is saying they are not investing this right. They are not doing all they can do. Councilwoman Rhodes stated the consultants Councilman Cooper was talking about told the Pension Board that our pension was getting a decent return. That is what the consultants said that he is talking about that they paid \$20,000 a year. That is what they told them. This was the problem they identified for us. This is the problem they are addressing. He has not sat for years on the Pension Board. She informed him he knows nothing about it and until he does then he needs to be quiet. Councilman Cooper begged to differ with her so earnestly it is unreal. Councilwoman Rhodes stated you can't day trade with the Pension money.

Mayor Thomas stated when he retired he had 25 years. He was eligible for retirement at that time. He had the option of the Deferred Retirement Option Program (DROP). He could have retired at 25 years and gotten 75% of his salary. They would have invested that. He elected to keep on working and accruing benefits. He didn't go into the DROP program. He did not retire. He kept on working. When he retired at 28 ½ years he got 83% of his salary. The employees have the option of retiring but that is when their accrual benefits should stop. Councilwoman Rhodes stated nobody retires and continues to accrue. Councilman Cooper stated Social Security even gives you a cost of living increase so don't try and tell me you don't deserve some kind of accrual if you are going to continue to pay into the pension. Councilwoman Rhodes stated you only get an accrual when you continue to work. When you stop working it no longer accrues. You still aren't getting a cost of living. Councilwoman Rogers stated they have two plans. What they are talking about is these 57 people in Defined Benefit Plan. When they continue to work, that money will go into the Defined Contribution Plan so they are still getting accruals just not under the Defined Benefit Plan. They are getting accruals under the Defined Contribution Plan. Councilwoman Rhodes stated they also have the option to put the money in their pocket. Councilwoman Rogers stated the Defined Benefit Plan is the plan that has cost the City the most money. When she first moved here in 2002 it was voted in a 1 mill increase. It had a lot to do with the shortfall in the pension. The part of the pension that was the problem was the Defined Benefit Plan because of the accruals. It was very hard for this company to get a handle on it. Everything Councilman Cooper mentioned she agreed with but she feels they have to do what they are suggesting in addition to

doing what he is talking about. They still have a sleeping giant coming at them. They just passed one January 29<sup>th</sup>. More is going to come and they are going to need to overturn every rock so they can find other areas to save. They need to do what Councilman Cooper is talking about in addition to what Councilwoman Rhodes has already dealt with. Councilman Cooper stated then why do this before they do the due diligence. The due diligence needs to be done first. Councilwoman Rogers stated do this in addition to it because this has been a long time coming. In corporate America people have lost their pensions. They aren't losing theirs. Councilwoman Rhodes stated she didn't care if they did it or not. It's not her pension. She would love to see these people keep every single thing they have. She doesn't have a problem with that. Councilman Cooper needs to tell them where to get the money for it. He needs to find it in the budget. Councilman Cooper suggested they not look at it in the budget. Look at it as a pension that has failed as far as what it is producing and what it pays to manage it.

Councilwoman Rhodes stated the City still has to pay the City's part of it. Mayor Thomas stated the citizens have been subsidizing it. Councilman Cooper stated they are so apt at voting and changing benefits that he didn't see any problem and he didn't hear anyone from the Pension Board come up with anything that said there was any big hurry or that they were pressuring the City. He was sure they could pay the same \$746,000 at this time and then when they get to when all the due diligence is done, then they decide what they want to do. If not, maybe they found a way to come up with the other \$500,000. Right now the people they reported that said this was a good return, they told them in that very same meeting that he sat in with her that they promised an 11% to 15% return and they made a 5.2% return. They also said the management fee would be closer to \$100,000, not \$892,000.

Councilwoman Bennington stated when she was sitting in the audience getting ready to run for council this was an ongoing problem. The people were polled and our "balanced budget" that was accepted was a direct result of this procedure. Corporate America. These people are getting a retirement. Her husband has been working at the Space Center for 40 years and he doesn't get a retirement. She commented on the money he has lost in his 401. These people are going to keep their money. They still get their retirement. Councilman Cooper stated \$20 today doesn't go as far as it is twenty years ago. Councilwoman Rogers stated they are still getting their pension. The big piece of this puzzle was the Defined Benefit Plan. They can't pull the people out of the plan. That is not what is being suggested. It is just the continuing to work and having accruals grow under the Defined

Benefit Plan. Mayor Thomas stated this problem has been here longer than any of the current Council. It has been avoided because it has been something that has not been something people wanted to vote on. They need to do something.

Councilwoman Rhodes stated this was after many months, even years. This was the very best compromise they could find between the Pension employees and the City Council. Councilman Cooper said there is no time limit. There is a time limit. This City Council gave them six months from September. That is March. They don't have another meeting this month. This also has to be funded. If she wasn't mistaken, that funding has to take place in March as well.

Mayor Thomas stated the City is still going to have to contribute \$700,000. Councilwoman Rhodes stated and the City should. That is part of the plan but at least with this, the City's contribution is in line with the other contributions they are making for Police and Fire. Councilwoman Bennington stated and the people are still working that are drawing most of this. Councilman Cooper stated the issue is the shortfall comes up again in six months and they haven't fixed it. There is no promise from Principal that this doesn't come right back and bite them again in six months. They have not adjusted the things that need to be adjusted in this Pension group to fix this problem. Councilwoman Rogers stated she was saying to do what Councilwoman Rhodes and Councilman Cooper are suggesting. Councilwoman Rhodes stated this is the first step. She doesn't want to take anything away from anybody. She doesn't care. It's not her pension plan. Her job is to do the very best she can for the employees and for the taxpayers. She can't ask the taxpayers to put a half a million dollars that no other pension plan in the world allows. Back in the day they didn't get paid very much. They still in her opinion don't get paid what they are worth. Something has got to be done. They can sit around and talk about it, which they have done for years or actually do something. It's Council's choice.

Mayor Thomas asked if they wanted to take any action on this tonight. He then entertained a motion.

**Councilwoman Rhodes made a motion to approve Amendment #2 to the General Employees Pension Plan and have the Acting City Manager sign the paperwork to implement it, second by Councilwoman Rogers.**

**The MOTION CARRIED 4-1. Councilman Cooper voted NO.**

## 10. OFFICER REPORTS

#### A. City Clerk

Interim City Clerk Bloomer had nothing at this time.

#### B. City Attorney

City Attorney Ansay wanted to talk about the proposed agreement for the City Clerk position. They won't be meeting again until March 3<sup>rd</sup> and they have a proposed agreement. She believed Personnel Director Donna Looney placed a copy before each of them tonight. The contract as she understood it made a couple of changes in the Performance Evaluation section that were discussed at the Special Meeting on Wednesday last week. There are still a few issues she needed guidance on so they could get Council's approval of the amended document tonight so after they leave here, they can get it approved and move forward with the transition. The first issue was filling in the names. She referred to Page 2 of 7 and having to work out the starting date. She was sure they would reach a date. The next thing is in Paragraph B. They are going to eliminate the clause that was in italics that was placed in the original version of the agreement when they didn't know where they were headed with the residency. Since they have hired someone where that is not an issue that will come out.

City Attorney Ansay then referred to Page 5. She wanted to get clarification from Council in the Compensation provision. It was her understanding that the compensation that was discussed at the meeting was initially \$46,000 for six months and to increase to \$50,000 after that. Apparently the term probationary period was used. She wanted to make sure she understood what was meant by that so there are no misunderstandings in the agreement. Is it Council's directive that they merely want a period of time whereby the \$46,000 would be paid and after the six month period of time expires the compensation increases to \$50,000 automatically. Is it an automatic increase? Is there anything else Council intended in the concept of probationary? Probation is a loaded term in the employment context. It is often used if you let someone go before their probationary period expires. Certain benefits may not accrue. Are they talking about just setting a time period for purposes of compensation or was there another intention there? Councilwoman Rogers stated she thought initially when they talked about it, it was so she could do the required licensing and education that was needed for the position. In the same token they realized it was going to take a couple of years for that. Councilwoman Rhodes stated her intent was to have a probationary period to evaluate if she is working out in the position. If she was not working out in the position,

then they would have to hire someone else. Mayor Thomas feels the same way. Councilwoman Bennington stated she did too. Councilwoman Rhodes stated in other words six months and you don't have to pay severance if within that time frame it doesn't work out. City Attorney Ansay stated that is really the real issue. They have the ability to terminate under the contract at any time. The question she had was whether they were intending with the probationary period to give themselves the opportunity to essentially opt out of the contract before that six month period expired without triggering the termination and severance provisions. Councilwoman Bennington stated or the applicant too, if it doesn't work out for her. City Attorney Ansay stated she can do that either way. It won't change her abilities. Where the real issue and distinction here is that if it is a true probationary period they can opt out or they can end the deal within the first six months. They would also go in and revise the severance provision so that if the City elects to terminate within the first six months of the effective date of this agreement, they were saying no severance would be paid in that event. Councilwoman Bennington informed her yes. City Attorney Ansay stated she wanted to make sure because she was getting different messages.

City Attorney Ansay then referred to Page 6, Benefits, Paragraph C. They have a provision related to the City Clerk's membership in various organizations. An issue was raised related to her fees for conferences and the expenses related to conferences City Clerks have to go to. She was going to get Council's direction and approval that they could amend that paragraph to say the City would agree to pay the conference fees and expenses necessary for the Clerk as well as the dues as they are approved in budget. They are all going to be budgeted and approved ultimately by Council. It was the consensus of Council to include this.

City Attorney Ansay asked to have a motion from Council this evening to approve the contract as they have just discussed these amendments barring any additional comments to changes. From this point forward it doesn't have to come back to Council. They can get the dates and everything implemented and they can get it executed.

**Councilwoman Rhodes agreed to make that motion, second by Councilwoman Bennington.**

**The MOTION CARRIED 5-0.**

City Attorney Ansay stated she believed the Council was provided a copy of the recent order in the ECARD v. City of Edgewater case. Councilwoman Rhodes stated they finally got one. City

Attorney Ansay stated essentially good news. The court denied the petition and basically found the City didn't do anything wrong. There was not enough to support a reversal of the action the City took in enacting that particular land use change. She then reminded Council and was seeking direction that they still have the pending issue that relates to the lands west of I-95. ECARD submitted petitions to get a measure on the ballot that would rezone all lands west of I-95 to 1 unit per 20 acres. There was a lot of back and forth late last year as to whether or not that measure would get placed on the January ballot or the November 2008 ballot. Right now ECARD in her view has the sufficient signatures that would be required under law. There is a question from a legal perspective whether or not the measure should be placed on ballot, whether it is illegal, etc. The way she sees it there are three options that Council has. One is to place it on the ballot. By August they have to request that measures for Charter amendments get placed on the ballot. They would then appear on the November ballot. They have the option to request that it get placed on the ballot. It goes on the ballot and then they have the legal uncertainty with all these challenges still sitting out there. The other alternative is they do nothing and don't put it on the ballot. That is a pretty confrontational act. The group that got the signatures feels like they are getting a disservice and they end up in litigation in a defensive posture. She doesn't recommend that. The third option would be to essentially petition the court and ask the court what they do in this case. They have the required number of signatures. They want it on the ballot come November. They have a number of legal arguments from interested landowners that it is improper and shouldn't go on the ballot. She recommended a judge tell them what to do. She feels to do it early and in the coming months so these issues can be resolved before the August deadline shows good faith to everyone that the City is trying to get a resolution. It doesn't put the court in a position where they have to rush the issue. This is going to be a Presidential election year. Elections have turned into litigation machines. Getting a ruling come August or September is going to be difficult. She felt the court would appreciate it if they did it early. She recommended if they felt comfortable taking action tonight that would be great. They can put it on the next agenda to talk about more.

**Councilwoman Rhodes made a motion to ask a judge for a declaratory judgment, second by Councilwoman Bennington.**

**The MOTION CARRIED 5-0.**

City Attorney Ansay stated it's been a little over year since she started representing the City. The contract she has provides it

is a yearly contract that automatically renews as they go forward. It also provides that each year they required by January 30<sup>th</sup> to look at the compensation and determine whether any increase is warranted. She just wanted to bring it to attention. She doesn't want an increase. Now is not the time. Even if it were the rates she is getting paid are sufficient. She is enjoying representing the City. She wanted to get it on the table so they have done everything under the contract. They can say no raise for her and move on.

Mayor Thomas entertained a motion.

**Councilwoman Rogers made a motion to keep City Attorney Ansay, second by Councilwoman Bennington.**

**The MOTION CARRIED 5-0.**

C. City Manager

Acting City Manager Barlow presented a status update on the Mission Oaks subdivision project. They started within two days after the last Council meeting running the temporary sewer line. They hope to have that complete within 30 days. They just finally secured an appointment with the Utilities Commission that will occur this week that they want to work with them on some billing issues. He was hoping to early next week plan a meeting with the Mission Oaks subdivision residents and be able to answer their questions regarding their future billing issues and how they address that. Councilman Cooper will attend that meeting as well as Jack Hayman to discuss some of the roadway improvement projects he may be able to help them out with.

1) Tentative Agenda Items

There were no Tentative Agenda Items to be discussed at this time.

**2) Reminder that the February 18<sup>th</sup> City Council meeting has been canceled**

Acting City Manager Barlow reminded Council the February 18<sup>th</sup> City Council meeting was canceled. They have a request from the applicants of the Restoration project that would like to come before Council at a workshop to present their new revised vision plans for Restorations. He originally had February 21, 2008. They have called and requested to move it to March 10<sup>th</sup>. Councilwoman Rogers she probably won't be able to attend. Councilwoman Rhodes couldn't do it that week either. It is Bike Week and Spring Break.

Acting City Manager Barlow suggested they start in the afternoon on the 17<sup>th</sup>. Councilwoman Bennington stated they have a regular meeting.

Acting City Manager Barlow suggested they could do it the same week or move the workshop and have it on the 24<sup>th</sup>. They could have a second meeting. Councilwoman Bennington suggested they have it on the 12<sup>th</sup>. Mayor Thomas asked if they were sure they still wanted to do that. He talked to Mr. Mears this week and he said they were still talking to the Regional Planning Council. They may not be ready. Have we talked to them to see if they can come and give them a report? Acting City Manager Barlow stated he could plan them at the same time. Mayor Thomas suggested after so the Council knows what he was presented. They are working together right now. They got a lot of things ironed out. Acting City Manager Barlow thought those were identified in the comments from the DRI on both parties. They are trying to mitigate a lot of those concerns. Acting City Manager Barlow stated last week Restorations requested they move it to March. Mayor Thomas asked if they could wait a week or two and let him contact Acting City Manager Barlow for dates. Acting City Manager Barlow stated they are meeting again March 3<sup>rd</sup> and they could actually put that on the agenda for March 3<sup>rd</sup>. Councilwoman Rhodes suggested they do that.

- 3) Schedule a Workshop (February 21, 2008) for a presentation on the Restorations Project

Councilwoman Bennington asked about the Tentative Agenda Items and asked what the Departmental status reports were.

Acting City Manager Barlow stated that was there prior to his arrival and prior to having numerous interims. Councilwoman Bennington stated when she was on the Council previously they used to get Department reports once a month but not at a Council meeting. They just gave them to them in their boxes. That was what she had intended. Not something to be brought up at Council meetings. Councilwoman Rhodes commented on Jon Williams doing a synopsis of everything that was on the table. Councilwoman Bennington was used to seeing was from the Fire Department how many calls they got. Councilwoman Rhodes stated they do that and thought it was quarterly. Acting City Manager Barlow stated annually. Councilwoman Bennington stated they used to get them every month. Acting City Manager Barlow asked if they wanted to see them monthly or quarterly. He would have each department submit one. Mayor Thomas felt if they did it monthly it would take up a bunch of time. He suggested alternating months for the department. Councilwoman Rhodes thought Councilwoman Bennington

was talking about putting them in their boxes.

Councilwoman Rhodes felt quarterly in their boxes would be good. Councilwoman Bennington felt if Council wanted it quarterly that would be fine but she would like to see them so they know.

Acting City Manager Barlow agreed to have the Departments give them written reports on a quarterly basis.

**11. CITIZEN COMMENTS**

There were no Citizen Comments at this time.

**12. ADJOURNMENT**

There being no further business to discuss, Councilwoman Rhodes moved to adjourn. The meeting adjourned at 9:07 pm.

Minutes submitted by:

Lisa Bloomer