

**CITY COUNCIL OF EDGEWATER
SPECIAL MEETING
JANUARY 17, 2008
1:00 P.M.
COMMUNITY CENTER**

MINUTES

1. CALL TO ORDER

Mayor Thomas called the Special Meeting to order at 1:00 p.m. Community Center.

ROLL CALL

Mayor Michael Thomas	Present
Councilwoman Debra Rogers	Present
Councilwoman Gigi Bennington	Present
Councilwoman Harriet Rhodes	Present
Councilman Ted Cooper	Present
Interim 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

There were no Presentations at this time.

4. CITIZEN COMMENTS

There were no Citizen Comments at this time.

5. CITY COUNCIL REPORTS

Councilman Cooper had nothing at this time.

Mayor Thomas had nothing at this time.

Councilwoman Rogers had nothing at this time.

Councilwoman Bennington had nothing at this time.

Councilwoman Rhodes had nothing at this time.

6. CONSENT AGENDA

There were no items to be discussed on the Consent Agenda at this time.

7. PUBLIC HEARINGS, ORDINANCES AND RESOLUTIONS

There were no Public Hearings to be discussed at this time.

8. BOARD APPOINTMENTS

There were no Board Appointments at this time.

9. OTHER BUSINESS

- A. Discuss Council qualifications for the position of City Clerk

Interim City Manager Barlow thanked the Council for taking time out during daytime hours. He felt they could get a lot of work done and utilize City staff. He set the meeting up on the floor with Mayor Thomas' permission to bring them together with a workshop feeling. He asked the Council to speak loudly. They want to discuss what the Council wants to see in the next City Clerk with regard to the roles and responsibilities. He would like to bring this back at a 5:30 p.m. workshop prior to the January 28th meeting. If Council is satisfied with that they will bring the applicants back so they could interview them before the Council meeting, where they will take a formal vote and tell him which ones they want to move forward with trying to negotiate a contract. They would also be talking about criteria and what they would like to see in a contract for the next City Clerk. He asked for direction on Item D and if they would like to see any changes and what they would like to see in Department Director contracts going forward. The next position he will fill is the Finance Director, which they have completed some interviews.

Mayor Thomas stated he needed some clear direction on the 5:30 VCOG meeting on January 28th. He tries to go to every VCOG meeting. He thought he had missed maybe one. That is where all the City governments in Volusia County get together and he represents the City. If they want him to be here or be there, he left that up to the Council. He feels the Council are cognizant people and can handle it without him. He looked for direction from Council to either be here or at VCOG if his mom is not in surgery. Councilwoman Bennington stated Interim City Manager Barlow said tentatively and that they could change it. Mayor Thomas stated he had full faith in the Council. Councilwoman Rogers stated that night they are going to be making the determination of who will have that position. She informed him he could voice today and they could get some kind

of idea today what kind of questions they are going to ask how they are going to be doing the interview and those who will be selected. She feels the VCOG meeting is important to keep the attendance in representing City. Interim City Manager Barlow stated they would continue at 5:30 p.m. and if Mayor Thomas is attending the VCOG meeting they will move on.

Mayor Thomas stated he really thought a lot about this. They had eleven applicants with the withdrawal of Joann Richard. He thought it would be very simple and it is going to be up to Council whether they want to interview three or five. He asked them to put everybody's name on the list and give them five if they want to select five. They would approach the board that was set up and put a dot in the square of who they want to vote for. He felt this was a simple way to do this. They have had the applications for two weeks and he reviewed them. He pretty well knew whom he was going to vote for. Councilwoman Bennington felt it was a good idea but before they did that she wanted to hear everybody's idea of what they want in a City Clerk. Mayor Thomas felt they needed to discuss what qualifications they need from the Clerk. What he read outlines the qualifications and duties. He asked if anybody had anything they wanted to add or delete to those things.

Councilman Cooper stated before they look at the responsibility list he wanted to ask Council for their opinion on the actual criteria or the type of person regardless of the job description of that they are looking for. He asked if they wanted to pull an outsider. Do they believe it is time to promote within? He wanted some help from the Interim City Manager who has more familiarity with the people that are employees already and their qualifications as he sees it. He wanted to get an open discussion so they could get the pulse of what they would like to do as a City.

Mayor Thomas felt they had some very qualified applicants. He spoke of also having people within the City that know the problems and have worked very closely with the Clerk. He spoke of having outside experience and inside experience.

Councilwoman Rhodes stated she read them and ranked them. Her #1 choice was outside the City and her #2 choice was inside the City. Mayor Thomas stated that is what the interview is for. He feels that person needs to be a people person. When they interview them is when they are going to find out whether they are a people person. They have to be a people person to be in that position. Councilman Cooper stated he was looking for the pulse of the Council as a City. He commented on having citizens there and the Council representing the City. He wasn't looking so much at the individual right now as much as do they have an intent? He was wanting an open forum regarding what the rest of the people think as well as what Interim City Manager Barlow thinks. He feels they are coming out of a morale fiasco. He

asked if they could gain points by doing certain things. Does he believe they need to go outside? He commented on having some pretty experienced individuals that have applied. He commented on discussing the salary ranges and possibly eliminating some there in the interview process. Mayor Thomas felt another thing that would have to be considered would be the applicants that live outside the City. One qualification is they must live within the City limits but it would be up to the Council if they wanted to waive that. Councilman Cooper asked Interim City Manager Barlow his thought.

Interim City Manager Barlow stated his management style when you get into positions such as this and seniority is part of the management team, he looks at the best-qualified applicant. He recognized those who currently work for the City but he tends to lean towards the best-qualified applicant when he is placed in that situation. Councilman Cooper feels amongst the four individuals under consideration that currently work for the City he felt they had an exceptional applicant who was the most qualified. He asked Interim City Manager Barlow if he could make a recommendation. He asked if he was at a point where he could say out of the present employees if they were to hire and promote from within what would be his recommendation. Mayor Thomas felt Councilman Cooper was putting Interim City Manager Barlow on the spot. Interim City Manager Barlow stated the Charter charges them with that. Councilwoman Rhodes stated it is not his job, it is the Council's job. Councilwoman Bennington stated the City Manager is separate and it is totally up to the Council. Councilman Cooper stated he was trying to get a feel. Councilwoman Rhodes felt he could talk to him privately and he may give him that information.

Mayor Thomas stated he and Interim City Manager Barlow discussed the most qualified applicant. He then presented a history of what he saw in his career. When he was first hired on with the Game & Fresh Water Fish Commission their era was to hire the best poacher thinking he could catch the people, which he did. The poacher could not do the required paperwork. They started hiring people with a little woods knowledge and a little college. At the end of his career hiring they were hiring the best applicant. There were five job openings a year and they would have 5,000 applicants. They would hire the guy with six years of college that didn't know anything about the woods. He feels they need to get a mixture and he felt that was what they were doing today. When they interview them they can see what type of person they are. Are they going to be able to mix in with the City of Edgewater. Councilman Cooper felt with the dot program they would be eliminating individuals today. His intent is not to eliminate anybody, that there may be some special considerations. It has been his experience when hiring for priority positions that sometimes the person that wants the job doesn't have the qualifications but will do twice the job as someone with the degrees and qualifications. He doesn't want to

eliminate by the dot process certain individuals that maybe they should be giving an edge.

Mayor Thomas asked Councilwoman Cooper if he wanted to interview all 11 applicants. Councilman Cooper informed him no. Councilwoman Rhodes informed him they have to eliminate some. Councilman Cooper stated he wasn't meaning to put Interim City Manager Barlow on the spot but with his experience and working with these individuals for such a length of time, he was not saying for him to make the job decision. He feels certain individuals have showed more in the workforce that Council does not know about. He doesn't want to eliminate an individual that might be a shining star. That has been his experience in business. Mayor Thomas felt Councilman Cooper had a very valid point. They can't interview all 11 or don't want to. They need to decide if they want to go with three or five. He suggested they interview five. Councilman Cooper felt they should make a determination on the four that have job experience. Even if they rate them 1 - 10 and state the reasons why, he can get a better feel before they start eliminating.

Interim City Manager Barlow felt based on the required qualifications, the only adage that a current employee has over other the other ones are they are already employees. They may be at a better opportunity up front deciding if they want them to be a resident or not. That may automatically eliminate some from the very beginning when they schedule those interviews. Councilwoman Rhodes felt that should have already been done. Councilwoman Bennington felt whoever they pick should be resident. That section is in the Charter for a reason and they need to honor it. Whether they pick an applicant that doesn't live in the City, they have to be asked if they are willing to move in. If they aren't willing to move then they will be eliminated automatically. She feels that should be one of their primary issues. Councilwoman Rhodes also felt they should live in the City due to this being passed by the voters and they should honor it. If they pick five then that leaves 6 they did not pick. From those five it is easy enough to find out if they are willing to move to the City. If they aren't then they come back and move somebody else up into. Mayor Thomas asked if she wanted to have alternates on the list also. Councilwoman Rhodes stated that is her suggestion. 1-12. First pick best. Last pick not the best. All qualified to a good degree. Not an issue as much as. She feels all of the applicants are qualified to a good degree. When you get 1-12, then if one drops out because they don't want to move to the City, then they move everybody up. When it comes time to interview there would be five people to interview.

Interim City Manager Barlow confirmed they had eleven applicants. They would number them 1-11 and bring four or five back for an interview. Councilwoman Rhodes stated the top five. Councilwoman Bennington stated that have agreed to move to the

City. Councilwoman Rhodes felt it was pointless to interview anybody that was not going to move here. If Council agrees they should live in the City, it is pointless to interview people that will not move here. Councilwoman Rogers stated their last meeting Interim City Manager Barlow asked for them to come up with five people. They were already directed to narrow the list to five. She believed Mayor Thomas's suggestion of a visual aid is a perfect thing they need to do. It is visual and they will see it. As far as a restriction of they must be resident of the City and if someone is not a resident of the City adding the extra burden to them by saying they need to live in the City if they want that job. She feels that is ridiculous, especially in the economic times we are in and the property tax situation. Who knows if the portability is even going to pass or not. It is going to make it economically not feasible for a lot of people to move. There are people that want to move in and out of City right now that can't because of what is going on in the State. She feels they are putting something that would more or less be a burden on somebody that just wants to have a job in the City. The City isn't that big and maybe somebody doesn't want to live this close to the coast. She commented on the homeowners' policies that have been cancelled because of the proximity to the coast. She feels they are adding an economic burden onto these applicants that don't live within the City limits. By them narrowing it to five individuals this was expressed at the last Council meeting for them to do that. She came prepared to do that. She thought they were supposed to be discussing the qualifications of the City Clerk. The first qualification they are dealing with is are they going to make that person have to be resident of the City. The next thing would be some of the qualifications. She mentioned a High School diploma being required. She feels with this position they should at least have a two-year degree. They are on the trend of forward thinking and need to start establishing something. They don't just want a basic high school diploma type individual in that position. They want to add a little prestige to the position. AS degrees are not that hard to come by. They have one candidate that is working already that is close to getting an AA degree. If someone is in the process of getting an AA degree, that tells them something about that individual. They are working full time and going on with continuing education verses somebody that is just working. Councilwoman Bennington stated this is not just a City employee. This is their City Clerk who is a Charter officer. This is not just someone that is going to be working here. They need to honor the Charter as much as possible. If they pick somebody that lived outside the City, there is a probation period. She wouldn't expect them to move until their probation ended and they agreed it would work for them. She feels for this position it is mandatory that they live in the City and be part of this community.

Councilwoman Rogers stated she would say under different circumstances but not economic times we have in the State. She feels it is not fair to put that on top.

Mayor Thomas felt they both had valid points. He would like to strike up a happy medium. He suggested someone living within so many miles of the City. They have somebody from Lakeland and they wouldn't expect them to drive back and forth. Councilwoman Rogers stated and they most likely would move to the City. Mayor Thomas stated most likely but felt they should give some leeway. Councilwoman Bennington stated she knew the Charter said in Edgewater City limits but this community is Southeast Volusia. In her mind it is Southeast Volusia. She wouldn't want someone that lives in New Smyrna Beach to have to relocate to Edgewater. Councilwoman Rogers stated Councilwoman Bennington said Charter and the Charter says City limits. Mayor Thomas stated they have some minimum requirements and the knowledge and skills and he didn't think they had to go through each one. He felt they would hire a qualified applicant. They could put it in the form of a motion. He asked if everyone was satisfied with the job specifications, the job knowledge, the skills and effort, and the primary duties and responsibilities or did the Council want to delete or add anything. Councilman Cooper stated as he looked at the responsibilities he was wondering whether they could reassign or alleviate a couple. He commented on reading the three-page responsibility list and needing five people to do it all. They are down to two and they know how tasking and stressful that job has been all along. He asked if there was a way to pull a couple of these out of here.

Mayor Thomas stated he was looking to do this in a motion. Councilman Cooper felt they needed to discuss it first. Mayor Thomas asked which ones Councilman Cooper would like deleted. Councilman Cooper stated responsible for maintaining the billing and collection of Animal Control Citations, Code Enforcement Citations and Parking Citations as well as Police & Fire False Alarm Program. He asked if they could delegate that to two or three other departments. Mayor Thomas felt that was a good point. Councilwoman Bennington agreed.

Mayor Thomas stated he was sitting in Mary Jane Henderson's courtroom and it just so happened there was an animal violation that she made him get involved with and she wanted to know if there was any way they could stop bogging her court room with all of these and at the same time save the City money. Every time she dismisses a case it is \$40 that the City has to pay. He already talked to Robin about that. He feels they need somebody to look that over. He felt that was a good suggestion. Interim City Manager Barlow explained the first two pages are the job description. The last page is random thoughts and duties that Susan had outlined and included. He is going through some reorganization and re-tasking. Once he gets a Finance Director on board he agreed to re-task some of these.

He felt some duties would be coming out of personnel and back into Finance where he feels they belong. He is going through some of that re-delegation. The City Clerk is not locked into any decision they make today to these responsibilities. Councilwoman Bennington stated it used to be that the City Clerk prepared their agendas. She asked who does the agendas and who is responsible for getting them all of their agenda information right now. Interim City Manager Barlow stated it is his understanding is it is a responsibility of the City Clerk. The paralegal is doing it today. Councilwoman Bennington asked why that was. Interim City Manager Barlow informed her it was before him. He is going through and doing some reorganization. Councilwoman Rhodes commented on the Assistant City Manager doing the agendas and then the position being eliminated. The next one in line was Robin. Councilwoman Bennington asked if they wanted the City Clerk to go back to being responsible for putting their agendas together and getting them the information since she is keeper of the records. Councilman Cooper felt that made sense. Interim City Manager Barlow stated that is where he was headed with some of this. He has to make some capacity there to add more work there. It takes him time to get there to move some of that finance stuff out. Councilwoman Bennington stated she understood Robin was doing a lot of things. Poor Lisa is struggling to keep up with everything right now. She feels that is something the Council needs to address. Do they want the City Clerk's office or the City Manager's office responsible? Councilman Cooper felt Interim City Manager Barlow was headed in the right direction. He gets the impression that he is taking people away from their job when he follows up on some of the ideas he has tried to bring forward. He would rather go to one source and stay out of his hair and let him manage because it is incorrect for them to meddle in the management if they are giving the man the trust to manage no matter who it is. If they start popping across to the paralegal all the time, they can't help but go through the maze of offices and stop and waste people's time and not get anything spearheaded the way they want it. He would like to see it go strictly with City Clerk. In order to add a responsibility, they would have to pull three or four things off of here. For years it's been a bear to get everything done on a timely basis and it is going to get harder. They have some real hard decisions they are going to be facing in the next twelve months. They have to find a way to streamline this in such a way so that person can accomplish their job. Mayor Thomas commented on speaking to former City Clerk Susan Wadsworth who had a suggestion. She said the Paralegal used to work in her office. Then it went outside. He asked how the Council would feel if the Paralegal were put back under her. It sort of makes sense to him. When they went to the elections Susan and Robin were always there together.

Interim City Manager Barlow stated that is definitely a good thought. Currently the Paralegal is being the Paralegal and

staff assistant to the City Manager since that position was eliminated. He would like to be able to open up some capacity before they hire a full-time City Manager so they have a secretary/staff assistant if they pull the Paralegal out. He is very amenable to some of that reorganization. Councilwoman Bennington asked if they were suggesting they take the Paralegal out from under the City Manager and put her under the City Clerk. Mayor Thomas stated that is what Susan's suggestion was. She said it used to be that way. Councilman Cooper asked if they fall into a situation. The Council is responsible for three employees. The Paralegal is not their employee. They are cross-referencing this man's ability to utilize personnel in different areas. The City Clerk's office works for the Council. He suggested they keep the City Clerk's office working for the Council and keep the Paralegal where the Paralegal is. Any City Manager without having a full-blown system, that Paralegal needs to be an important function to the City Manager. He doesn't want to see that office move but he wants to make sure they separate church and state and keep the employment where the employment is. Councilwoman Bennington stated the whole point when the Charter was set up the way it was was for checks and balances. They had a bad situation where the City Manager wasn't a really good City Manager and he was telling the City Clerk who worked for him to destroy records. She was put in a position. She couldn't destroy the records but he was her boss and if she didn't she didn't want to lose her job. That is how this concept came about to separate them. A lot of things the City Clerk does overlaps with legal. Councilman Cooper stated they do have two applicants that are Paralegals that are applying for this job. Depending on whom they end up picking as a source, they may get the best of both worlds. They might want to add that to their criteria of thinking of whom they are going to nominate. They do have a need for that legalize expertise. He wants the City Manager to have his assistant and he needs that.

Mayor Thomas stated it was Councilman Cooper's suggestion to pull responsible for maintaining the billing and collection of Animal Control Citations, Code Enforcement Citations and Parking Citations as well as Police & Fire False Alarm Program from the City Clerk's responsibilities. He asked if there was any discussion.

Councilman Cooper made a motion that the item reads responsible for maintaining the billing and collection of Animal Control Citations, Code Enforcement Citations and Parking Citations as well as Police & Fire False Alarm Program be omitted from the responsibilities of the City Clerk as they hire this position, second by Councilwoman Rogers.

The MOTION CARRIED 5-0.

Mayor Thomas stated he would leave that up to the City Manager on who he wants to be responsible for that. Councilwoman Rogers stated she had one more. She referred to the last item, which reads serves as editor of the City's newsletter. They want minutes, which she feels are more important for the City Clerk to be working on than that. She felt that could be done by someone else at City Hall at the City Manager's direction.

Councilwoman Rogers moved to remove serves as editor of the City newsletter, the Edgewater ShoreLines, second by Councilwoman Bennington.

The MOTION CARRIED 5-0.

Councilwoman Rhodes suggested looking into a volunteer to be the editor of newsletter. Councilman Cooper felt it was off the beaten track. There is some noise out there in the citizens group to help start putting together this newsletter in a more civic minded format. What Councilwoman Rhodes' brings up is an excellent idea. The whole idea of these rumblings is so the input will be automatic. Mr. Sopko said it is easy enough to set up a newsletter format. They can drop the information in and it will be a done deal. He thinks they can take a nuisance problem, streamline it and get it out of there and yet get more leverage with it throughout the community. Councilwoman Rhodes stated while she doesn't want to belabor this point when they use volunteers, they had to bring it into the office because they are not reliable a lot of time. They need to be careful but it might work. They need more than one editor. Interim City Manager Barlow confirmed the Council did not want the City Clerk to do the newsletter.

Mayor Thomas asked if there were any other additions or deletions. They are happy with the job specifications, the knowledge, the skills/efforts and the primary duties.

Councilwoman Rogers commented on the minimum qualifications where it says a High School diploma is required. They say minimum required and then something along the lines where an AS or AA degree is preferred. Councilwoman Bennington agreed for the future. Interim City Manager Barlow stated they could certainly take that into consideration as they consider these applicants. Councilman Cooper had mixed feelings on that. Councilwoman Rhodes did too. Councilman Cooper stated to remove that. If they look at the employees, he was almost positive they have in their personnel jackets where they allow people to educate themselves at local colleges and campuses and promote their career as long as it pertains to their job. The City helps with tuition. This is one of the benefits that gets overlooked too often and doesn't get encouraged. Our past City Manager did the same thing. He would really like to look at that, promote that, and let them be rewarded for doing that. If they extend their career and their education while working for

the City to get better to do a better job, he feels that should be kudos and they shouldn't eliminate that. Councilwoman Bennington stated they are not eliminating it. Councilman Cooper stated that is why he doesn't want to pull the high school thing off of there. Councilwoman Bennington stated they want them to at least have a high school education. Councilwoman Rogers stated minimum. Councilwoman Rhodes stated there are some people that are not school people but that doesn't mean that they have experience and do not do the very best work. She hates to eliminate someone that would be very good. She knows people that are very good at their jobs. She is married to one of them. He has a High School diploma. He cannot make Lieutenant. They are talking in Daytona about changing the job qualifications for Lieutenant so he can because he is that qualified. She would hate to take somebody that does that kind of work and eliminate them from the process based on that. Councilwoman Rogers felt it was very important if they want to set the City apart from other cities to start establishing at least a minimum requirement of some education beyond high school. Councilwoman Rhodes stated if they get somebody that does a very good job, it will set the City apart.

Mayor Thomas asked Councilwoman Rhodes if that was in the form of motion to leave this as is. Councilwoman Rhodes stated they didn't have a motion to change it.

Mayor Thomas entertained a motion to approve the job specifications, knowledge, skills/efforts, and primary duties.

Councilwoman Bennington so moved, second Councilwoman Rhodes.

Councilwoman Rogers stated she made the motion before about just doing the minimum requirement with the High School diploma being the minimum requirement and the AA or AS degrees being preferred.

Mayor Thomas and Councilwoman Bennington asked Councilwoman Rogers if she had made a motion.

Councilwoman Rogers stated that is her motion, second by Councilwoman Bennington.

The MOTION CARRIED 3-2. Mayor Thomas and Councilwoman Rhodes NO.

Councilman Cooper clarified that they were saying preferred. They want it to say preferred but it is not a mandated word. Councilwoman Rogers confirmed that was correct. Interim City Manager Barlow stated it is common in advertisements. Councilwoman Bennington stated hopefully they won't have to use it for a long time.

Councilwoman Bennington made a motion to accept the job qualifications as amended, second Councilwoman Rhodes.

The MOTION CARRIED 5-0.

- B. Review/discussion of submitted applications and select applicants for interviews

Mayor Thomas stated Interim City Manager Barlow requested they go to five to interview. That is what he is prepared for. He felt Councilwoman Rhodes had a valid point about putting them in order. He was not prepared to do that. They can do five or three. He suggested five. They can do it with a different color or all the same color, where it is not distinguishable on who voted.

Council agreed to do them all the same color.

Interim City Manager Barlow asked Mayor Thomas if it was okay to take the names off of the top.

City Attorney Ansay informed Interim City Manager Barlow they had to leave the names at the top. Under Florida Law, as part of the Sunshine Law, they can't do secret ballots. They have to have a way of knowing exactly whom each Councilmember voted for five times.

Mayor Thomas asked if they wanted to do three or five. Councilwoman Rhodes wanted to go with five. Councilwoman Rogers and Councilwoman Bennington both said they would have to pick another one. Councilman Cooper stated before they start putting names on things, there is going to be criteria that is going to come out before they can hire anyone that has nothing to do with their qualifications that will automatically eliminate. He saw three applications where they never put any salary specifications. He feels they are probably going to be higher than they want to spend. He feels they need to qualify and general qualifications and spearhead this so they can make better selections. There is no sense interviewing a couple of individuals and getting their hopes up when they going to ask for \$120,000 a year salary. Councilwoman Bennington suggested they ask them. Councilman Cooper stated if they set an outline at this stage of game, there are going to be questions. They may have to do a two or three interview process to get down to this. Mayor Thomas stated they may be in a financial difficulty and may be willing to take anything. Councilwoman Rhodes stated it is based on qualifications and nothing else. Councilwoman Bennington pointed out where it said criteria for the City Clerk contract, which would include what they are willing to pay. Councilman Cooper he knows in an employment search you are out there to get the maximum amount of dollars you can. Sometimes employers mislead thinking they are going to match previous salaries and they may not be able to do that. Mayor Thomas

stated when they go up there, there may not be two or three dots per person so it may be a crap shoot. Interim City Manager Barlow stated it would be uncommon if they cannot negotiate an agreement with the top applicant. Councilwoman Rhodes stated do the top five but keep the other six in their back pocket.

The Council at this time selected their choices by putting circles on a whiteboard. Councilman Cooper mentioned not knowing the ages. Councilwoman Bennington informed him they can't. Councilman Cooper also commented on picking someone who has to work with another person. He wished they would have made an outline. Councilwoman Bennington again stated they couldn't ask age. She asked if they had to pick five. Interim City Manager Barlow informed her he would prefer if she did. City Attorney Ansay informed her her votes would go uncounted giving the other votes more weight.

Mayor Thomas selected Julie Christine-Clinton, Robin Matusick, Bonnie Wenzel, Gwen Gortmans, and Markae Rupp.

Councilwoman Rogers selected Robin Matusick, Bonnie Wenzel, Richard Gardner, Markae Rupp, and Pamela Stern.

Councilwoman Bennington selected Julie Christine-Clinton, Tyna Hilton, Robin Matusick, Bonnie Wenzel, and Markae Rupp.

Councilwoman Rhodes selected Tyna Hilton, Robin Matusick, Bonnie Wenzel, Diana Beckham, and Markae Rupp.

Councilman Cooper selected Julie Christine-Clinton, Robin Matusick, Bonnie Wenzel, Gwen Gortmans, and Markae Rupp.

Mayor Thomas announced they would interview six, Julie Christine-Clinton, Robin Matusick, Bonnie Wenzel, Tyna Hilton, Gwen Gortmans and Markae Rupp.

Interim City Manager Barlow suggested they talk about the six. Let's talk about the residency and what they want to see with the residency and he would communicate that to the applicants. Councilwoman Bennington stated they already know Robin already lives in New Smyrna Beach. Interim City Manager Barlow suggested they allow them to eliminate themselves based on what the Council wants. He wouldn't factor that in and cautioned them on that. Mayor Thomas suggested giving them a twenty-mile limit. Councilman Cooper thought they said Southeast Volusia. Councilwoman Rhodes mentioned one of the top five getting five votes and she lives in Lakeland. Interim City Manager Barlow suggested they not allow them to influence them today and get a ruling from the Attorney. The Charter stipulates one thing and only gives them an opportunity to make one small change and not to move boundaries.

City Attorney Carolyn read what the Charter says as it relates to the residency requirement so everybody understood what the Charter says.

Councilwoman Rhodes said so it has to be extraordinary circumstances. City Attorney Ansay stated the job as it was advertised did not discuss as any kind of restrictions. The Charter applies no matter what the job description says. The job description did not talk about within twenty miles of Edgewater. It didn't talk about those types of restrictions that aren't otherwise already in place in valid law. She cautioned them now imposing a new criteria after they have ranked the folks in their packets. Imposing a new criteria that is different than the Charter. She recommended they A) say as a policy matter they think they have enough applicants to choose from, they want somebody within the City of Edgewater and they aren't going to waive the requirements or b) they say based on the requirements of the job description and based on the criteria these applicants have, they think those circumstances exist where can waive. They say they aren't going to make that an issue in terms of residency. Or they wait and see which candidate they pick. She cautioned them at this point. She informed the Council to keep in mind they all have right to internally think they will never vote for that person because they don't live in the City or they can factor that where they live. If they live in New Smyrna that can be in their mind when they vote for that person. They have to be careful about imposing restrictions that are not in the Charter or have not been advertised. She urged the Council to be cautious. Councilwoman Rogers stated since they are talking about the most qualified candidate and they haven't interviewed the candidates yet, they could wait until after they have done the interviews because that is going to be part of their criteria. Councilwoman Rhodes asked if one of the questions in the interview could be if they are willing to move to the City. City Attorney Ansay stated in the interview process they can say our Charter provides that they have this residency requirement however it can be waived. What is your position on residing in the City of Edgewater? They have someone who says they didn't know and they would think about it. Some may say they don't even know what they are willing to pay. Are you talking about paying me \$30,000 or \$90,000? It would be legally appropriate given the Charter to ask that question. Sometimes they can't ask that question. Because of the Charter provision, they can ask it and can favor it in. They will ultimately decide on their ranking and direct the negotiation to proceed with #1 candidate. If the candidate doesn't live in the City of Edgewater, it is at that point that they need to resolve that issue if they wanted to go on the approach of the most qualified applicant.

Mayor Thomas stated he would love for City Attorney Ansay to give them a list of questions that they can or cannot ask the

applicant. He has never hired or fired anybody. He knows when they were hiring wildlife officers, they could not ask them if they have hunted or fished which he couldn't believe. City Attorney Ansay stated she had a list like that and would be happy to provide those before the interviews. She presented a few examples of question they could not ask.

Councilman Cooper asked if they were going to ask the same questions of every applicant or is each Councilmember going to ask his or her own designed questions to pull out information as he or she deems fit within limitations. Mayor Thomas stated that is why he asked for a guide. They don't want to cause a lawsuit for the City. Councilman Cooper stated he already had a list of questions. He didn't have any problem with the legalities. They already have a majority of the information. Now they are getting the pulse of this individual to work with the City. Mayor Thomas informed Councilman Cooper he would not be limited. City Attorney Ansay stated only by time. They only have 1 1/2 hours to interview six people. Councilwoman Rhodes asked if they could make a list of questions to ask and ask them as a group. Interim City Manager Barlow stated he recently put together a Selection Committee for the Finance Director, where each member submitted questions to the Personnel Director. She went through and identified 15 questions and they asked the same 15 questions of all of the applicants. He feels this keeps it consistent. They also have an opportunity to elaborate on any other particular question. Councilwoman Rhodes was looking at what Councilman Cooper had and he had every question under the sun.

Councilwoman Rhodes suggested they take Councilman Cooper's list of questions and give each one of the Councilmembers a copy and then they could add any to it they want to and submit it to Interim City Manager Barlow and he can make up a list of questions. She feels that what will speed up the process.

Mayor Thomas mentioned City Attorney Ansay having a list of questions. City Attorney Ansay clarified she had the list of questions they can't ask.

Interim City Manager Barlow agreed to work with the Personnel Director to come up with a shortlist and he will submit them to City Attorney Ansay, who will say yeah or nay. Mayor Thomas stated that was fine with him. Councilwoman Rhodes felt it is a way to streamline the process.

- C. Memorandum from City Attorney Carolyn Ansay regarding the City Clerk position and discuss criteria of the City Clerk contract

City Attorney Ansay stated she provided to Council a copy of the contract with the previous City Clerk because she felt it would be interesting and important to see. She then took that

contract and made some changes, which she could go through in detail with them, as a starting point for a future contract. She also in her efforts to get something to Council, she contacted some of our fellow cities. She has never worked with another city before that has a contract for their City Clerk. Most City Clerks are not contract employees. She did include in the search she found no other city that had contracts for their City Clerk. There was a resolution for the City of Orange City when they appointed their Clerk that described some of the terms and conditions of the appointment. That was the only thing really in writing she could get from any of our sister cities. Councilwoman Rhodes stated they don't need to have contract. Councilwoman Bennington asked when they started having contracts with the Department Heads. City Attorney Ansay stated she spoke with David Young about that very issue today and she had some previous conversations with him along those same lines. As contract issues came up that would come to her, she was continued to be provided contracts for Department Heads. Her experience was such that that was very unusual. She didn't know if there was a purpose for that. When she spoke with Mr. Young he indicated to her that back when Mr. Hooper was City Manager shortly before his departure, he had negotiated and entered into contracts with a number of Department Heads. She thought there may be a packet that had some of contracts that Robin prepared. The contracts were recently provided to her and the dates of them all were in the same time range. The contracts were not put in place when these people were hired. They were all put in place right around the 2006 time frame. She asked Mr. Young, because he does most of the City's labor work, about that and he said he was aware that they existed and that it was the desire of the former City Manager to do that and now they have these contracts in place. Do they need to have a contract? No. Councilwoman Bennington asked if a resolution would do. City Attorney Ansay stated they don't even need a resolution. They have personnel policies and procedures. Councilwoman Bennington asked about having a contract with her City Attorney Ansay's firm. City Attorney Ansay informed her she is not an employee. She is an outside contractor. Councilwoman Bennington stated the City Attorney is a Charter officer. The only three people she feels that need contracts with are the three Charter officers, the City Manager, the City Clerk and the City Attorney and that the resolution would take care of that.

City Attorney Ansay stated there are two issues. There is one immediate pressing issue before them now and that is how to handle the position they are about to hire. She feels there is a much broader issue that hasn't been talked about and that is how are they going to handle all of these other positions, many of which are in the process of being filled. They have a number of other positions vacant that are going to be filled in the next couple of months. They have a Manager, that for his protection, the Council's protection and the employees protection, she feels it is a good idea to air these issues and

get Council to give policy direction so he knows what he can and can't do. They have these other contracts in place. For his sake he needs to know whether he should be doing that or not doing that. Councilman Cooper stated so he needs direction from Council on whether to continue this format. Some of these came as surprise after the recent election. Some may be becoming a surprise to folks that have been here for a while. Councilwoman Bennington asked what their liability is if all of a sudden they decide to stop. Do they have a liability? City Attorney Ansay informed her no, not at all. They have contracts that are in place now with a number of employees that were entered into by the previous City Manager. What they do in the future is a different issue. She thinks there are certainly reasons why they need to address it. If they find those contracts were problematic and not the best policy for the City they don't want to keep replicating it into the future. Councilman Cooper asked if there are some of the criteria in the contracts that go against State Statutes as it stands right now. They shouldn't be doing any of that whether they had a contract last year or not. City Attorney Ansay stated the contracts are pretty straight forward and there is nothing out of the ordinary, with the exception of they all contain severance clauses. If they desire to terminate any of those employees, most of them are going to be a six or nine month payment of salary and benefits if those folks are terminated. Councilman Cooper stated he was reading 250 days, which exceeds a year if you take off the weekends and you take off the holidays. Councilwoman Bennington stated he was talking about working days. City Attorney Ansay stated the bottom line to it is there certainly could be made an argument that without having a policy in place for the granting of severance and she has been unable to find one, where Council for instance enacted a resolution and said they as a Council direct the City Manager to go out and enter into contracts that provide severance to the Department Heads. There is a State Statute that says they can't use taxpayer dollars, public funds to pay for compensation that hasn't been earned. If they have a policy, that Statute has been interpreted to allow for those payments. They can't after fact say they are going to give someone a \$20,000 bonus because he is a swell guy, not with government funds anyway. State Statute prohibits that kind of thing. There are arguments that could be made that some of the contracts that were entered into. Another issue someone raised with her was their authority to even enter into these contracts. They have rules that allow the City Manager to negotiate contracts with employees but they also have spending restrictions and limits. What is the issue there? She personally wouldn't advise them to go in and try to initiate a legal action to destroy all of the existing contracts they have with existing employees now. That is not good for the City or the employees. At the end of day they would spend more money trying to do something like that. She thinks the issue is how they do fix it going forward. She is more of the optimist. Let's own up and say what they have done in the past going is

going to be adhered to by the City and they are going to make good on it but as a policy perspective going forward they have to decision the decision to say they are or aren't going to give every employee their severance. It is highly unusual. She has never worked with another City that has that type of policy. Maybe there was a reason for it and she was sure there was a reason to it and maybe there continues to be reason for it going into the future but that is something Council has to decide on a go forward basis. Councilman Cooper thought in the contracts in the past, he knows if he was one of the directors and he had this contract he would be fighting like crazy if the City was threatening to take it away. On the same token, he believes they are breaking Statutes. Does a person even have right to do that when they have spending limitations? But then there is a part of the Charter that gives him full right. He thinks Council has been amiss for not giving proper guidance to personnel and any City manager at this point on what they should or shouldn't do. They just went through a situation with the City Manager that they relieved of duties for no cause and every citizen wanted to know how a city that doesn't have a lot of money could pony up that kind of severance. They have the same kind of situation in every one of the contracts he was looking at. He believes that aspect of that they need to set a guidance on what is severance, what is actually bonus. Severance to him is you get fired, you get severance. The word severance is being used as even if they retire they are owed severance. They just had a situation with two dedicated individuals that others have gotten it and these individuals didn't because there wasn't anything in writing. Even though they are discussing it today that writing may not be correct already. He believes that office and Donna's office needs to have something on what they will tolerate. Is it 90 days? Is it a year? Councilwoman Bennington asked him if he was saying without cause. Councilman Cooper stated everyone thinks they deserve it. If they go to past practices they have paid.

City Attorney Ansay stated the contracts for most part provide that if the City terminates the agreement, which is not retirement or a resignation, that the severance would be paid unless the person was removed from office by the Governor or convicted of a felony. There are a couple contracts that have a third criteria that says or violation of policy, which is common practice. They represent the School Board and a number of local governments and as a general proposition they have contracts for the Chief Executive, Superintendent, City Manager, or Executive Director. Usually those contracts provide severance because that is the nature of that high-level position. Usually that severance package has a very long list of things. If they have to terminate for all of these reasons, they don't get severance. The Council makes the policy. If they decide they want a contract with the City Clerk and they want the Clerk to have severance or any provisions they had in the previous contracts, they can do that. Council has to ultimately make that decision.

Councilwoman Rhodes stated those contracts were originally put in place in lieu of cash because they can't afford to pay money. What it did was provided the Department Heads with some security. City Attorney Ansay asked about instead of a raise. Councilwoman Rhodes stated it was more of like a benefit. If you are fired because Interim City Manager Barlow doesn't like the color of your eyes, you will not walk out the door and not get a paycheck. They are going to have some cushion and the City is saying they get some cushion for that. Councilwoman Bennington stated they can't fire someone for that reason. Councilwoman Rhodes stated they fired Jon Williams for what reason? Councilwoman Bennington stated because his contract said it didn't matter whether they fired him for reason or not he was going to get his severance package. Councilwoman Rhodes stated that is the reason these other people have contracts as well. Councilman Cooper stated they work for the citizens. Mayor Thomas thought what City Attorney Ansay suggested was they have some contracts that were put in place in the past and they will have to live with those. She was sort of suggesting that they not write contracts in the future. City Attorney Ansay stated the reality to it is they have to decide whether as a City they want to have a lot of folks under contract or whether they want them to be general employees. With most cities it's highly unusual to have contracts. What you get with contracts is the ability to have somebody walk in and say they don't like the color of your tie, goodbye. They have to write a fat check to do that but they have the ability to do that. If they have regular general employees, there are basic due process rights in the personnel manual that have to be adhered to but they are not onerous. The whole goal is to keep good people get rid of the bad people. The term Mr. Young used was it is highly unconventional to have these levels of contracts. He said it is not the industry standard in government. Councilman Cooper feels they have to adhere to a policy, fix the policy problem in personnel, give them proper guidance, address these contracts fairly. What he heard from Mr. Young is they need to get out of these because there are liability aspects from the State for paying taxpayer funds when they shouldn't be for work not performed. He says it is a legal fight and asked if they want to be in that. He commented on if he was a director with a contract and he knew when he left he was going to get paid all his sick time, all his vacation time and another year's pay that is a pretty nice deal. The citizens never get that and they aren't going to like them doing that. If they knew this was done back in 2005 and 2006 they would have squawked like there was no tomorrow.

City Attorney Ansay stated she wouldn't characterize David Young's opinion as being that strong. There is a huge issue that has been simmering for a long time. There is an argument that by entering into these contracts and giving the possibility for severance, which is only tripped if someone gets terminated,

that they have this uncompensated or this claim for unearned compensation. The terms of the contracts all provide that you have to have consideration for that. They can give somebody severance as long as there is some consideration for it. When they entered into these contracts these employees gave up their due process rights, the ability to get the personnel procedures that the personnel manual gives them. The Law says you can't compensate someone for something they haven't earned or given up. She could give them a hundred reasons why they could get these tossed out tomorrow. She also could give them a hundreds reasons why she thinks she could fight if anybody were to ever challenge the Council or the City that they were invalid. She thinks because they gave up that due process right violation in exchange the City gave them severance. That is a valid claim under State Statutes. Therefore it is fair.

Councilwoman Bennington stated she just opened up a contract and didn't know whose it was and it says with 30 days notice by either the City Manager or the employee, that is all they have to do unless termination for cause is defined by the City's personnel policies and procedures. That would void them getting any severance pay. City Attorney Ansay just said they gave that up but they didn't. If they are terminated for violation of the City's personnel policies and procedures they don't necessarily get their severance pay. They really didn't give up anything. City Attorney Ansay stated they could still be terminated without cause. They just don't get severance. Councilwoman Bennington stated without the contract. City Attorney Ansay explained with a contract in place, unless they are terminating them for cause for violation of rules, if they terminate them because they don't like their tie, they get severance. What they have given up is their due process rights to go through all the procedures they would have to go through to have somebody terminated. She explained the benefits they get when terminated only apply if the Council is terminating them. Councilwoman Bennington stated no. City Attorney Ansay asked her which contract she was looking at. Councilwoman Bennington informed her Darren Lear. Councilman Cooper stated they are all very closely the same. City Attorney Ansay stated they do differ a little though. Councilwoman Bennington stated he gets total balance of accrued vacation, sick and personal leave and 183 days potential over five years of service with the City. City Attorney Ansay stated the way the contract reads is either party may terminate. It can be terminated by Darren with 30 days notice. Upon termination without cause by the City, then Darren gets cash payment. Councilwoman Bennington stated there is a C section that says if Darren terminates he doesn't receive the severance. City Attorney Ansay stated if she were to advise the Council of a way to do this in the future she would advise that severance would be something she thinks Council should ultimately have to approve unless they have a strict dollar value or number of days. She told them to not totally restrict themselves. Port Orange said one time they had a stellar

engineer that wanted to move from Atlanta. It was exactly the type of person they needed. When they wanted to hire that person, someone isn't going to move from Atlanta without a severance package in there. She didn't know that saying forever they will never offer severance is necessarily a wise approach but they would certainly have to have some restriction on it so they ensure the contracts are good, the employees have certainty and the City Manager doesn't have to stick neck out to do things that probably aren't proper. Councilman Cooper stated a month or two ago Mr. Williams started a search on putting severance packages together and they tabled them because there were so many things going on. When Interim City Manager Barlow first got appointed, he brought it out on agenda. He feels it needs to be looked at. He doesn't believe they have to be so harsh that if they are going to let an employee go or if an employee needs to move along, that they could come up with some kind of package that is not so lucrative. When they have to pony up a year's salary, the Directors' salaries are not so small anymore. They are relatively large compared to our community and they get another year on top of that plus all their vacation and a nice pension program. He agreed with not stealing benefits from people that have paid in all their life but that is an awful lot of money. They have to be really hell bent to find other private industry out there that ever give that away and in that sizeable amount of change. He has to fight for the citizens on this end of it. They just spent over \$200,000 to get rid of two people. They don't have that kind of money sitting in a pot right now. They have five more out there that they would fry them if they knew they were continuing to do this and not looking at a way to change this. He feels they have a moral obligation to support people that voted them in office. He also feels they have a personnel and employer obligation to do something fair. They have to look at this and take on the 400-pound gorilla and try to come up with something that is fair. Interim City Manager Barlow gave him a duplicate copy of other people's contracts, including the person that was just hired. Councilwoman Bennington asked him if he wanted them to try to negotiate the existing contracts. Councilman Cooper stated you don't mess with personnel. He wants the Council to give guidance and come up with something that is fair. Mayor Thomas commented on Interim City Manager Barlow looking for direction as to whether they want to write these future contracts or not. He asked if everybody knew what they wanted to do. Councilwoman Rogers stated no future contracts.

Interim City Manager Barlow asked for an opportunity for thought from an Interim City Manager perspective. Councilwoman Bennington stated the City Manager is the one that did this. Interim City Manager Barlow stated this would be a unique perspective coming from a department director perspective as well as an Interim City Manager perspective. Mayor Thomas asked Interim City Manager Barlow if he had a contract. Interim City Manager Barlow informed him yes. Mayor Thomas informed him that

is why he didn't want him to be put on the spot. Interim City Manager Barlow stated he works for the community and wants to get transparent and get it all out on the table without a doubt. Everybody involved wants this. We have five existing contracts now. Each one of those five employees has 18 plus years longevity with the City other than Darren. Those aren't really a concern. He wanted to drill to the root of the issue with the contracts with regard to severance and looking out for the taxpayer dollars. From a management standpoint, a City Manager standpoint it is an opportunity for a City Manager to have those at will employees, if they bring a department director in or promote from within. If they are not doing the job or something changes in their personal life where they aren't doing the job any longer, the Manager needs to have the opportunity to be able address the problem, readjust the organization to keep moving forward. If they focus on the contract to keep them at will and give the City Manager the opportunity to remove an individual or director if they need to. He feels that is important for starts. He mentioned when he was researching the contracts some of the common things he has seen is they have tied severance to longevity, the same thing that was referenced in Darren's contract. It gives some opportunities where they can discharge with cause and they would forfeit that severance. That is a thought process too to attach longevity to it. At the same time when they get to the Department Director level, the early retirement option or incentive for a Department Director, they could possibly even tie that to a contract. If they do 25 years they are eligible for retirement, which is either age or years of service. They could get that incentive as well. That is also an opportunity. From his understanding that is totally legal as long as it is identified in the contract up front and they aren't after fact with tax dollars saying someone did a great job and giving them a bonus. It is an identified, up front, established policy there. That is a thought as well.

Mayor Thomas asked Interim City Manager Barlow if he was telling him that he is sort of pro contract. Interim City Manager Barlow stated when it comes to a Department Director level. He is even on the rail for a Deputy Director. He thinks the City Manager Barlow needs to have that opportunity not to be stuck. Mayor Thomas asked if Interim City Manager Barlow wanted to write a contract, could Council approve that? There were some made in the past that were just way out there. Interim City Manager Barlow informed Council he wanted them to give him the framework so they have a template of a contract. He commented on his severance being one week per year of full employment. Councilman Cooper stated if you do the math and you have a 30-year employee and they are talking one weeks bonus or severance incentive when they retire, they are still over a year's pay. Mayor Thomas stated one week per year. Councilman Cooper stated if you work 30 years that is 30 weeks, which is still over a year. Interim City Manager Barlow stated they could stipulate that in the contract and put a days number to that. Councilman

Cooper stated in a method to simplify and he understood the Directors fighting for these contracts, the flip side is he would do away with contracts and put in the personnel policy that is more fair to all employees. If they are going to have a deal for a director you add two months to whatever the deal is for directors and employees get three months. Why would they have a separate deal? He understood it gave them some wiggle room in hiring and incentives but they need to be fair as a Council to the entire general employees. They really need to be making those kinds of decisions, not just picking out eight people and making it juicy there and everybody else gets nothing. Mayor Thomas asked Councilman Cooper if he wanted to put that in the form of a motion.

Councilwoman Rhodes stated there are five contracts right now. If they change those contracts and those people fight it, they will spend as much in legal fees as they will need to pay them to get out of the contract. She asked Councilman Cooper if he was talking about changing existing contracts. Councilman Cooper felt they needed to address the articles in the existing contracts. If they address them the fear he has is the City Manager now will have five people come forward and want to be paid off right now and they will be looking for five new Directors. He doesn't want to see them go into that. Councilwoman Rhodes stated they don't have the option to come forward and get paid. Interim City Manager Barlow stated only if they terminate without cause. Councilman Cooper stated that is all the more reason to look at particular articles and see if they can come up with a fairer situation. He believed with the legal aspect the best thing to do is don't do contracts. Mayor Thomas mentioned having five existing contracts with Directors. He asked how many directors do not have contracts. Interim City Manager Barlow informed him they have the Police Chief, which has not been filled and the Personnel Director contract which has not been executed, the Finance Director and the next City Manager and the next City Clerk. Councilwoman Bennington asked about Brenda Dewees. Interim City Manager Barlow informed her she is a Deputy Director that is under contract. The only difference with the directors is if they make them an at will employee or straddle the City Manager with having to have cause to removing a Director. Councilwoman Bennington felt as a City Manager before they get rid of anybody they better have documented cause. Interim City Manager Barlow stated there are a couple different thoughts there. Councilwoman Bennington stated she has been in management and you don't just fire someone because you don't like the color of their eyes. Councilwoman Rhodes stated people do it all the time. Councilwoman Bennington stated then you open yourself up. Councilwoman Rhodes stated they aren't opening themselves up for anything in this State. Councilwoman Bennington stated they haven't had to have it up to this point. In 2006, something happened that caused the City Manager at that time to protect the Department Heads. She feels they shouldn't mess with the

existing contracts but as a Council they should direct the City Manager to not write any more contracts. Mayor Thomas asked Councilwoman Bennington if she was putting that in the form of a motion.

Councilwoman Bennington made a motion to honor the existing contracts but have no future contracts except for Charter officers, the City Attorney, the City Manager and the City Clerk, second by Councilwoman Rhodes.

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

Councilman Cooper then asked if they were looking at a \$10,000 fine or 5 years in jail for what they just voted on would they have still voted yes. Councilwoman Rhodes stated our City Attorney is sitting right there and if she thought they were going to jail she would have said something. City Attorney Ansay explained the State Statutes certainly provides that they cannot compensate people for claims they haven't earned. They have five existing contracts. The question they are faced with is whether honoring those existing contracts constitutes a violation of the Statute. She thinks that because there wasn't any policy in place at the time, there are arguments that those severance packages were excessive. She thinks because they took employees that were general employees governed by the personnel rules and had due process rights give to them under those rules and because they gave those up in an open negotiation with a City Manager at the time, whether that was a good bargain or not is a different question. She would totally support the Council that that probably wasn't the best bargain but it was a bargain that those two parties made at an arms length transaction theoretically. She thinks if the City's position is that they want to honor those contracts they have ability to do so. She didn't think they were violating the law. She didn't think if anyone were to accuse them of violating the law in having honored those contracts, she would stand ready to do everything in her power to defend them. There was no case she could find where contacts such as these were put in place and somebody later on affirmed them or made the type of motion they have made tonight and that type of issue was addressed. She thinks it is squirrely. She thinks they have very good policy reason to live up to those contracts because people who entered into them did give up something. If they came to table and said they would give up nothing and wanted the Council to give them six months severance, they would have a real problem. The fact of the matter is those folks did give up something. That is what they have compensated them for. Councilman Cooper stated they are banking their decision here today on the fact that one is a trade off for the other and they are hoping it sticks. City Attorney Ansay informed him he was right. She couldn't tell them there was a clear case either way. Their choices are not good. Their choices are to do what they have done, which is affirm them or try to unravel this big mess. Councilman Cooper

stated with what they just did they still gave no guidance. Several of the Councilmembers said they did. Councilwoman Cooper said they did on the contracts that are existing. .

City Attorney Ansay went back to the City Clerk issue. They have made the determination that they do want a contract. She felt they could talk about the terms of that. The Council can give direction now or they can leave it open. Right now they are negotiating with no one. As a negotiator, she would caution them. They don't know who is going to be the number one candidate. Councilwoman Bennington felt they at least had to determine a salary range. Mayor Thomas stated if they think they have somebody that is jam up, he wouldn't even do that.

Mayor Thomas called a ten-minute recess. The meeting recessed at 2:40 p.m. and reconvened at 2:50 p.m.

Mayor Thomas stated they left off discussing the City Clerk's contract.

- D. Discuss existing and future contracts for department directors and assistant/deputy directors

City Attorney Ansay stated based on everything they have said thus far is that they are going to have a contract for the new City Clerk. She referred to Exhibit C in the memorandum she had done, which was the beginning draft of a proposed contract. Since this went in the agenda packet, she received some very good feedback from Interim City Manager Barlow on a couple of issues. She took what was in Susan's contract that probably should have been changed when it was Susan's contract that he has now updated. She suggested they run through the contract. She wanted to get feedback from the Council so they can revise this one more time and leave out the blanks such as salary and those types of things. They will at least have a template to use for the City Clerk.

City Attorney Ansay then went over the changes made to the proposed contract with regard to the Terms and Conditions in terms of Residency Requirements, and Compensation.

Councilwoman Bennington stated they are thinking about maybe going to biweekly. She asked if they wanted to put weekly in the contract. City Attorney Ansay suggested they say payable in installments as determined by policy.

City Attorney Ansay continued her presentation of the contract by further discussing Compensation with regard to the annual pay increases will be granted at the rate the City Council approves for all City employees. They have a choice. They can tie this contract with what everyone else gets or they can recognize it is a different type of position and determine whether they want to do anything differently. Even though Susan's contract read it was tied to all City employees, Interim City Manager Barlow

suggested they make clear that it is all non-union employees because clearly they have different distinctions. If they keep it in terms of tying it with all City employees, she will add the words non-union. If they determine they want to have any kind of review or do something differently, she would change that accordingly. That is a policy decision. The Council needed to tell her how they want to handle that. Councilwoman Bennington stated so what this is saying is that they are going to give an annual increase. All they have to decide is how they are going to do it. Above that they aren't going to tie it into a performance evaluation.

Councilwoman Rhodes suggested they take the word annual out and just have pay increases will be granted at the rate the City Council approves. City Attorney Ansay stated so instead of having it tied to all City employees, that is going to mean they are going to have to have the affirmative act of doing some sort, which was different than what was done in the past.

Councilwoman Bennington agreed with Councilman Cooper. The Council was negligent in the past when it came to evaluating the City Clerk. That position needs to be evaluated annually and determine whether they are worthy of a raise or not. City Attorney Ansay stated there is a provision that deals with evaluation, which is above it. Councilwoman Bennington felt Councilwoman Rhodes change was great. City Attorney Ansay agreed to make the change.

City Attorney Ansay continued her presentation by discussing the changes made to Benefits.

Councilwoman Rhodes pointed out that everybody else has unlimited cashing in at this point in time. This Council wants to limit that so that our budget is not blown by people taking all their years that they have accumulated. Maybe a way to do that would be in this contract, to limit it in this contract. City Attorney Ansay stated that is how it is drafted now. It was limited to two weeks. Interim City Manager Barlow expressed concern with eliminating it for all the employees and this position having an opportunity to cash two weeks in. Councilwoman Rhodes stated they don't want to eliminate it. They just want to put parameters on it so they can define it every year for the budget.

Mayor Thomas stated during the last discussion he thought they were talking 100 hours. Councilwoman Rhodes stated she thought the point was to put parameters on it so they could account for it in the budget and it didn't become bulky. Had everybody that had accumulated sick time and vacation time come and cashed it all in, we would be killed. We did get killed. Councilman Cooper mentioned putting some kind of parameter on it to slow it down. City Attorney Ansay asked if she was hearing to keep it at two weeks. City Attorney Ansay then commented on removing

the provision that had severance that was originally in place. That is something the Council has to tell her they want. It was six months and included the salary, retirement and insurance. She took it out because usually that is something that is negotiable. She wanted Council to give her feed back as to whether they want it to be 0 months or 12 months. That is a policy decision the Council has to make. Councilman Cooper stated he wasn't sure he understood. In Susan's contract there was a stipulation that she had a severance of six months if she were terminated only. Where she left in this situation, other than retirement, she didn't get any of this. He would love to see some kind of bonus for loyalty and appreciation instead of paying someone when he has to fire someone. City Attorney Ansay informed him that is illegal. Councilman Cooper stated as a reconciliatory aspect, can't they word some logic for when they have an employee with 36 dedicated years? They are better off if they are fired. City Attorney Ansay stated it is very perplexing. They can establish a City wide policy that is separate from this contract, where they have contract buyouts. They would have to leave. They can't have a policy where they give somebody a \$10,000 bonus. Councilman Cooper stated they would have to do a similar thing like a pension. If they are leaving and they fit all of the criteria, that is the kind of person they should be rewarding. Not the ones they really just want gone. If they are going offer buyouts to folks because they can lower payroll, they want to be lucrative or at least be more congenial with the folks that have done a great job. It seems they do things backwards and they pay people for doing a bad job. He wants to get away from that. How can he explain this to the citizenship? Councilwoman Rhodes stated if they are fired with cause, they don't have to pay them. The point is if you are firing them because they are a bad employee, they don't have to pay them. If they fired them because they don't like the color of their eyes, then you have to pay them. It protects them against capricious firing.

Mayor Thomas stated he fired two wives but he still had to pay them. Councilwoman Rhodes commented on him receiving the benefits.

City Attorney Ansay was looking for guidance on how they want to approach the severance in the City Clerk's contract. Councilman Cooper suggested they go to no more than three months. That is standard operating procedure in the private sector for firing and 90 days is it. They need a policy in place to reward people that have done their job instead of rewarding the people that haven't.

Mayor Thomas felt Councilman Cooper was right. The bad employees get the benefit and then you have the good employees. What they are teaching is honesty is not the best policy. He doesn't know what to do about it. Councilman Cooper felt on a severance and a firing three months is fair and no more than

that. They shouldn't be ponying up citizen's money in large amounts on a severance situation. Councilwoman Rhodes stated most surrounding cities don't have contracts. She asked if the ones that do have a severance package included. If they can't offer something they are going to get the dregs of the barrel. City Attorney Ansay stated most of the cities she contacted and got a response back none had contracts so therefore none had severance. Of the people she heard back from those Clerks were all treated under the personnel rules so therefore they had more protection. They didn't work strictly for a Council and that could change and they could throw them out because they didn't like their eye color. She commented on having differing views. Some would rather have the protection to know they couldn't be fired at any minute or some may say it doesn't bother them but they want to be paid until they find another job. Those are trade offs. It is up to Council. They need to make that policy. They only have two contracts where this is going to apply now based on their previous motion, the City Manager and the City Clerk because they made direction that in the future there are no more contracts. Councilwoman Rhodes felt sorry for anybody that has to work for a City Council. There is not enough money to do that in her eyes because it changes all the time. They have political agendas coming up all over the place. For anybody to woop their job based on a Council, she feels they are asking something huge and she wouldn't do it if it was her. Se thinks some severance absolutely. She had no problem with the three months. City Attorney Ansay confirmed they were saying three months. She pointed out the two places that this was going to be inserted. They are willing to do three months. They will put in the same qualifiers regarding being convicted of a felony or removed from office or if you are terminated for cause defined in the City's policy and procedures. They are talking about termination without cause. Councilwoman Rhodes asked why the contract they were looking at was 60 days. City Attorney Ansay informed her it was in the original contract. Councilwoman Rhodes stated the City Manager is 30 days and she felt the City Clerk contract should be 30 days too.

Councilman Cooper asked how come they have never used the standard ethics clause provision in these termination highlights or caveats. Why has that never stuck in there? He realized most of it is intestinal fortitude and integrity of a position. Councilwoman Rhodes felt the personnel policies and procedures covers that. Prior to this the City Manager's contract was not dependent upon the personnel policies and procedures. As long as this is tied to that that is fine. City Attorney Ansay explained they are getting in the back door by having the with cause. The issue they had raised before was a morality clause and there is a difference between ethics and morality and she was concerned about morality but certainly not the ethics. She felt they had that with the termination clause they will add but that wasn't in the previous City Manager's contract.

City Attorney Ansay further commented on suggested changes to Benefits - Paragraph C & D.

Councilwoman Bennington stated in the past under Duties on Page 2 of 7 she has been told there and is aware that there has been a certain amount of stress involved in who really controls the City Clerk's office and her personnel, is it the City Manager or the City Clerk. She thinks in the Duties they need to define exactly if Lisa works for the City Manager or City Clerk under the City Clerk's cloak.

Councilman Cooper stated it is his understanding the Assistant is strictly City Clerk. Councilwoman Bennington stated she is a Deputy City Clerk but in the past she has been told and has seen it that past City Managers have pulled with the City Clerk over who is Lisa's boss. Councilwoman Rhodes stated then the City Clerk should have come to the City Council and said something. Councilwoman Bennington stated if they put it in the contract and make it clear, there wouldn't be any question. Mayor Thomas suggested putting this under the Responsibilities instead of in the contract. Councilwoman Rhodes thought so too. Councilwoman Bennington didn't know. Mayor Thomas stated the Deputy Clerk needs to be loyal to the Clerk and should be under the Clerk's office. Councilwoman Bennington felt they needed to define it some place. Councilwoman Bennington stated she is also going to be a supervisor of and shouldn't put in. Councilwoman Rhodes stated next year she might be the supervisor of her and somebody else. Councilman Cooper stated as the City grows. Councilwoman Bennington suggested putting it under Duties and not only will she do this but her responsibilities to supervise the City Clerk, Deputy City Clerk and whatever other jobs they give her. Councilwoman Rhodes stated or they could just tell her. Councilwoman Bennington agreed that she should have it brought to them but she didn't. Councilman Cooper thought it was standard operating procedure that everybody on the Council assumed it wasn't supposed to be done any other way. He feels if they make that clear to new City Clerk and incoming City Manager and at any time if they want to put in law somehow, then they revise the Charter and make it very clear. Councilwoman Bennington felt it should be written down some place to make it clear to both entities where their line in the sand is drawn.

City Attorney Ansay stated earlier they took the list of duties that Susan drafted up and made some changes and approved them. One of those is managing the City Clerk's Department. The Deputy City Clerk has a position description and in her position description it says that she reports to the City Clerk. Obviously it all flows through back to. It is the same situation with her. She works daily with Robin on the Paralegal type job she does but she is supervised by someone else and it goes up through. Here it just happens to be the same person. She felt that covered it.

City Attorney Ansay asked if they wanted to leave the language as coordinated with the City Manager on the comp time or do they want to take it off recognizing they are two separate positions that don't report to each other. Councilwoman Rhodes stated she would leave it off. They want to make that clear. Her theory is there is a divide there. Councilwoman Bennington questioned why she would have to justify her comp time. Councilman Cooper felt they were wanting to make sure the office is covered. City Attorney Ansay felt taking out the coordinating with the City Manager eliminates what could be tension. Councilwoman Rogers felt she had to have some accountability to somebody. She commented on not being there when she decides she wants to take comp time. She asked if there was a separate payroll category for comp time so they know this was time she took off and got paid for and they have accountability. She felt she should be reporting something so they know she has bank. Interim City Manager Barlow explained if it is a salaried employee they can't track compensatory time off. He spoke of influencing a cooperative working relationship between a City Manager and a City Clerk. Councilwoman Rhodes suggested she send notice to the City Manager when she is going to take comp time but it doesn't have to be approved by the City Manager for that to occur. Interim City Manager Barlow reminded Council they have a Deputy City Clerk as well who fills in in the absence of the City Clerk. They have witnessed today they have a very competent Deputy that fills that void. He feels there should be more effort put into making sure the Deputy and City Clerk work together on taking time off so they don't have both of them absent versus a City Manager and a City Clerk. Councilman Cooper mentioned wording that in such a way that one of the clerks has to be there at all times and coordinate comp time amongst themselves. Councilwoman Rhodes didn't feel that was necessary. Councilwoman Bennington felt they didn't need to go there. Interim City Manager Barlow felt that was micromanaging. Councilwoman Rhodes stated they are grown ups. Councilwoman Bennington stated if the City Clerk is taking too much time off and Council notices it, they can bring it up at a meeting and let her know they don't like the way she is doing her job and that she is taking too much time off and find out what the reason is. If they don't, they are derelict. Mayor Thomas stated Susan always told him when she was going to take time off. Councilwoman Rogers stated she did memos and put them in their boxes. City Attorney Ansay informed Council on Page 5 of 7 Termination of Agreement she was going to add the language about severance and change it from 60 days to 30 days.

City Attorney Ansay went back to Benefits - Paragraph B. Since this was modeled after Susan she could elect to participate in the City's Pension Plan. Since that is now closed they need to change that. She stated Interim City Manager Barlow suggested offering the alternative of the Defined Benefit Plan. Interim City Manager Barlow explained if their final selection is a

current City employee then obviously they are part of this pension plan and they would just tailor this portion to accommodate that. If it is someone from outside that is not eligible for this pension plan then they have another one as it referenced to defined contribution. City Attorney Ansay stated they leave it as it is now and see where they are when they get to the actual selection.

Mayor Thomas entertained a motion

Councilwoman Rhodes made a motion to approve this contract with the corrections they made to it, second by Councilwoman Rogers.

The MOTION CARRIED 5-0.

City Attorney Ansay informed the Council to recognize they would have to re-approve it once they hire somebody and stick in the number.

10. OFFICER REPORTS

a. City Clerk

Interim City Clerk Bloomer had nothing at this time.

b. City Attorney

City Attorney Ansay nothing at this time.

c. City Manager

Interim City Manager Barlow informed Council that next week he would be in Jacksonville from Tuesday through Saturday at a conference but he would be available by computer and cell phone.

Interim City Manager Barlow stated just for clarification on December 17th is when they did a roll call vote to elect for him to come in as Interim City Manager. Conversation with the labor attorney since then has recommended changing his title to Acting City Manager so that way it is very clear so it doesn't have any influence on his pension or years of service because he is still doing the Fire Chief job as well.

Mayor Thomas entertained a motion to that effect.

Councilwoman Bennington so moved, second by Councilwoman Rhodes.

The MOTION CARRIED 5-0.

Councilwoman Rhodes felt Acting City Manager Barlow should be getting more money. Mayor Thomas thought they had a problem with that on his pension. Councilwoman Rhodes mentioned him working out of class. Mayor Thomas stated he is still the Fire

Chief. He is just Interim City Manager. He thought once they started paying him that would change things. Acting City Manager Barlow didn't know but stated on the economic times we are going into he would appreciate if they didn't do that. He didn't do it for the money. He did it to help the community. He further declined that opportunity.

Councilman Cooper wanted to get on the record that what Mr. Barlow just said and did is commendable. At the end of his term as Acting City Manager he would like for the Council to investigate or look at some sort of bonus structure for his help during this interim time rather than Acting City Manager Barlow saying he doesn't want the money. He understood all of the caveats. Once a City Manager is acquired and they feel comfortable with it, he would like to entertain some kind of bonus structure that does not mess up his legalities of his pension. Acting City Manager Barlow informed him they couldn't do that. Councilwoman Rhodes pointed out that violated State Statute.

Acting City Manager Barlow informed Council of the workshop to be held on January 28th at 5:30 p.m. for City Clerk interviews.

Councilman Cooper confirmed the pictures were put off until February. Councilwoman Bennington questioned if they were going to discuss a pay range for the new City Clerk. She asked if they were going to leave it up the candidates to tell them what they want. Councilman Cooper thought it was advertised. Councilwoman Bennington felt they had to have some idea of where they were going before they talk to these people.

Personnel Director Donna Looney stated there is none in the broadband because it is a contract position. Councilwoman Rhodes stated so they could do a range. They could do a high - low. Councilwoman Bennington again mentioned establishing a range.

Councilwoman Rhodes suggested they not do a low because it could be higher than they have to do but she felt they should do a high. Councilman Cooper asked what it said on the pay scales when they did the comparison a while back of the other cities. Interim City Manager Barlow stated recently the Personnel Director did a survey of the local cities. There is a range anywhere from a high of \$97,000 and a low of \$48,000.

Councilwoman Bennington pointed out the City Clerk in New Smyrna Beach has been there 15 months and is making \$56,000. Councilwoman Rhodes pointed out she had been there for 16 years.

Councilwoman Bennington asked what Susan's salary was when she left. Personnel Director Looney informed her \$76,000. Councilwoman Bennington asked how many years she was City Clerk. Deputy City Clerk Bloomer informed her since 1989.

Councilwoman Rhodes suggested a high of \$70,000 with a low of \$40,000.

It was the consensus of Council to go with a high of \$70,000 and a low of \$40,000.

11. CITIZEN COMMENTS

There were no citizen comments at this time.

Councilman Cooper wanted to review the six names. They were Robin Matusick, Bonnie Wenzel, Markae Rupp, Julie Christine-Clinton, Tyna Hilton and Gwen Gortmans.

Acting City Manager Barlow informed the Council if they would like to submit any questions to himself or Donna for the interviews that they should have them to her by noon on Thursday. Councilwoman Rogers asked if they were going to get a copy of the questions from Councilman Cooper. Councilman Cooper agreed to e-mail them to everybody.

Mayor Thomas asked if they were going to let City Attorney Ansay look at those. Acting City Manager Barlow stated once they streamline those they will go through City Attorney Ansay for clearing. Councilwoman Rhodes asked when he wanted them. Acting City Manager Barlow informed her to e-mail them to himself or Ms. Looney prior to noon on Thursday, January 24th.

12. ADJOURNMENT

There being no further business to discuss, Councilwoman Rhodes moved to adjourn. The meeting adjourned at 3:28 p.m.

Minutes submitted by:
Lisa Bloomer