

CITY COUNCIL OF EDGEWATER
REGULAR MEETING
MAY 18, 2009
6:00 P.M.
COUNCIL CHAMBERS

MINUTES

1. CALL TO ORDER

Mayor Thomas called the Regular Meeting to order at 6:00 p.m. in the Council Chambers.

ROLL CALL

Mayor Michael Thomas	Present
Councilwoman Debra Rogers	Present
Councilwoman Gigi Bennington	Present
Councilwoman Harriet Rhodes	Present
Councilman Ted Cooper	Present
City Manager Tracey Barlow	Present
City Clerk Bonnie Wenzel	Present
City Attorney Carolyn Ansay	Present

INVOCATION, PLEDGE OF ALLEGIANCE

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

2. APPROVAL OF MINUTES

A. Regular Meeting of February 2, 2009

Councilwoman Rhodes moved to approve the February 2, 2009 minutes, second by Councilman Cooper.

The MOTION CARRIED 5-0.

B. Regular Meeting of April 20, 2009

Councilman Cooper moved to approve the April 20, 2009 minutes, second by Councilwoman Bennington.

The MOTION CARRIED 5-0.

3. PRESENTATIONS/PROCLAMATIONS/PLAQUES/CERTIFICATES/DONATIONS

A. Presentation of the FY 2008 CAFR by Finance
Director John McKinney and McDirmit Davis

This item was postponed to the June 15, 2009 meeting.

4. CITIZEN COMMENTS

The following citizens spoke:

Mike Visconti, 316 Pine Breeze Drive, commented on Kennedy Park. Being on the Beautification Committee, Thursday night they had a meeting and he received phone calls about the restroom across the street. They think it is an eyesore. He spoke to Jack about it Thursday night and he said there's nothing they are going to do about it because it can't be moved. The people that called him were very disappointed. They live on Riverside Drive. He told them he would bring it up at the Council meeting tonight. He personally feels it can't be moved either. He asked if it could be camouflaged with trees to try to hide it. Their remarks were who approved the plan. He was bringing it up to Council to let them know what was going on and what he heard about it. With the meeting they had Thursday night, Jack had a point that it is close to the sewer line and when he called them back to let them know that one reason was because of the sewer line. They asked him why it wasn't put in the middle of the park or in the back instead of right on Riverside Drive. They asked him if it could be removed and he informed them he doubted it.

Mayor Thomas mentioned this being a work in progress. City Manager Barlow confirmed it could not be removed. That was the final design approved by Council. The reason the restroom facility landed where it landed was to accommodate the people who walk on Riverwalk, the location of the existing utilities and to try to strategically place it where they weren't taking away from the functionality of the park itself. Based on what they are trying to do with that small piece of real estate and to get the most out of it, they were very limited where they could put it. If council wanted them to go back and look at putting additional shrubbery or greenery up there to try to camouflage, he can look at that once they have accepted the park and released the developer.

Mr. Visconti stated they mentioned also why put it so close to the street when they have the facilities in the Community Center building. City Manager Barlow explained the goal was because of the design of those restrooms, once those were placed maybe they would have an opportunity to close these restrooms off, refurbish them and make them support restrooms for the Council Chambers. These necessarily won't always be open to the public, all day and all weekend. He hasn't received any complaints and only compliments on the entire progress of that park.

Dominic Capria, 606 Topside Circle, stated the newsletter said the City is working with the county to try to come up with more wells for water. We sold water to the County years ago and sold it cheaper than what they pay for it until he complained and then they raised it. The Restoration project shall not proceed past development of Phase I until an adequate water supply is identified. He asked if this was the reason they were working with the County for this, to go possibly past Phase I of the Restoration project?

City Manager Barlow stated the engineer was in the audience tonight to talk about the water facility planning. He explained that is all part of the long range water facility planning. This is not solely for Restoration. This is for the continuous water supply for the City.

Mr. Capria stated he didn't say totally but asked if it was part of it. City Manager Barlow informed him no.

Carmen Ferrera, 34 Laughing Gull, stated he was looking for a refund on his water bill due to an overpayment because the meters were installed improperly back in January of 2005 by the Johnson Group. They brought it to the attention of the Utilities Commission and they properly came out and took care of the water lines and he would like a check instead of a credit on his account. They have already credited the account up to six months, which was all he could do without bringing it before Council.

City Manager Barlow informed Council this was brought to his attention today. They live in a duplex and when they put the water meters in he was getting his neighbor's bill and paying it and his neighbor was getting his bill and paying it, which was just recently discovered. John has done the workup and it goes beyond the fiscal year we are

in so it will take Council action. He could have John come up and give a synopsis of where they are or he could have it on the agenda at a later date.

Councilwoman Rhodes asked why they couldn't give him a check. City manager Barlow explained they could give him a credit or a check but anything beyond this fiscal year he would prefer it get direction from Council.

Councilwoman Rhodes asked if they owe him money. Finance Director McKinney informed her yes. Councilwoman Rhodes asked how much they owe him. Finance Director McKinney stated they have given him a credit of \$227.53, which was through October 2008. Back to September 2005, we owe him an additional \$1,046.87.

Councilwoman Rogers felt this shouldn't have come to Council and should have been dealt with.

Councilwoman Rhodes told Finance Director McKinney to give him a check. Councilwoman Rogers agreed.

Councilman Cooper asked if it puts them in harms way with the neighbor that was paying his. He asked if there was a problem there too. City Manager Barlow informed him it would be a loss to the City. The individuals that installed the meters crossed them.

Councilwoman Rhodes asked if the \$1,000 was for the difference between the two bills. She was informed that was correct.

Councilwoman Bennington asked if they needed a motion. City Manager Barlow was okay with consensus of Council.

Councilwoman Rogers asked how quickly they could get him a check. Mr. Ferrera asked where he would go to pick the check up. Finance Director McKinney informed him they had his address and would mail it to him.

City Manager Barlow explained the reason it was brought before Council was because it was outside of this fiscal year and they have already reconciled books for the previous fiscal years.

Bill Glaser, 1703 Needle Palm Drive, asked Mayor Thomas if he could address him if he doesn't get personal. Mayor

Thomas informed him if he didn't say anything bad about him.

Mr. Glaser asked Mayor Thomas if he remembered when they had their little verbal dust off at the last Council meeting. Mayor Thomas did. Mr. Glaser stated it really bothered him because he has been trying to suppress his cynicism. He couldn't figure out what set him off to say what he did so he read the minutes of the meeting and he wondered if Mayor Thomas remembered when he asked him why he didn't take him up on the offer to count traffic on the street and Mayor Thomas said he didn't think he could stand to be in his presence for more than a couple of minutes. Mayor Thomas remembered and said that was true. Mr. Glaser stated back in his previous life he used to have to occasionally interface with BS artists and they would banter back and forth to one another insults and one of the insults he tended to use was about their logic is all screwed up because they are smoking that funny smelling hemp weed. Mayor Thomas stated that is personal. He didn't accuse him of smoking marijuana. Mr. Glaser informed him he felt what he said was personal too. The whole time he was speaking his brain was having flashbacks and he was trying to figure out what was going on. After reading the minutes it finally dawns on him that his brain was going back having flashbacks back to when he used to do the banter with these folks. Although he has suppressed his cynicism to his subconscious, his remarks just brought out from his subconscious that statement. He knows Mayor Thomas was smiling when he said what he said so if he said it in jest, what he said was in jest also.

Mayor Thomas asked if that was some sort of apology. Mr. Glaser stated he didn't think so.

Mayor Thomas stated he has never smoked any kind of weed in his whole life. The first time he saw marijuana was when he arrested a guy for it. He was a cop for 30 years.

5. APPROVAL OR CHANGES/MODIFICATIONS TO THE AGENDA

There were no changes or modifications to the agenda.

6. CITY COUNCIL REPORTS

Councilwoman Bennington stated as a representative for the Council between the Pet Society and the Animal Shelter,

they had a meeting and the Pet Society is donating close to \$14,000 to outfit their surgical room at the Animal Shelter. They have agreed to kick in, if an animal needs to be checked out over and above what the City pays, they have agreed to pay \$100 more to verify whether the animal is healthy or whatever is wrong with it, over and above what the City would do.

Councilwoman Rhodes thanked the Fire Department for the way they helped her father who has been sick and the way they did their job. Her father was in some very humiliating positions and they never made him feel humiliated. They treated him with respect and kindness. When you are in that position, you cannot ask for anything better than that. She wanted them to know how much she appreciated it.

Councilwoman Cooper reported on the YMCA. The YMCA is now consolidated and we are called the Southeast Volusia YMCA. They are trying to get some help, at least matching funds, and it doesn't look like they are going to get it from New Smyrna but they have been asking. They would like the City to come up with a letter letting them know the total quantity of people that go to the YMCA from New Smyrna and most of the cost is being borne by Edgewater. They talked in the past about looking for some way to offset these constant expenses. The Y has been progressively losing money year after year. Last year he thought they lost \$77,000 for the whole year and they are probably going to do worse this year. Any help they might be able to get in the form of a special tax if they could or excise if they can that is legal. Any kind of pressure they can apply to get some money from New Smyrna as a city would be very helpful and the Y needs it desperately.

Councilman Cooper stated the 25th is Memorial Day and the Vets will be having their function at the Edgewater Cemetery at 11:00 a.m.

Mayor Thomas reported on the Smart Growth committee. They have completed three years of work on the document and he has asked Rafael Montavo to come to the next Council meeting so they have an understanding of the Smart Growth principles, standards and rules. This is going to come up before Council to vote on that document.

Councilman Cooper commented on a lot of talk going on right now through WAV, VCOG and Smart Growth in reference to

water and looking for water sources. He stated he knows the one aspect seems like they are zeroing on just themselves but he questioned if the whole County has been asked. They had a survey go out a while back with regard to desalinization and consolidation of water and those types of things. They are doing everything they possibly can to find sources that wouldn't hurt the aquifer in areas where it isn't being utilized.

Mayor Thomas stated it is like a multi-tier attack. They try to educate people, especially the youth, on conservation of water as well as the public on the water restrictions. They have to go by the St. Johns guidelines. They are always looking for future ways of obtaining water other than taking it out of the aquifer. They discuss that frequently at their meetings. He would be attending the WAV meeting on Wednesday.

Mayor Thomas reported that he attended the Mayors' meeting today. He missed the VCOG meeting tonight. He attended the Friends of the Fireworks Committee meeting last week. He thought what they were shooting for in the future is to have the old fashioned 4th of July fireworks and that day a celebration at our park and pier. They have a committee trying to do that. He was trying to get it this year where they could have enough vendors and charge the vendors or split the profit so the City wouldn't have to get a benefit next year like they did this year. We do have enough money for the fireworks and they have a little extra where they are going to set up kids' games and have a live band. He didn't think they were there yet. They are talking about having another annual benefit and maybe adding a fishing tournament to it and awarding prizes and making money that way. Their goal is to get back to the old 4th of July celebration where they have vendors and watermelon eating contests.

Mayor Thomas reported on the Special Olympics Torch Run. He didn't think he would be able to attend so Councilwoman Bennington read the proclamation. He thought they transferred the torch to Lake County. The police officers carry the torch for the Special Olympians that get out there and try their best.

Councilwoman Bennington stated this year they had more police officers participate than ever before. She thinks it is going to increase. They had people on horses. She

wasn't sure how much money they raised. She asked David Soltz if he knew. David Soltz informed her including the county and the State they raised \$1,600. Councilwoman Bennington commented on the CAPS being very active in helping raise the money. It went over pretty big. She thought next year they were going to plan for it to be a little bigger than just ending in Edgewater.

Mayor Thomas asked how Council felt about doing the 4th of July fireworks celebration the old fashioned way. Council felt it was a great idea.

Councilwoman Rogers commented on the paving that is being done on Merrimac and Ocean. Residents contacted her wanting to know why those two roads were selected. City Manager Barlow stated those are areas within the CDBG zone, which is a very limited district, and they are prioritized and he thought it was Mike Tenney that keeps up on all of the roads and there is a long priority of roads based on their condition of when those get paved. Outside that zone they also have other roads prioritized.

Councilwoman Rogers stated that was brought up because both Ocean and Connecticut are the thoroughfares to Menard May Park. Most people come in directly off of Ocean but they don't use Merrimac, they use Connecticut. City Manager Barlow though those roads were in better condition than the ones that are being resurfaced.

Councilwoman Rogers asked if Connecticut was on the list. City Manager Barlow didn't think it was on the list this year but it may be next year.

Councilwoman Rogers then commented on the restroom facilities at Kennedy Park. If she understood correctly, City Manager Barlow was indicating when the contractor is complete then they can look at doing something. City Manager Barlow stated after the project is finished and turned back over to the City, if they want to add landscaping they could certainly do that.

Councilwoman Rogers stated this is something they could do without asking the contractor. She suggested they do some kind of latticework in an L shape and then plant Oleanders. They need to show they are going to do something. Councilwoman Rogers asked what the expected time was for the contractor to be done because she believed he had

already received a two-week extension. City Manager Barlow stated he thought they did project closeout this Friday because they want it open before the Memorial Day weekend. Councilwoman Rogers thought it would be great before the 4th of July to have some camouflage there because it is rather unsightly.

7. CONSENT AGENDA

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

8. PUBLIC HEARINGS, ORDINANCES AND RESOLUTIONS

- A. 1st Reading, Ordinance 2009-0-02 - Amending Chapter 5 (Animals and Fowl) of the Code of Ordinances

City Attorney Ansay read Ord. 2009-0-02 into the record.

City Manager Barlow made a staff presentation by highlighting the proposed changes to Chapter 5 of the Code of Ordinances.

Mayor Thomas referred to Page 11, Section 5-11 where it referenced the State of Florida Game & Fresh Water Fish Commission. There is no such thing anymore. It is now the Fish & Wildlife Conservation Commission. The same reference was made on Page 13, Section 5-18.

Mayor Thomas then referred to the definition of wildlife on Page 8. He asked why they added feral cats. City Manager Barlow stated because they are treated as wildlife and not domesticated or owned animals. Mayor Thomas asked if it would help the Animal Control Officers treat them in a way that they can take care of them better or euthanize them. City Manager Barlow stated the whole purpose with the inclusion of feral cats is because they want to prohibit people establishing colonies in someone else's neighborhood in feeding these feral cats, which live like wildlife. Later language prohibits the feeding of wildlife.

Councilwoman Bennington feels a feral cat really is a wild animal. Mayor Thomas doesn't feel they are wildlife. Councilwoman Bennington stated she knew they weren't wildlife but they are wild animals. You can't touch them.

Mayor Thomas stated they still aren't wildlife. Just like wild hogs. They aren't wildlife; they are feral hogs.

Councilwoman Bennington questioned why they didn't have wild hogs in there. City Manager Barlow informed her that was just for an example. They couldn't list everything.

City Manager Barlow commented on another change on Page 10, Subsection D1 regarding the regularly scheduled meetings of the Animal Control Board.

Mayor Thomas stated he read about the prohibition of possession of reptiles like pythons and stuff. He commented on tortoises/turtles being excluded. Mayor Thomas asked City Manager Barlow to provide the purpose of that. City Manager Barlow commented on learning from other communities and some of the problems they are facing now. It is hard to go back and correct after the fact. He commented on the problems that are occurring in South Florida with people letting iguanas, monitor lizards and large snakes go because when times get tough they can no longer feed them or they grow beyond their ability to handle them.

Mayor Thomas commented on Florida being subtropical and these animals being able to exist in our environment and they have no predator. The Fish & Wildlife Conservation Commission already has laws regarding reptiles and possession of poisonous venomous reptiles but the Council can make an ordinance prohibiting where they can't have them at all. Right now they can have them if they have a permit from the State. The City can supercede that which they will do if they vote for this document. He guessed it would be in the future. He thought people that have had them in the past could still have them. City Manager Barlow commented on a clause that if they had them by a certain date they are permitted but no more after that. Mayor Thomas commented on hybrid animals being prohibited in the future but if they had them before they could still have them.

City Manager Barlow reminded Council this was the first of two readings and that they would recognize the comments being made tonight and effect those changes in the ordinance and bring it back at the next meeting.

Councilwoman Rogers referred to Page 2 and asked why they struck the definition of aggressive animal. City Manager Barlow informed her to be consistent with State Statute. State Statute already addresses it and he didn't believe it was referenced anywhere in the ordinance so no sense having a definition for something not in the ordinance.

Councilwoman Rogers stated if they go along with that, then everything the State says they are under obligation as far as our laws then why are they writing anything. She asked if all of our stuff was added to the State. City Manager Barlow informed her what they are seeing is more stringent than the State.

Councilwoman Rogers then referred to Page 4, the last paragraph. She asked if that was also something that was at the State level and that was why they were striking it. City Manager Barlow informed her that was correct.

Councilwoman Rogers then commented on Page 3 and the comments they are striking regarding incessant dog barking for a period of ten minutes or barks intermittently for one half hour or more. She asked if that was State Statute or if that was ours. City Attorney Ansay didn't think the State Statute defined barking dog. That definition existed in the prior ordinance.

Councilwoman Rogers asked if there was anything in the ordinance regarding parks and what they are planning to do in the future by creating dog parks where animals and dog owners are allowed. City Manager Barlow informed her it was on Page 12, Section 5-13. That was the language he had before Council and they approved.

Councilwoman Rogers read from Section 5-13 by stating unless such park or beach is designated and posted by the City as an animal park. She asked when they were going to do that. City Manager Barlow informed her he requested Jack bring back on the second reading of this a draft resolution identifying the parks he recommends and Council can make those changes at that time.

Councilwoman Rogers would mostly be out of town for the June 15th meeting and asked that if she is not here that they postpone that to a meeting where she will be there, which would be the next meeting in July due to her being the one that initiated it.

City Manager Barlow informed Councilwoman Rogers that would be up to the Mayor if he wanted to do that but he didn't have a problem with it.

City Attorney Ansay asked if it was the resolution on the parks or the second reading. Councilwoman Rogers informed her the second reading because that is when he is going to bring up what parks they would recommend. City Manager Barlow informed her that would be a separate resolution. He informed Council they would do the second reading of the ordinance in June and the resolution would be brought before them in July identifying which parks would permit animals.

Councilwoman Bennington asked about the list of prohibited animals that are not allowed in the City, except for agricultural. City Manager Barlow referred to Section 5-8, Page 10. Councilwoman Bennington was also talking about the reptiles. She knows it is easy to spot a potbelly pig but how do you enforce someone having a reptile when they aren't allowed on their property or in their house to inspect? City Manager Barlow informed her it depends on what the issue is why they know about it. If they don't have any suspicious reason to believe it is in there then they won't know about it and they won't have to go through a warrant to go in there to find out. That is certainly not the direction they want to go.

Mayor Thomas stated it would probably come from a complaint and then it would have to be substantiated and then they would have to have probable cause to get a warrant to go into the house. Councilwoman Bennington so they get a complaint that someone has a python. They can't just go up and say they have a complaint that they are keeping a reptile that is against the law. City Manager Barlow informed her if it was part of an investigation. City Attorney Ansay stated they can't go in but they can ask.

Councilwoman Bennington stated the only way they would be able to enforce these types of things is if there is a reason to go in and they get a warrant or somebody sees it in their yard. When they are passing ordinances prohibiting things how are they going to enforce that? City Manager Barlow informed her it was no different then when they put speed limits up and you can break the law by speeding but you only get a ticket when you get caught.

Councilwoman Bennington stated what if they keep an animal in their backyard and they don't have access to the backyard. City Manager Barlow informed her if the neighbor invites them on their property and allows them to go into their backyard. Councilwoman Bennington wanted to make sure they have ways to enforce some of this stuff.

City Manager Barlow pointed out that has been the problem in the past. They couldn't enforce it. This cleans it up and is a pretty stringent that gives them enforcement ability.

Councilman Cooper referred to Section 5-8 on Page 10. He didn't know if anacondas or pythons were indigenous to Florida but they do thrive here. He knows in the Everglades they are all over the place. Mayor Thomas stated they are trying to eliminate the problem before it starts. Councilman Cooper asked if they are legal in saying because they weren't originally indigenous to Florida or were they. Mayor Thomas stated once they get established and breed they don't have any predators and then they take over the other native species. That is what they are trying to prohibit. City Attorney Ansay informed him they are considered exotic or non-indigenous.

Leisure Services Director Jack Corder informed Council that Animal Control has picked up two pythons in the past year in Edgewater.

Councilman Cooper questioned if they should identify the species of snakes. Mayor Thomas thought they tried to do it generally.

Due to there being no public comment, Mayor Thomas opened and closed the public hearing and entertained a motion.

Councilwoman Bennington moved to adopt Ord. 2009-0-02, second by Councilwoman Rogers.

The MOTION CARRIED 5-0.

B. 1st Reading, Ordinance No. 2009-0-03 - Amending Chapter 10 (Health and Sanitation) of the Code of Ordinances

City Attorney Ansay read Ord. 2009-0-03 into the record.

City Manager Barlow made a staff presentation. He commented on a lot of this being moved from the Land Development Code into Chapter 10 of the Code of Ordinances. He then highlighted the proposed changes.

Councilman Cooper felt Items 8B and 8C were good things for the City and they are cleaning some things up and letting citizens know a lot of these things that have been tolerated are not going to be tolerated now. He would like to see notice in the newsletter giving people warning that it is on the way. He feels it would be the right thing to do. He also expressed concern with the added Code Enforcement responsibility due to some of these things getting heated. He wondered how much more the police would be involved.

City Manager Barlow pointed out one of the Code Enforcement Officers is also a certified law enforcement officer that works reserve time with the Police Department. The Supervisor is also a certified law enforcement officer. He spoke of having a good working relationship with the Police Department. He also commented on the reorganization he recently did for some efficiencies by bringing the Code Enforcement Department into the Development Services Department.

Councilman Cooper was concerned for the Code Enforcement Officers. He feels if a Police Officer is there it would be intimidating and there wouldn't be a problem. If they give them enough notice and then start cracking down on these things nobody can complain that they didn't know anything about it.

Mayor Thomas stated most of the time they give a warning first. City Manager Barlow informed him they have to by State Statutes unless they are a repeat violator within a five-year window. They issue a notice of violation before the citation is issued. Once it passes second reading they plan to put a clean copy on the website and advertise it in the newsletter. As space becomes available in the newsletter they will include each section. Mayor Thomas commented on most of this already being in effect. He hates for people to keep making laws. If they are going to make a new law he wants to see one taken off that are antiquated. He thought City Manager Barlow assured him they are taking more off than they are putting in new.

Councilman Cooper feels if they let the public know maybe they can get some personal responsibility and some of the things they will be nuisanced with could be cleaned up all on their own. City Manager Barlow explained a big part of Code Enforcement is education.

Councilwoman Rhodes didn't recall in the old Code that there was interior structure. Councilwoman Bennington thought it was in the Land Development Code. City Manager Barlow pointed out some of it was new from the International Property Maintenance Code.

Councilwoman Rhodes doesn't think they have any right to be in her house. City Manager Barlow explained most of their problems are rentals that are not properly maintained. Councilwoman Rhodes stated but this doesn't only apply to those. City Manager Barlow stated but those are the ones they have the problems with. Councilwoman Rhodes stated then make it apply to those. This also applies to her house and they have no business in her house. City Manager Barlow commented on affecting the health, safety and well being of neighbors. They may have an obligation as the City to protect the property. Councilwoman Rhodes feels they need to stay out of people's houses. Mayor Thomas stated that is a constitutional right. City Attorney Ansay stated unfortunately they couldn't have two sets of requirements. Councilwoman Rhodes pointed out they have requirements for businesses that are different from residences all the time. City Attorney Ansay explained when the issues are based on the City's ability to regulate health, safety and welfare it would be hard for them to legally support the fact that in certain structures the health, safety, and welfare would dictate a regulation because it's rented to a tenant whereas an owner who owns it is subject to a different health, safety, and welfare restriction. She has never heard of any jurisdiction having two sets of interior building requirement codes for people that live there verses people that don't.

Councilwoman Rhodes doesn't want two sets. She doesn't want there to be one for anybody except people that are making money off of it. Then you have one set and it is for them and not for anybody else.

City Attorney Ansay spoke of doing Code work as Special Counsel for seven different cities and they have had issues

across the gamut. She didn't know it was always fair to say it was only the absent landowners. She thinks there is a lot of stuff in the Florida Building Code she personally doesn't agree with.

Councilman Cooper asked if they have ever adopted a paragraph or clause stating that upon receiving a life safety, health threat or complaint then and only then would the officers or Code Enforcement have the right. He spoke of running nursing homes and they have a bad situation in many areas because the homes are not conducive to taking care of people. City Attorney Ansay thought as a general proposition in order for them to legislate in an area, they have to find that they have that basic prerequisite met for passing the underlying regulation. That is more of a legislative function that is vested with Council to determine if there is a particular health, safety and welfare need for a particular ordinance. She thinks when they start delegating that policy level judgment down to staff, she thinks the law says it is Council's job to determine if it is important enough to put it into the Code, not vesting them with discretion and every time there is a complaint to measure whether it warrants that. It's a big judgment call.

Councilwoman Rogers referred to Page 25, Section I. It says a limit of one vehicle, watercraft, watercraft trailer, motor home trailer, wrecked vehicle, etc. If she is reading that correctly somebody that would have a boat, somebody that would have a motor home, somebody that would have a utility trailer would not be able to have it any longer because if she understood what Mayor Thomas said about everything new being underlined. Mayor Thomas stated either new or moved. City Manager Barlow explained it is new to Chapter 10 but that particular language currently exists today in the Land Development Code. Councilwoman Rogers questioned only being allowed to have on in your yard. City Manager Barlow informed her per 4,000 square feet.

City Manager Barlow further commented on the 17-member Ad Hoc Committee that went through this section and made recommendations.

Councilwoman Rogers stated this is restricting it. She questioned this just limiting on the front setback. If they are using their backyard then they are okay. City

Manager Barlow stated if it is screened. Councilwoman Rogers asked if this was correct. She was informed it was correct. Councilwoman Rogers stated she was mentioning it for obvious reasons. She has three trailers, two boats, and four to five vehicles.

Councilwoman Rogers questioned Page 14, Section 10-82 - Commercial Vehicles. She thought it was in zoning where when they have signage on vehicles, they aren't supposed to be parking them at your residential property unless the signage on the vehicle is State mandated. City Manager Barlow asked Mr. Lear if that was still valid. Councilwoman Rogers remembered that being in zoning back in 2002 when she moved here. City Clerk Wenzel believed that was for a home occupational license on the residence. Councilwoman Rogers stated it pertains to on the residence, not the vehicle. City Clerk Wenzel informed her that was correct. Councilwoman Rogers has noticed with what is going on with the economy right now, a lot of signage laws being broken and she guessed the reason the City wasn't writing up anybody was because it is a State law and has to do with Chapter 489, Construction Building Industry, where anybody that is doing work that advertises as a contractor they are supposed to have on their signage their license number on their signage. She has seen roofs being worked on and construction projects being done but she has not seen license numbers and that allows for more unlicensed activity. She read recently in the newspaper about the work the State Attorney's Office has been doing by going after unlicensed activity. It's happening in Edgewater and nobody is catching it. City Manager Barlow agreed to look into this.

Councilwoman Bennington referred to Page 10, Section 10-40 - Littering - Public property and waterways. She spoke of one of her neighbor's having nine newspapers in his side yard. She doesn't like the way this is written. She doesn't feel they should be throwing them anywhere. Her husband has called the Hometown News four times and asked them not to deliver that newspaper. They are still throwing it in their yard. If they pass this, who are they going to cite, the homeowner who didn't want it there to begin with or and if it is an abandoned house, who are they going to cite? Are they going to cite the person who threw it for the newspaper?

Mayor Thomas felt that was a good question. Councilwoman Rhodes felt it should be the newspaper, as did Councilwoman Bennington.

City Attorney Ansay explained the way the ordinance is drafted it is unlawful for any person who is actually responsible for the distribution, either themselves or through an agent. They could site the owner of the newspaper, the person doing the distribution and the homeowner. The way this is worded she didn't think the homeowner was likely to be cited because it is putting the burden on the person actually making the distribution. As far as citing for vacant homes and unattended vehicles, that is pretty deliberate. The reason why the unattended vehicle and vacant home is used is because you start to run into First Amendment issues when they prohibit a newspaper or someone who is handing out a handbill from handing it to someone who is either living in the home or who is a willing recipient. Councilwoman Bennington stated what if you aren't a willing recipient. They have first amendment rights and they have had this problem from a lot of citizens. Councilwoman Rhodes asked if they can write it so they must hand it to someone in the home. City Attorney Ansay stated if they wanted to establish some sort of a system whereby residents that do not want to, do not wish to receive the materials anymore can place the newspaper on notice and can place that notice with the City. That would be one way around it. She spoke of there being a long line of cases that deal with this notion of how and how far they can go to tread on the rights of the newspaper to distribute news to the people in the community. They could look at ways that folks can try to opt out, almost like a Do Not Call List. It's more of an administrative burden. Council has to decide if it is worth the resources and the effort.

Councilwoman Bennington thinks it is a big issue in our City. It is constantly being brought before Council. This added language says known vacant property or property with the appearance of vacancy. She mentioned someone delivering the newspapers at night not seeing there are two newspapers already at a location. She mentioned Code Enforcement, as they are driving around the City checking things, isn't going to say a house has three newspapers and they are going to cite the homeowner or whoever. She feels it is impossible to enforce this the way it is and it isn't fair to the people who have called and said they don't want

the newspaper. They called the Observer and they put it in their paper slot but the other ones won't. She spoke of CAPS doing home watches for people that are gone. One of the things they have to do now is they pick up the garbage that is thrown in these people's yards because it gives the appearance of vacancy and they don't want these people cited for something so they are picking up the garbage that they shouldn't have there to begin with. Who has the rights, the citizens or the newspaper?

City Attorney Ansay stated if Code Enforcement drove by a home that was vacant and there was a pile of newspapers greater than two or more and if they clearly saw the house appeared vacant, she thought they could and would cite them. Councilwoman Bennington stated what if it isn't a vacant house. City Attorney Ansay stated if it isn't a vacant house they aren't under the language as drafted they can't do anything about it. Councilwoman Rhodes questioned this falling under a different category. What if a house isn't vacant and they don't pick them up and they leave them there. City Attorney Ansay stated they would get into the paragraph above that. At a point in time when you live there and you are leaving the newspapers to sit in the front yard to accumulate, they can be cited for the provision above because now at that point that newspaper has become junk or trash or litter. City Manager Barlow mentioned citing those in the past.

City Manager Barlow commented on a good conversation he had with the Code Enforcement Supervisor in Orange City. They have a similar, very stringent code as it relates to. He shared with him that the carriers over there are so concerned and so cooperative that when they are out throwing the newspapers if they see a driveway that looks vacant or there is an accumulation of papers there, they will stop and pick them up even if they aren't theirs. City Attorney Ansay stated this language is pretty aggressive by most city standards. Councilwoman Bennington suggested if they are going to pass this the way it is, once it is passed and approved they notify the newspapers that the carriers and themselves are subject to being cited.

Mayor Thomas expressed concern with someone going on vacation, contacting the newspapers and telling them to cancel delivery and then they throw out the other papers, that shows a burglar that you aren't there. He has gotten

more complaints on these newspapers and handbills being thrown out to the vacant houses and to the people that live here for six months and live up north for six months and they come back and their driveway is orange. City Manager Barlow commented on it becoming problematic in our stormwater conveyance system as well. Councilwoman Bennington stated realistically with the City right-of-way, they aren't actually throwing it on anyone's property, they are throwing it on the City's property. A lot of it is on City property. City Manager Barlow pointed out the requirement in the Code to maintain the City right-of-way in front of your property.

Councilwoman Bennington referred to Page 49, Section 10-289, Rooming houses. She asked if the bathroom counts as a rooming unit. City Manager Barlow explained the intent of that. If someone were to convert a building, they would require so many lavatories per number of occupants. Councilwoman Bennington clarified for each four rooms they would have to supply a lavatory. City Manager Barlow confirmed that was correct. He further explained this was before the Planning & Zoning Board as well last week and they endorsed it and sent support and they identified some other grammatical errors they will clean up before the second reading.

Councilwoman Bennington asked City Attorney Ansay to tell them step-by-step if someone was in violation of one of these what the procedure is, which she did at this time.

Due to there being no comments, Mayor Thomas opened and closed the public hearing and entertained a motion.

Councilwoman Bennington moved to adopt Ord. 2009-0-03, second by Councilwoman Rogers.

The MOTION CARRIED 5-0.

Mayor Thomas called a ten-minute recess at this time. The meeting recessed at 7:21 p.m. and reconvened at 7:35 p.m.

Mayor Thomas asked Mr. Henry Frederick to approach the podium and state his name and address.

Henry Frederick, 616 N Dixie Freeway, New Smyrna Beach, stated he was the editor of the NSBnews.net, which is a

daily website newspaper that goes to the community online. He commented on the delivery of news products and the question about freedom of the press. His understanding is that most communities now have standards where there is a contract between the person who wants the paper and the person delivering the paper. If they want the News Journal, they pay a subscription as opposed to going to the store and buying it. If you leave it in your yard it is your responsibility to get rid of it. He thought there was a lot of confusion because if they don't get the News Journal and they get either the Pennysaver, the Hometown News or the Observer, for a while the Observer was sending out papers to everybody free and now they have subscription basis and he believed Hometown News to a large extent has gone with if you want it delivered you can contact them and they will send it to you. Otherwise they have a series of boxes throughout the communities where you can pick one up. He didn't believe the laws would be broken or the cities would be liable for any kind of journalism constitution first amendment right of free press. Free press doesn't mean that he can just throw something in your yard because he is trying to give you something. It means if you want something he has a right to give it to you without government getting involved and abridging that. Most communities across the country require a permit process. He spoke of the News Journal having a thing called the Focus for non-subscribers that goes in the mail that is mailed through the Post Office. If you don't want it, you can tell the Post Office or the News Journal that you don't want it. He spoke of Councilwoman Bennington's concerns regarding the numerous phone calls that were placed that she didn't want the newspaper. There is a tool they have available which is called litigation. If they want them to stop and they don't they can file a claim with the court and they can go through the City's enforcement as their first tool of evidence that they have made steps to stop that. Most publications don't want that kind of expense. Even the thought of litigation will scare them. Most of the carriers are people that are paid for how many they throw and he doesn't think it matters to them where it goes. He thinks the confusion is is it three days of News Journals in a row or is it here is my Pennysaver, here's my New Journal, here's my Hometown News, here's my Observer, here's my real estate weekly or whatever it is? Those are thrown by people indiscriminately. He knew the Observer now does either home delivery or mail. They do have rights in that regard.

C. 1st Reading, Ordinance No. 2009-O-04 - Amending Chapter 21 (Land Development Code) of the Code of Ordinances

City Attorney Ansay read Ord. 2009-O-04 into the record.

City Manager Barlow made a staff presentation.

Due to there being no comments, Mayor Thomas opened and closed the public hearing and entertained a motion.

Councilwoman Rogers moved to approve Ord. 2009-O-04, second by Councilwoman Rhodes.

The MOTION CARRIED 5-0.

D. Resolution No. 2009-R-07 - Requesting the St. Johns River Water Management District to reduce permit application fees

City Attorney Ansay read Res. 2009-R-07 into the record.

City Manager Barlow made a staff presentation.

Councilwoman Rhodes asked whose idea this was. Environmental Services Director Brenda Dewees informed Council this is typically done with the Department of Environmental Protection for the Wastewater Permit application. This came about with our well applications. St. Johns requires a resolution approved by Council.

Councilwoman Rhodes stated whoever noticed this, good job. Environmental Services Director Dewees informed her she had.

Mayor Thomas entertained a motion.

Councilman Cooper moved to approve Res. 2009-R-07, second by Councilwoman Rogers.

The MOTION CARRIED 5-0.

E. Resolution No. 2009-R-08 - Modifying the Schedule
of Fines, Penalties, Costs and Various
Administrative Fees

City Attorney Ansay read Res. 2009-R-08 into the record.

City Manager Barlow made a staff presentation by
highlighting the changes.

Councilwoman Rhodes referred to Page 23, Development Fees. She asked why the total valuation went down for \$100,000.01 to \$500,000. City Manager Barlow informed her some of those and some of the rate studies we have done comparable that we try to be competitive and comparable with the neighboring communities. He spoke of adding the application fee due to people submitting applications, going through the review process and not coming back and picking up the building fee so we were losing those costs. In an effort to do that without over escalating the total development fee, building permit fee, they had to reduce other fees. He further commented on the commercial fees and wanting to attract more jobs and more commercial in this community.

Councilwoman Rhodes understood why they did it but she didn't like it. She feels it looks like the people that can afford it the least are going to have to pay the most

Due to there being no further comments, Mayor Thomas entertained a motion.

City Attorney Ansay stated she noticed on the bottom of Page 22 they have a star that says engineering and recording fees shall be paid by the applicant. We have a little agreement that they sign that lists a number of fees. They need to make sure all of the fees are agreeing to our fees that are listed there because there are others beyond that with that change. She asked to include in the motion that that provision of the resolution will match what we already require them to pay by agreement when they apply.

Councilman Cooper moved to approve 2009-R-08 as amended by Counsel's recommendation, second by Councilwoman Rogers.

The MOTION CARRIED 5-0.

F. Resolution No. 2009-R-09 - Approving a Water System Facility Plan (2009) relating to the Florida Department of Environmental Protection (FDEP) State Revolving Fund Loan Program

City Attorney Ansay read Res. 2009-R-09 into the record.

Brad Blais, explained the Water System Facility Plan relates to two specific projects, the water supply wells at the Alan R. Thomas Wellfield and also the southeast ground storage tank and pump station for the southeast service area down south U.S. #1 area. In order to qualify for any of the stimulus money that is out there it is a requirement that they have a facility plan document completed. He further commented on everything that has to be done. A business plan will also be brought before Council for consideration probably in the next two weeks or so. Once they adopt this plan they can submit this entire package for consideration at the next board hearing in July. This is an effort for the projects that are planned, designed with permits in hand to get in line to obtain some funding. He further commented on the way this is being done. He further commented on the document in general.

Councilwoman Rogers commented on the Water System Facility Plan being one of the requirements for getting the stimulus money. Mr. Blais stated in order to become eligible. Councilwoman Rogers asked about the business plan and if this is required. Mr. Blais informed her it is a required document.

Councilman Cooper asked if there was any co-pay on the grant money. Mr. Blais stated the May 13th hearing has already occurred, which was 85% funding from the Feds with a 15% match from the communities for the few that got it. They will have a hearing 60 days from May 13th. They won't know what type of grant funding or what is available until the day of the hearing. Coming up to the hearing they will see the list and where we are setting in it. This is basically our last shot to get in line.

Councilman Cooper stated if we weren't chosen for the grant money but were chosen for the low interest government loan, would that automatically make them eligible for the forgiveness of principle. Mr. Blais informed him when they execute the loan agreement that loan agreement will define the terms.

Councilman Cooper assumed they were going through this process to see if we can actually get the money and get the stimulus package. If they were turned down would they still be obligated to go through with the process? Mr. Blais informed him they aren't obligated until they execute the loan agreement. Even then they are only obligated to repay the amount that is borrowed.

Councilwoman Rogers stated the fact is the first thing they are looking to hope is that we will get a principle forgiveness. Mr. Blais stated there is no way to guarantee any of that. This is what they have to do to get there.

City Manager Barlow stated the City Clerk maintains a complete copy of the plan if they would like to evaluate it.

Due to there being no further comments, Mayor Thomas entertained a motion.

Councilwoman Rogers moved to approve Res. 2009-R-09, second by Councilman Cooper.

The MOTION CARRIED 5-0.

9. BOARD APPOINTMENTS

There were no Board Appointments at this time.

10. OTHER BUSINESS

- A. Purchase adjacent property located at 131 East Park Avenue for future expansion/redevelopment for a total cost of \$68,710.50 using Police Impact Fees

City Manager Barlow made a staff presentation.

Councilwoman Rogers asked the dates of the City's appraisal and the owner's appraisal. City Manager Barlow didn't have the whole folder with him but estimated they were three months apart.

Councilwoman Rogers felt this sounded good on the face and it does say a budget amendment is not required. They are getting ready to go into another budget season. In light

of what is going on at the State level and the sharing of revenues and the lower property tax values and everything that the impact fees just to state according to what they have is impact fees are intended for capital improvements for the PD or maintenance upkeep. City Manager Barlow informed her impact fees are used for capital enhancements or future expansion. Councilwoman Rogers stated by doing this purchase they aren't forgoing something else and they aren't missing something that might require an increase in budgets in these areas. City Manager Barlow informed her that was correct. They are going to bulldoze the property and leave it vacant property and use it for overflow parking as needed and for future expansion. There won't be any operating costs going forward. Councilwoman Rogers felt the main thing was there are no opportunity costs. City Manager Barlow informed her no, as a matter of fact they budgeted \$80,000 for this in the budget on the capital side.

Due to there being no further comments, Mayor Thomas entertained a motion.

Councilman Cooper moved to authorize the Mayor or City Manager to execute the purchasing contract and all associated closing documents/costs for the property located at 131 East Park Avenue, Edgewater, Florida, second by Councilwoman Bennington.

The MOTION CARRIED 5-0.

- B. Request to purchase one-ton cab and chassis with stake body bed from Duval Ford using the Florida Sheriff's Association, Florida Association of Counties and Florida Fire Chiefs' Association Bid Award in the amount of \$33,116.00

City Manager Barlow made a staff presentation.

Due to there being no further comments, Mayor Thomas entertained a motion.

Councilwoman Bennington made a motion to authorize this purchase, second by Councilwoman Rogers.

The MOTION CARRIED 5-0.

C. Request to purchase a Kenworth 18-yard rear Loader Garbage Truck from Kenworth of Central Florida using the Florida Sheriffs Association, Florida Association of Counties and Florida Fire Chiefs' Association Bid Award in the amount of \$118,651.00

City Manager Barlow made a staff presentation.

Due to there being no further comments, Mayor Thomas entertained a motion.

Councilman Cooper made a motion to approve the purchase of an 18-yard rear loader garbage truck from Kenworth of Central Florida, second by Councilwoman Bennington.

The MOTION CARRIED 5-0.

D. Request to purchase an 18,000 pound Post Lift for Fleet Maintenance from Rotary Lift using the GSA Contract in the amount of \$10,709.17

City Manager Barlow made a staff presentation.

Due to there being no comments, Mayor Thomas entertained a motion.

Councilwoman Bennington moved to authorize this, second by Councilwoman Rogers.

The MOTION CARRIED 5-0.

Mayor Thomas asked if we are still dealing with New Smyrna Beach. Environmental Services Director Dewees informed him no. Mayor Thomas asked her if she felt like we were saving money. Ms. Dewees informed him yes.

Mayor Thomas asked if we have a lift. Ms. Dewees informed him we have an existing lift but this will allow them to utilize both mechanics.

Mayor Thomas commented on not having any mechanics when he first came in and we were sending most of our stuff to New Smyrna and they were charging us a lot of money. We are saving money by having our own mechanics and our own lifts. He feels this is a cost saving item to the City of Edgewater. Councilman Cooper felt Ms. Dewees and her staff

needed to be commended on their last quarterly. They showed a cost savings on how much they are saving on maintenance compared to where they were before.

E. Approval to use Community Development Block Grant (CDBG) Fund money in the amount of \$95,946.00 to do a Street Improvement Project within the CDBG Fund Target area

City Manager Barlow made a staff presentation.

Due to there being no further comments, Mayor Thomas entertained a motion.

Councilman Cooper made a motion to approve the use of the Community Development Block Grant fund for street improvements, second by Councilwoman Rhodes.

The MOTION CARRIED 5-0.

Mayor Thomas wanted to make a comment he forgot to make during his report. During the fires, he requested some deputies for security and he saw one of the new Impalas go down the road and it sounded like it was falling apart. A supervisor came in driving a Crown Vic and he told him the horror stories about the Impalas. He wanted Council to know they did the right thing by sticking with the Crown Vics. He appreciated Council making the right decision on that.

11. OFFICER REPORTS

A. City Clerk

City Clerk Wenzel commented on some meeting changes. In August they will be adding a meeting on August 31st to discuss the Enterprise Fund budget workshop. For September the original meeting date was September 7th but that is Labor Day so they are moving that to September 14th and then September 21st they will move to the 28th that way they don't have four meetings in a row.

B. City Attorney

City Attorney Ansay had nothing at this time.

C. City Manager

City Manager Barlow notified Council they are in the process of applying for the Justice Assistance Grant in the amount of \$27,056 to be applied towards replacement of radios. If approved it will come back before Council as an agenda item and an official acceptance and approval of expenditure funds. Part of the application process is they must inform Council in a public meeting although it doesn't have to be a public hearing and give opportunity to open it up for any questions and comments from the public. He asked Mayor Thomas to open up for any questions from the public for the JAG grant so we can qualify.

Mayor Thomas asked if any public had any questions reference the JAG grant. There were no comments from the public.

City Manager Barlow advised Council that he is starting to work with New Smyrna on drafting an RFP for a consultant to come on board and start to do some work and preparation for CRA District. They have to have a consultant do the necessity study. He is going to have them look at some research on business tax receipts as well as looking at some Florida Brownfield incentives we can do. This will come back to Council formally to select a consultant or a group of consultants that will do some of that economic development work for us.

Councilman Cooper asked City Manager Barlow if he was able to delegate particular areas on the CRA stuff. City Manager Barlow informed him first they have a consultant come on and do a necessity study, which will come back before Council.

Councilman Cooper asked City Manager Barlow to explain what they are looking at with the CRA's and the different areas for the public.

City Manager Barlow pointed out that the Community Redevelopment Areas has been identified in the EAR as well as talked about in the Vision Plan. They anticipate the necessity area would be the area from the Gaborby Canal at the Edgewater/New Smyrna line down to an area of Turgot Avenue and probably from the railroad tracks on Park Avenue west to the River. They freeze the taxable value of that property that year and then any increase goes in a separate fund that can be put back into the District for

redevelopment. He has had some preliminary conversations with some consultants in the area encouraging them once they do the RFP to submit. Mr. McIntosh has also done a lot of work for the city in reference to a lot of research as it relates to economic development opportunities and grants. He has assisted him in some of those areas.

Councilman Cooper stated it allows them to target blighted areas within the community and put an opportunity forward to start to clean those up. It's a good thing to start to exercise this so they don't start to fall in bad array. City Manager Barlow stated we are one of the minority cities in the County that hasn't had a CRA District. Most of them have had them established for years.

12. CITIZEN COMMENTS

The following citizen spoke:

Mike Visconti, 316 Pine Breeze Drive, congratulated the citizens of Edgewater for coming across to have our fireworks this year. He recommended to the Fire Chief for the 4th of July if the fire personnel could get into uniform and start collecting donations that night for next year's fireworks. He thinks they could collect some money that same night they are doing the fireworks.

Mr. Visconti would like to see the City set an example on catching precious Florida rainwater. There is a place in Lake Helen that makes the rain barrels. They get \$70 for each rain barrel. The City could buy the rain barrels for \$70. He is selling them for \$95 but the City could buy them for \$70. They get a \$20 rebate for each barrel they buy. He asked the Council to give McKinney a blank check for \$200 and he could buy four rain barrels.

13. ADJOURNMENT

There being no further business, Councilwoman Rhodes moved to adjourn. The meeting adjourned at 8:17 p.m.

Minutes submitted by:

Lisa Bloomer