

CITY OF ST. AUGUSTINE

Special City Commission Meeting
December 29, 2004

The City Commission met in a formal session Tuesday, December 29, 2004, at 10:08 a. m. in the Alcazar meeting room at City Hall. The meeting was called to order by Mayor Gardner, and the following were present:

1. Roll Call:

George Gardner, Mayor/City Commissioner
Susan Burk, City Commissioner
Errol D. Jones, City Commissioner

Absent:

Joe Boles, City Commissioner
Donald A. Crichlow, City Commissioner

Timothy A. Burchfield, Chief Administrative Officer
James P. Wilson, City Attorney
Mark Litzinger, City Comptroller
Tim Shields, Facilities Manager, Public Works
John Regan, Chief Operations Officer
James Whitehouse, Staff Attorney
Loran Lueders, Police Chief
James Owens, Fire Chief
Karen Rogers, Recording Secretary

2. Public Hearing regarding Horse and Carriage Permits.

Mayor Gardner explained the procedure for the meeting.

James P. Wilson, City Attorney, stated that in terms of the law it was a simple procedure; however, it could be more complex from the citizen's standpoint. He explained that according to Code anytime an application was submitted for horse drawn carriage permits the matter was investigated followed by a public hearing to determine whether public convenience and necessity would be promoted by issuance of any additional permits. He said that should it be determined there was a need for additional permits the Commission

would direct staff to change the ordinance, as the ordinance limited the number of horse drawn carriages.

Timothy A. Burchfield, Chief Administrative Officer, stated that staff had conducted due diligence regarding the applications, and before the Commission was a packet prepared by staff regarding the matter. He announced that Mr. Denny Axlen of Old Town Trolley Tours had withdrawn his application for 15 horse drawn carriage permits reducing the submitted applications from 114 to 99.

Mark Litzinger, City Comptroller, reported that on August 2, 2004, Paul Meredith requested 12 additional regular horse drawn carriage permits for Murphy

McDaniel of Avalon Carriages. He said that originally the public hearing was scheduled for September 27, 2004 but Mr. Meredith experienced a scheduling conflict; therefore, the City rescheduled the meeting for November 8, 2004, which had been delayed as a result of Mr. Meredith filing a lawsuit against the City on behalf of Murphy McDaniel. Therefore, the City rescheduled the meeting to a date when everyone involved was able to attend.

Mr. Litzinger said that after the initial request the City continued to receive additional requests for horse drawn carriage permits, and the Commission directed staff to include all applications for permits in the investigation up to the date of the public hearing. He said that currently there were ninety nine permits requested; however, one individual had not specified a number of permits he was requesting.

Mr. Litzinger stated that there were currently 46 active regular permits renewed annually in the amount of \$80. He said that the permit holder could have non-active permits for \$40. He said that the current number of horse drawn carriages operating on the street averaged between 10-15, but there could be as many as 20 and as few as zero carriages according to demand and weather conditions. He said that currently there was space on the bayfront for 13-15 carriages at one time.

Mr. Litzinger stated that the City Code specifically limited the number of horse drawn carriage permits to 46, but allowed for non-transferable special permits to be issued upon demonstrating public need or convenience. He said that the proposed applications were for regular permits; therefore, if the Commission decided to grant additional permits the Code would have to be amended.

Mr. Litzinger referred to the agenda packets and said that it provided an abundance of information for the Commissioners to review, including past investigations for additional requests for horse drawn carriage permits.

Mayor Gardner questioned the special permits.

Mr. Litzinger replied that a special permit cost \$200 and provided the same rights as a regular permit, and the same rules and routes had to be followed as well. He said that the only difference was that they renewed annually. He reiterated that the 99 requested applications were for regular permits.

Mr. Litzinger summarized that the investigation revealed the same results as past investigations. He said that the current number of active permits exceeded the demand for services and greatly exceeded the infrastructure capacity of the City streets. He said that the agenda packet also included responses from the Public Works Director and the City Police and Fire Chiefs addressing public safety and street capacity issues. He said that City Staff determined that the addition of any regular horse drawn permits was in the disinterest of the public and no additional need had been demonstrated; therefore, staff recommended that the Commission deny all the applications for horse drawn carriage permits.

James Owens, Fire Chief, stated that his primary concern was public safety. He said that the carriages were a part of St. Augustine, but the City had changed over the years, and horse drawn carriages mixed with motor vehicles on the streets presented a safety issue. He said the situation would be a safety issue anyplace; however, the situation in St. Augustine was unique due to the amount

of traffic, as well as the narrow streets. He said that there had been accidents in the past involving carriages, some of which resulted in injury and property damage and some had to do with run-away horses. He said it was fortunate that there had not been any fatalities.

Chief Owens said that in the past the horses had been better trained to handle traffic without spooking; however, currently he questioned how well the horses adapted to the sound of diesel engines and air brakes. He used the example of a fire truck having to shut down on Carrera Street to avoid further spooking some horses. He also questioned the drivers training and experience with handling horses in urban areas. He suggested that his recommendations regarding the current situation be addressed before adding more horses to the street. He added that the situation also created a traffic obstruction with cars backed-up behind the slow moving carriages. He said that there were traffic jams, sometimes the carriage drivers were inconsiderate to motorists and they disregarded traffic control devices, all of which needed to be taken into consideration.

Chief Owens noted that over the years firefighters had silenced their sirens to keep from spooking the horses; however, in certain areas that was inappropriate, as it put the fire department at liability. He added that some of the drivers expected the firefighters to silence their sirens even though in some situations the firefighters could not do so, at which point the carriage drivers indicated their dissatisfaction. He said that at night the carriages were difficult to see even though they were lighted, and they presented a hazard because they were slow moving. He recommended that the Commission take the aforementioned into consideration before issuing

additional permits. He offered to answer questions.

Mayor Gardner said there were current standards that could be added to the Code for effective rear lighting on the horse drawn carriages.

Chief Owens said that even with improved rear lighting slow moving vehicles were difficult to see and therefore a hazard.

Loran Lueders, Police Chief, stated that Chief Owens had covered the public safety aspect. He said that the Police Department was not in favor of adding any horse drawn carriage permits. He said that everyone present had driven through town during the day and could not help but be aware of the situation concerning the slow moving carriages. He said that regarding sirens, it was the fire and police department's responsibility to make sure the general public knew an emergency vehicle was approaching. He pointed out the lack of space on the bayfront should there be more horse drawn carriages trying to park there.

Commissioner Jones questioned whether there was an ongoing record of accidents and injuries involving the horse drawn carriages.

Chief Leuders said that they did not keep the records separate, but they could separate them in the computer system. He said that it was not significant as there were a few every year, which was not astronomical considering the traffic situation.

Tim Shields, Facilities Manager, Public Works, referred to the level of service rating conducted by the DOT in 1999 on King and Cordova Streets and the bayfront and Cathedral areas. He said that it described conditions in terms of

speed, travel time, freedom to maneuver, traffic interruptions, comfort, convenience and safety, and anytime a slow moving vehicle was interjected into the traffic stream all of the aforementioned were negatively impacted resulting in an immediate decline in the level of service for the system.

Mr. Shields explained that there was a rating from A to C. He said there were few streets rated A or B and King Street was rated F, which was the worst rating. He said that Cordova Street, Cathedral Place and the bayfront were rated C.

Mayor Gardner invited the applicants to speak.

Don Becker, American Ghost Tours, stated that they were interested in using one horse drawn carriage rather than a motorized vehicle for their tour.

Commissioner Jones questioned what time of day they wanted to conduct their tour.

Mr. Becker replied during the evening hours.

Mayor Gardner questioned the number of hours.

Mr. Becker replied between 7:00 and 10:00 p.m.

Commissioner Jones questioned whether Mr. Becker considered the maintenance involved with the horse and carriage.

Mr. Becker replied that they had looked into boarding the horse and carriage.

Mr. Burchfield stated that the horse drawn carriages had strict routes, and he questioned whether the proposed tour intended on adhering to the routes or whether he would be requesting a special route.

Mr. Becker replied that they would adjust to the established routes.

Mark Cosgrove, 6332 Pine Circle South, stated that he had been involved in the business for 27-years, and currently he was employed as a part-time driver and consultant for Country Carriages. He said that horse drawn carriages were a vital part of the City, and he could provide a good service, as he was qualified to do so. He said that it would be more cost effective to buy the permits from the City than to purchase them from Mr. Gamsey; however, if the City decided not to issue permits he would pursue the matter with Mr. Gamsey. He added that he had a verbal agreement with someone in the City regarding maintenance for his horses and carriages.

Commissioner Jones questioned whether Mr. Cosgrove could tell him where he intended to board the horses.

Mr. Cosgrove replied that the horses would be kept outside of the City, and he had another plan for materials and equipment.

Commissioner Burk stated that it would be unfair to go into the details with every applicant considering they would be revealing their intention to all their competitors.

Commissioner Jones agreed but questioned whether all the applicants had given consideration to the problem aspects of acquiring permits.

William Cushion, Country Carriages, stated that he had applied for 12 permits, but he had not been aware of the availability of special permits, which he could be interested in. He said that if the City was going to issue more permits he would want more, as he only had two

permits currently. He continued that Commissioner Burk was interested in good quality horses and carriages, and he had spent the past two months investigating where to get 36 additional good horses. He added that he and his wife were particular about the matter. He noted that his drivers pulled their carriages over to the side of the street whenever possible to avoid traffic jams. He stated that he had found other locations on SR 16 to store carriages should he be granted the permits.

Mayor Gardner clarified that Mr. Cushion would be operating under Country Carriages, which currently had two permits. He questioned whether obtaining special permits for particular occasions might be sufficient for Mr. Cushion's needs, and the response was affirmative.

Commissioner Jones said that the additional 12 permits would give Mr. Cushion 14 permits, and he questioned whether they would all be active permits.

Mr. Cushion replied that they would probably use all the permits for special events and weekends, but not all 14 carriages would be on the bayfront at one time, as they would be dispersed throughout the City.

Mayor Gardner questioned whether the two permits that Mr. Cushion currently had were used on a daily basis.

Mr. Cushion replied not on a daily basis, but approximately 8-10 shifts weekly.

Mayor Gardner questioned whether he had experienced any difficulty finding hack space on the bayfront.

Mr. Cushion replied that unfortunately he had experienced some difficulty parking on the bayfront.

Mayor Gardner questioned whether Mr. Cushion had discussed the situation with the other permit holders.

Mr. Cushion replied that he had spoken with Mr. Gamsey a couple of times. He said it was his understanding that Mr. Gamsey had recently purchased eight new carriages, as he had to use his permits to avoid potentially losing them.

Mayor Gardner noted that there were 13-15 hack spaces on the bayfront and he questioned whether there was difficulty finding space.

Mr. Cushion replied that there would be problems parking on the bayfront once Mr. Gamsey put his new carriages on the street.

Commissioner Jones questioned whether the 13-15 hack spaces were first come first served, and the response was affirmative.

Elaine Fraser, Ripley's Believe It or Not, stated that they were requesting 44 permits, as that was the number of permits they had requested to be transferred from Mr. Gamsey. She said that the County had a special need for group tour businesses, and Mr. Gamsey did accommodate several group tours that sometimes entailed putting 10 carriages on the street for one group tour. She said that she would be interested in permits for the group tour business, associated with the ghost tour business as well as historic tours. She said that Mr. McDaniel handled a lot of weddings, and Mr. Gamsey had carriages specifically for weddings, which she considered a specialty. She added that the heritage of St. Augustine was romantic.

Ms. Fraser said that she had not stopped looking for new carriages and horses since their original request to transfer Mr. Gamsey's permits. She said that the

carriages would be equipped with batteries and lights, as well as additional safety features. She said that she also had a proposal, that she would be glad to share with the Commission afterwards, regarding a new route eliminating the left turn onto Orange Street and avoiding King Street.

Mayor Gardner questioned what Ms. Fraser proposed for group tours.

Ms. Fraser said that they were looking into larger carriages to accommodate larger groups rather than using numerous carriages. She stated that she was excited about the different variety of carriages they could use for special situations.

Mr. Wilson noted that Stuart Gamsey was not an applicant for horse drawn carriage permits, but if he wished to speak he could use the time during the public hearing.

Cynthia Jones, Revista Upscale Resale Boutiques, stated that she enjoyed doing business in St. Augustine, and she wanted the opportunity to diversify; therefore she was requesting two permits. She thanked the Commissioners for their consideration.

Paul Meredith, Counsel for Murphy McDaniel and Avalon Carriages, stated that his client was in federal litigation with the City. He said that the City did not have to increase the number of permits to solve the current situation, as there were 28 permits that were being used unlawfully. He said that he hoped counsel appreciated that there was a serious matter in the court, as Mr. Gamsey had withheld 28 permits for the purpose of decreasing competition in violation of federal and state law. He said that according to Code the Commission had the duty to revoke the 28 permits that were held illegally. He

said that regarding parking permits the rule was *first in time was the first in line*, which meant that Mr. McDaniel should be the first in line for any horse drawn carriage permits that should be issued. He stated that if the City refused to increase the number of permits the City needed to mitigate Avalon Carriages damages at that time.

Mr. Meredith stated that the permits were deliberately held from use for the specific purpose of eliminating competition. He said that Mr. McDaniel's application had been refused in the past for being incomplete; however, currently his application was the only complete one of the 11 submitted. He said that his client welcomed competition in the City, which would improve the quality of services and care of the animals.

Mayor Gardner stated that they were not there to mitigate damages or try lawsuits, as the focus was whether to issue additional horse drawn carriage permits.

Mr. Meredith disagreed and once again pointed out that there was another solution to the problem. He stated that by revoking Mr. Gamsey's 28 unlawfully held permits they could re-issue the permits to people that had horses and carriages that could be put into operation. He stated that the matters Commissioner Burk did not want the Commissioners to discuss because of business privilege were required discussion under the Code and that was also the information that was missing from most of the applications. He pointed out that most of the applicants did not have horses and carriages, but Avalon could be operational the following day. He reiterated that the Commission could create competition without increasing the number of permits. He stated that his client had the best quality

carriages and the healthiest horses and he was a dedicated horse and carriage man, which they could demonstrate. He pointed out that his client was requesting 12 permits, which would allow for an additional 16 permits that could be issued to create competition if the Commissioners revoked Mr. Gamsey's unused permits.

Timothy Robb, 457 Deerfield Road, stated that he had applied for three permits, but he would be satisfied with one. He said that he had been in the business on and off for 13-years, and he would like to stick with it.

John Storey, Victorian Carriage Company, stated that he was applying for one license, and he wanted to talk about fairness. He said that currently there were three companies in town and one major company had paid a percentage and a decent wage to the drivers years ago; however, currently the drivers were paid \$2.14 and tips if they were given, and the company was also one of the highest charging companies in the country. He said that visitors should be afforded a choice. He suggested that there should also be 5-6 other carriage locations, and offered a proposal supporting his suggestion.

Virginia Whetstone, 287 St. George Street, said that she was in the tourism business and wanted to expand her opportunities by applying for 15 permits. She stated that the City was limiting competition by limiting the number of permits. She noted that bed and breakfast inns, retail businesses and restaurants were not restricted. She stated that when competition was limited people lost their inspiration, but if competition was unlimited products were better and with better pricing. She said the City should remove all license restrictions from the horse and carriage industry and the franchise sightseeing

trains. She said that the City should then increase the permit fees, because \$80 was too cheap. She added that she paid \$480 annually for an employee's parking space but a horse drawn carriage took up more than one parking space on the bayfront for only \$80 annually. She suggested that the horse drawn carriage companies should be willing to pay more for the privilege of operating their business on City streets, plus an increase could reduce the number of applicants. She said the City should also produce non-transferable permits associated with particular carriages that could not be moved. She concluded that competition would regulate the business while producing a better marketplace and service for visitors.

Mayor Gardner questioned whether there was an ordinance that limited the sightseeing trains to two companies.

Mr. Wilson replied that anyone could apply for a sightseeing train franchise.

Mayor Gardner questioned whether there was any restriction about adjusting the cost of the horse drawn carriage permits.

Mr. Wilson replied that permits fees were regulatory, which had to relate to the cost for the City that administered the regulations, but he did not believe that they were limited on changing permit fees considering that the fees had not been raised in a long time.

Mayor Gardner opened the public hearing.

Holly Bowman, Animal Rights Foundation of Florida, stated that there had been at least 16 published accidents involving carriages since 1996 that included injuries, hospitalization and property damage, illustrating the inherent dangers of the industry. She

added that many other accidents had been reported to their office that had not been reported to the police or published by the City. She stated that the majority of the accidents were the result of the horses becoming spooked. She described incidents that could insight horses and concluded that there was no such thing as an unspookable horse, plus she added that a spooked horse could not be controlled by the average driver. She delivered some statistics regarding the numbers of accidents involving horse drawn carriages nationally. She stated that no one visited St. Augustine for the horse drawn carriages, and they were an unnecessary risk for residents and visitors. She added that cruelty to the animals through heat and humidity, traffic, vehicle fumes and constant pounding on asphalt streets should not be ignored. She noted that for the aforementioned reasons Palm Beach, Deerfield Beach, Pompano Beach, Key West, Treasure Island and Panama City Beach had banned horse drawn carriages. On behalf of the Animal Rights Foundation she urged the Commission to deny the applications to increase permits and enact an ordinance prohibiting horse drawn carriages.

Mayor Gardner stated that he would prefer to shoot the cars than the horses.

John Storey, 5105 Porter Road, stated that he had been driving horse drawn carriages for nine years, and he agreed that there was always a potential for problems with the horses, which was why equine law in the nation stated that a person could not sue if they participated in equine activities. He said that owners did their best to insure that any horse they put on the street was conditioned to be unafraid of sirens, loud noises and diesel trucks etc.; however, there was always an exception. He used the example of rental motor scooters as an equal danger to the public, which no

one was suggesting they get rid of. He stated that he had worked for three companies and had his own company and the horses were not treated poorly; they were loved and cared for. He added that the companies ran multiple shifts to be certain that the horses were not working for too many hours in poor conditions.

William Cushion, 2945 B Stratton Boulevard, stated that 90% of accidents involving horse drawn carriages were the result of people speeding. He said that few accidents had occurred because of the horses, and he was not aware of a single horse being lost in the history of horse drawn carriage industry in St. Augustine.

Debbie Smith, 113 Washington Street, stated that the Commission was not considering the current situation regarding where the horses were stabled. She said that the majority were stabled and cared for at Stuart Gamsey's stables. She said that the Avalon staging area was on Riberia Street and she had observed horses there left unattended and tied to trees with short tethers. She said that Avalon trucked horses in for two shifts, but she had observed instances when the horses worked 14 hour shifts. She stated that the Police Department had not been helpful when she reported the circumstances. She described further incidents of neglect administered by Avalon Carriage Company. She emphasized that the horse drawn carriage industry was currently big business in St. Augustine; therefore, the City should install proper signage to inform visitors of the situation. She also suggested using reflective tape on the horse tack at night to further alert vehicles. She suggested better lighting on the carriages and research for anything that could be done to make them more visible. She recommended looking at rerouting the

carriages to get them off the major streets.

Mayor Gardner stated that moving the carriage station was part of the multi modal facility plan at the VIC and staff had been working with the carriage industry regarding improved routing.

Ms. Smith pointed out that raising the fee for permits would be irrelevant to the industry.

Mayor Gardner questioned the status regarding a Code Enforcement action against Mr. McDaniel's (Avalon Carriages) staging area.

Mr. Burchfield replied that the matter had been resolved.

Mr. Wilson advised that revoking the existing permits would be outside of the scope of the current hearing.

Commissioner Burk questioned the scope of consideration for the current meeting. She questioned the number of permits the Code allowed and what year that decision had been made.

Mr. Wilson replied that the number had been limited to 46 sometime in 1980's.

Paul Meredith, 5 Palm Row, stated that Mr. Wilson was saying that due process would be violated if the Commission revoked the 28-unused permits.

Mayor Gardner reiterated that they were not going to try the lawsuit during the meeting.

Mr. Meredith stated that he was not trying the lawsuit; he was trying to get his client permits. He explained that his client had applied for permits, not for extensions or additional permits, and due process required a property interest, but the City Attorney had advised that

provision of the Code stated there was no property interest for due process consideration. Therefore, he stated that the permits could be revoked at that time.

Mr. Storey questioned whether the Commission would decide whether to grant additional permits at that time, and the response was affirmative.

Commissioner Burk replied that the Commission could determine whether more than 46 permits should be issued and if the answer was yes they would address how, when and where.

Mayor Gardner closed the public hearing.

Commissioner Burk said that previously the Commission had discussed the matter, and the consensus had been that 46 carriages on the streets were too many. She said that currently there were not that many carriages on the road, but no one wanted to increase the number of carriages according to reports from the different departments within the City. She agreed that increasing fees, attaching medallions to carriages, lighting at night and rerouting etc. had to be addressed, but those matters were not part of the current agenda. She stated that as the situation was currently she did not see how the Commission could possibly agree, in good consciousness, that more than 46 permits would serve public safety, traffic and general health and welfare of the community.

Mayor Gardner noted that the agenda packet included information from the different City departments, the VIC, Chamber of Commerce and other organizations indicating that there was no further patronage demand for additional horse drawn carriages on the street. He clarified that in 1988 the Commission determined to limit the

number of permits to 46 and revised the Code. He noted that many of his concerns were addressed in the Code but simply required enforcement, and he read some of those parts of the Code. He suggested that the drivers should observe a dress code and wear a badge, comply with traffic regulation, there should be equal opportunity for hack stand space enforced by the City Manager, specific lights regulations, an enforcement officer should be hired to insure complaints were borne by the carriage industry, reconsider routing and increased permit fees were all matters for discussion in a workshop.

Commissioner Burk added that the Commission should also consider whether there should be 46 permits allowed.

MOTION

Commissioner Burk MOTIONED that based on the reasons previously stated and contained in the staff reports, as well as considering public safety and routing concerns, issuing additional permits was not in the best interest of the City; therefore, they would deny all applications for additional permits. Commissioner Jones SECONDED the motion.

Commissioner Jones noted that they could be in the same situation in a couple of months; therefore, he suggested addressing the aforementioned items as soon as possible.

Commissioner Burk suggested that staff coordinate a workshop.

Mayor Gardner questioned how a Commission discussion about reducing the number of horse drawn carriage permits had turned into applications for 114 permits. He clarified that the motion was made and seconded to deny all applications for additional permits

VOTE ON MOTION

AYES: Burk, Jones, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

Commissioner Jones stated that the ordinance needed to be reviewed and revised.

Commissioner Burk said the City had a committee to work on parking; perhaps they should have a committee of citizens of St. Augustine involved in the matter of horse drawn carriages.

A brief discussion determined that the Commission would provide staff with recommendations and staff would work on revising the ordinance for the Commissioner's review.

7. Adjournment

There being no further business, the meeting was adjourned at 11:31a.m. ¹

MAYOR

CITY CLERK

¹ Transcribed by Karen Rogers, Recording Secretary