

CCITY OF ST. AUGUSTINE

Regular City Commission Meeting
Monday January 25, 2010

The City Commission met in a formal session Monday, January 25, 2010 at 5:00 P.M. in the Alcazar Room at City Hall. The meeting was called to order by Mayor Joe Boles, and the following were present:

1. Roll Call:

Joe Boles, Mayor/City Commissioner
Errol Jones, Vice Mayor/City Commissioner
Donald Crichlow, City Commissioner
Leanna S. A. Freeman, City Commissioner
Nancy Sikes-Kline, City Commissioner

William B Harriss, City Manager
Ron Brown, City Attorney
Karen Rogers, City Clerk
Timothy A. Burchfield, Chief Administrative Officer
John Regan, Chief Operations Officer
Mark Knight, Director, Planning and Building
Jim Piggott, General Services Director
Mark Litzinger, Comptroller
Paul K. Williamson, Director, Public Affairs
Carlos E. Mendoza, Assistant City Attorney
Loran Lueders, Police Chief
Mike Arnold, Fire Chief
Martha Graham, Director, Public Works
Dana Ste. Claire, Executive Director of the 450th Commemoration
Celebration/Director, Heritage Tourism
Darlene Kirkland, Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

Pastor Earl Glisson, Anchor Faith Church, delivered the invocation, and Commissioner Jones led the pledge of Allegiance.

3. ADMINISTRATIVE ITEMS

3.A/ Modification of Agenda

Mayor Boles modified the agenda to include a brief presentation by Bill Leary regarding a nomination recommendation to

the 450th Commemoration Federal Commission.

3.B/ Approval of Minutes

Commissioner Sikes-Kline stated that page 7, column 2, paragraph 2 should read "business owners would not lose customers", and that page 14, column 1, paragraph 2 should read "North East Florida Regional Council (NEFRC)"

Commissioner Freeman noted that her name should have not been included for the vote on Page 7, Column 1.

MOTION

Commissioner Jones **MOVED** to approve the minutes of the regular meeting of January 11, 2010 as amended. The motion was **SECONDED** by Commissioner Crichlow and approved by **UNANIMOUS VOICE VOTE**.

3.C.1/ Proclamations

(None)

3.C.2/ Recognitions

Presentation to St. Francis House.

Mayor Boles presented a check for \$22,908 from proceeds raised by the Mayors' Holiday Lighting Gala for funding expansion of the St. Francis House.

Non-Agenda Item

Mayor Boles stated that General Colon Powell and Andrew Young had declined invitations to be possible nominees for the 450th Commemoration Federal Commission.

Bill Leary stated that he had worked with the City to make recommendations for the 450th Commemoration Federal Commission for appointment by the US Secretary of Interior, and he suggested Dr. Robert Stanton. He noted some of Dr. Stanton's achievements as follows:

- Appointed by President Bill Clinton as the first and only African American Director of the National Park Service
- Confirmed unanimously by the United States Senate
- Currently serving as the Deputy Secretary of Policy Management and Budget for the National Park Service

MOTION

Commissioner Crichlow **MOVED** to appoint [recommend for appointment by the US Secretary of Interior] Dr. Robert Stanton to the 450th Commemoration Federal Commission. The motion was **SECONDED** by Commissioner Sikes-Kline and approved by **UNANIMOUS VOICE VOTE**.

4. Appeals

(None)

5. Ordinances and Resolutions - Public Hearing Required

5.A/ Ordinances – First Reading

(None)

5.B/ Ordinances - Second Reading

5.B.1/ Public Hearing - Ordinance 2010-01, temporarily amending Section 4-3 of the City Code regulating the sale, service and consumption of alcoholic beverages.

Ron Brown, City Attorney, stated that St. Johns County and the City of St. Augustine Beach had adopted ordinance modifications that extended the sales, service and consumption hours for alcoholic beverages within their jurisdictions. He noted that state beverage laws regulated the hours of operation for the sales, service and consumption unless provided for by local ordinance. He reviewed the City's current regulations as follows:

- Allowed sales of all alcoholic beverages from 7:00 A.M. until 1:00 A.M. the following morning
- Sales of liquor other than beer and wine restricted until 1:00 P.M. on Sundays
- New Years Eve day, sales, service and consumption on premises allowed until 2:00 A.M.

Mr. Brown explained that Ordinance 2010-01 modified the City's current regulations of alcohol as follows:

- Extended the hours of sales, service and consumption of alcoholic beverages from 1:00 A.M. until 2:00 A.M.

Commissioner Jones questioned whether last call would be at 1:30 A.M. and closing time at 2:00 A.M.

Mr. Brown replied that the sales, service and consumption would end at 2:00 A.M., and the ordinance did not provide for an additional half hour for closing.

Commissioner Freeman questioned the conflicting hours between the City and St. Johns County, and whether the restrictions regarding sales on Sunday were City Policy that could be reviewed and modified.

Mr. Brown replied that the City's Code had always conflicted with jurisdictions in St. Johns County and the proposed Ordinance extended the hours; however, the Commission could modify the Policy. He stated that the effective date of Ordinance 2010-01 would be February 5, 2010, and it would sunset on July 12, 2010 unless the Commission chose to extend it beyond that date.

Mr. Harriss pointed out that St. Johns County and St. Augustine Beach had modified their beginning sales hours when they approved the extension. He stated that there had been no requests to have the hours begin at 6:00 A.M., only to extend them until 2:00 A.M.

Public hearing opened.

Conrad Matt expressed concerned regarding an increase in alcohol related issues and residents being disturbed by noise at a later hour.

Pat Paolini, owner, Mardi Gras, stated that his establishment would generally utilize the extended hours on Friday and Saturday nights. He pointed out that there were customers that worked late hours that could take advantage of the extended hours.

John Arbizzanni, owner, Scarlett O'Hara's stated that visitors and tourists had expressed dismay with City establishments closing earlier. He felt that local City businesses were losing revenue, because businesses outside the City limits were allowed to stay open longer. He expressed concern that lowering the noise Ordinance decibel levels could create an issue regarding outdoor service.

Commissioner Freeman questioned Mr. Arbizzanni regarding the limitations of liquor sales on Sunday.

Mr. Arbizzanni replied that customers had requested certain alcoholic beverages; however, Sunday liquor sales beginning at 1:00 P.M. had never created an issue.

John Cunningham, owner, Ann O'Malley's, spoke in favor of Ordinance 2010-01, as a more hazardous situation could be created by customers leaving to find establishments that stayed open longer. He stated that the extra hour would enable his employees and his business to earn more money

B.J. Kalaidi felt that passing Ordinance 2010-01 would decrease the quality of life for residents. She felt that the consumption of alcoholic beverages should be prohibited on public rights-of-ways.

Heather Call, owner, Giggling Gator, supported Ordinance 2010-01, and stated that her staff was educated regarding control of the consumption of alcohol.

William Smith spoke in favor of Ordinance 2010-01, as he felt that it would allow City businesses to compete with businesses in surrounding jurisdictions.

Chaplin Helen Toby commended City police for their assistance with an incident involving her son.

Public hearing closed.

Commissioner Crichlow stated that he had spoken with City police, and they felt there would not be a significant impact on their services or an increase in alcohol related incidences. He felt the change could eliminate issues regarding customers driving to another bar that stayed open later. He stated that in the event issues regarding noise and public safety increased, it would be addressed when the Ordinance sunsets.

Commissioner Freeman stated that she would support adjusting the hour from 7:00 A.M. to 6:00 A.M. to remain consistent with St. Johns County and St. Augustine Beach, and to allow boaters to purchase alcohol prior to launching their boat. She felt that adults should be allowed to purchase any kind of alcoholic beverages prior to 1:00 P.M. on Sundays.

Commissioner Crichlow stated that the restrictions of liquor sales on Sunday might have been established out of respect for church services. He suggested the possibility of changing the hour to 11:00 A.M.

Mr. Brown stated that changing the hours other than the provisions stated in the proposed Ordinance would be considered a substantial change; therefore, re-advertising would be required.

Commissioner Sikes-Kline expressed her concern with delaying the passage of Ordinance 2010-01.

Commissioner Freeman questioned whether an additional Ordinance could be written to allow for earlier sales of liquor on Sunday, and the response was affirmative.

Commissioner Sikes-Kline requested that City staff and police report to the

Commission increased issues regarding alcohol related problems prior to the sunset of Ordinance 2010-01 if they occur.

MOTION

Commissioner Crichlow MOVED to have Ordinance 2010-01 amending Section 4-3 of the City Code regulating the sales, service and consumption of alcoholic beverages placed on second reading, read by title only and passed. The motion was SECONDED by Commissioner Jones.

Mr. Brown read Ordinance 2010-01 as follows:

ORDINANCE NO. 2010-01

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA TEMPORARILY AMENDING SECTION 4-3 OF THE CODE OF THE CITY OF ST. AUGUSTINE REGULATING THE SALE, SERVICE AND CONSUMPTION OF ALCOHOLIC BEVERAGES, INCLUDING BEER, MALT BEVERAGES, WINES AND LIQUOR BY PERSONS AND ENTITIES HOLDING A STATE BEVERAGE LICENSE; MAKING FINDINGS OF FACT; PROVIDING FOR THE TEMPORARY EXTENSION OF HOURS OF SALES, SERVICE OR CONSUMPTION OF CERTAIN TYPES OF ALCOHOLIC BEVERAGES; PROVIDING FOR EFFECTIVE DATES FOR TEMPORARY EXTENSION OF HOURS; PROVIDING FOR CONTINUED EFFECTIVENESS OF UNAMENDED PROVISIONS OF CODE SECTION 4-3; PROVIDING FOR SUNSET OF THIS ORDINANCE; PROVIDING FOR EFFECT OF SUNSET OF THIS ORDINANCE; PROVIDING FOR THE REESTABLISHMENT OF CODE SECTION 4-3; PROVIDING FOR REPEAL OF CONFLICTING

ORDINANCES; PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

VOTE ON MOTION

**AYES: Crichlow, Jones, Freeman
Sikes-Kline, Boles**

NAYES: None

MOTION APPROVED UNANIMOUSLY

Mayor Boles questioned whether the Commission would support an Ordinance that allowed for earlier hours of the sales, service and consumption of alcohol, and amend the prohibition of liquor sales before 1:00 P.M. on Sunday.

After a brief discussion the Commission requested that Mr. Brown draft another Ordinance for review.

5.B.2/ Public Hearing - Ordinance 2010-02, creating City Code Section 22-14 and providing for regulation of vending activities and street performer activities in the West Plaza.

Mr. Brown stated that Ordinance 2010-02 regulated vending activities in the West Plaza, also known as Loring Park. He noted that the property was owned by the State of Florida under the Trustees of Eternal Improvement Trust Fund. He stated that the City was under a Federal injunction regarding the restriction of sales and vending in public places; therefore, regulations had to be handled cautiously.

Charlene Putz, Supervisor, City Parks Division, was sworn, and Mr. Brown questioned her observations regarding vending activities in the West Plaza since October 2009.

Ms. Putz testified as follows:

- Increased vendor population
- Approximately 1,400 square feet of turf damage

- Increased litter; thereby, necessitating the relocation of trash receptacles

Jeff Truncellito, SAPD, was sworn. He stated that he was a bicycle patrol officer for the City, and he had observed vending and other activities in the West Plaza. Mr. Brown exhibited photographs taken by Officer Truncellito.¹

Officer Truncellito testified to the following

- Vendor's tables and products blocking fire hydrants
- Vendors using pop-up tents
- Vendors parking in taxi zones
- Congestion of sidewalks causing pedestrians to step into the to pass by
- Debris left by vendors

Commissioner Crichlow questioned whether there had been witnessed confrontations among the vendors, and the response was negative.

Doug Tyce, SAPD, was sworn, and stated that he was the foot patrol officer for the area from King Street to the Visitors Information Center. He testified to the following:

- Increased pedestrian traffic, which on occasion had impeded the flow of pedestrian traffic
- Vendors displaying merchandise on meter stations, light poles and fire hydrants
- Report on December 31, 2009 of argument between possible customer and vendor
- Vendors parked in taxi stand zones occasionally resulting in parking citations

Dana Ste. Claire, Executive Director of the 450th Commemoration Celebration, Director, Heritage Tourism, explained that the Governors' House formerly known as

¹ Photographs attached to original minutes

the Palace of the Governors' was a part of the original town plan, which was founded by royal decree in 1573. He stated that the grounds of the Governors' House, which included the Plaza and West Plaza was one of the most historical places in Florida. He pointed out that the West Plaza contained a newly restored fountain from the Flagler Era and the General Loring monument, which had the remains of General Loring buried underneath. He noted that remnants of the Rosaria Redoubt had been recently discovered along the West Plaza.

Mr. Brown stated that the criteria that the courts used for consideration regarding the regulation of vending and certain expressive activities included the following:

- Reasonable time, place and manner restrictions
- Must allow alternative venues

Commissioner Freeman questioned whether an artist could paint in the West Plaza.

Mr. Brown replied that an artist could paint; however, they could not impede the normal flow of pedestrian traffic or create a performance.

Public hearing opened.

Anthony Lazzara, General Manager, Casa Monica Hotel, stated that noise levels from vendors and performers in the West Plaza had disturbed guests and patrons of the outdoor café. He advised that he had witnessed aggressive vendors approaching passing vehicles. He felt that the presence of the vendors and performers created a negative impact on the Historic Downtown District.

Gregory Travous provided a transcript from the May 11, 2009 City Commission meeting describing Judge Marsha Howard's ruling regarding the City's

vending Ordinance.² He felt that artists such as printers, painters, sculptors and photographers should not be categorized along with vendors. He stated that the City's lottery system for the market in the Plaza violated artists First Amendment Rights.

Charles Dickinson spoke against Ordinance 2010-02. He felt that artists should not be banned from any public area. He stated that issues regarding vending in the West Plaza could be regulated by establishing rules.

Elena Hecht stated that Ordinance 2010-02 violated the rights of visual artists. She noted that the City had paid a settlement agreement of over \$50,000 for violating artist's rights. She felt that the City viewed visual artists the same as commercial vendors. She stated that surrounding communities supported artists, and she suggested the City do the same.

Kate Merrick explained that she was an artist not a street performer or vendor, and that the First Amendment protected artists by allowing them to display and sell their work in public areas. She stated that artists did not impede pedestrians, cause a public safety hazard or intimidate tourists.

Public hearing closed.

Commissioner Freeman stated that she felt the artists had become a casualty of the City's attempt to regulate vending. She expressed concern regarding the inclusion of visual artists in the Ordinance. She stated that vendors had no Constitutional rights mandating that the City provide free retail vending spaces; however, artists had the right to create and sell their art.

Mr. Brown stated that past arguments indicated that the City could not permit artists, and references were made to a court case from New York; however, there

² Transcript attached to original minutes

were other public places available for artists to sell their art in the City.

Mayor Boles pointed out that artists were opposing the prohibition of art and performance within the Plaza locations. He stated that the Plaza areas should be protected from all vending activities and preserved for memorial purposes.

Mr. Brown stated that the City could regulate vending in all public places; however, it would require time, place and manner restrictions, supervision and permits.

Commissioner Freeman felt that issues had been created by not addressing the City as a whole. She stated that she supported the regulation of vendors; however, she felt that the City had not encouraged artists to be a part of the community. She suggested that the City hire a Constitutional Attorney to regulate vending throughout the City.

Mr. Brown stated that artists had the right to create their art in the Plaza and West Plaza; however, they could not draw a crowd or sell their art. He pointed out that the City had to prohibit events that traditionally used the Plaza.

Commissioner Sikes-Kline agreed with regulating the City as a whole. She felt that it was important to have artists in the community with places to create their art. She recommended scheduling a workshop.

Mayor Boles pointed out that the entire City was available for artistic activity with the exception of a few areas.

Commissioner Jones stated that the City had no responsibility to provide free retail space to anyone; however, he felt that the City could provide low cost options to vendors. He pointed out that the regulated areas were minimal compared to the rest of the available public places. He questioned at what point an artist became a vendor regarding the sale of their art.

Mr. Brown replied that expressive content was protected; however, at times it was difficult to determine expressive content.

Commissioner Jones felt that the City should explore all options to provide places where artists and vendors could sell their art and products.

MOTION

Commissioner Jones MOVED to have Ordinance 2010-02 placed on second reading, read by title only and passed. The motion was SECONDED by Commissioner Crichlow.

Mr. Brown read Ordinance 2010-02 as follows:

ORDINANCE NO. 2010-02

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA CREATING SECTION 22-14 OF THE CODE OF THE CITY OF ST. AUGUSTINE PROVIDING FOR REGULATION OF VENDING ACTIVITIES AND STREET PERFORMER ACTIVITIES IN THE PLAZA DE LA CONSTITUCION WEST OF ST. GEORGE STREET; MAKING FINDINGS; PROVIDING FOR PENALTIES; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST. AUGUSTINE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION

**AYES: Jones, Crichlow, Sikes-Kline
Freeman, Boles**

NAYES: None

MOTION APPROVED UNANIMOUSLY

5.B.3/ Public Hearing - Ordinance 2010-03, creating Section 22-15 of the City Code and providing for regulation of vending activities and street performer

activities in the Ponce de Leon Circle and Anderson Circle.

Mr. Brown stated that Ordinance 2010-03 regulated vending and street performance activities in the Ponce de Leon and Anderson Circles.

Officer Truncellito remained under oath and testified to the following:

- Vendors setting up within the Circles using pop-up tents
- Police report filed by a female pedestrian in which a vendor had been arrested and charged with simple battery
- Vendors employed transients that stood in the street to sell merchandise
- Visual distraction for pedestrians and motorists
- Pedestrians crossing street while motorists were turning created a possible safety hazard

Officer Tyce remained under oath and testified that vendors would set up on the curb causing pedestrians to stand in the street; thereby, creating a safety hazard. He stated that he encouraged vendors to move back from the curb.

Commissioner Sikes-Kline clarified that there were no sidewalks along the curbs in Ponce de Leon Circle.

Commissioner Jones questioned the ownership of Anderson and Ponce de Leon Circles.

Mr. Brown replied that Ponce de Leon Circle was City property and Anderson Circle was listed by the St. Johns County Property Appraiser as being owned by the Trustees of Eternal Improvement Trust Fund.

Dana Ste. Claire remained under oath and stated that the Ponce de Leon Circle had been established and the statue of Ponce de Leon was erected in 1923. He stated

that the statue was an important landmark for continued history. He explained that as the City celebrated the 500th anniversary of the landing of Ponce de Leon the statue would be a critically important icon. He stated that the WWI memorial had been erected in 1921, and it was important to preserve and commemorate that history.

Public hearing opened.

Charles Dickenson expressed concern regarding the prohibition of the public watching an artist create art, and the language used in the Ordinance. He pointed out that all art had expressive content, which was protected. He felt the City should encourage art.

Gregory Travous stated that the issue concerned freedom of speech. He questioned whether vendors blocking the fire hydrants had been ticketed. He concluded that he would continue to honor First Amendment Rights through the federal courts.

Elena Hecht felt that the language in the Ordinance concerning artists and public performances was ambiguous. She stated that there were locations throughout St. Johns County that encouraged artists.

B. J. Kalaidi questioned whether risqué types of performances would be permitted in the restricted areas.

Mr. Brown replied that the City had passed a comprehensive ordinance regulating adult entertainment; therefore, it would not be permitted.

Public hearing closed.

Commissioner Jones stated that the artist's comments had not included displaying and selling their art, and he felt that selling art made them a retailer. He pointed out that the Ordinance regulated the sale of merchandise in certain locations, and the City had alternative venues for that activity.

Commissioner Freeman questioned whether Ordinance 2010-02 and 2010-03 could be modified to remove the language regarding visual artists.

Mayor Boles stated that he supported regulating the sales of art and merchandise in the Plaza, and he felt that the artists objections were economic based.

Mr. Brown pointed out that the Ordinance language had been endorsed by the Eleventh Circuit Court of Appeals.

Commissioner Crichlow stated that the City's purpose was not to prevent artists from photography and painting, only from performance and sales within certain areas.

Mr. Brown noted that since the passage of the Ordinance regulating the main Plaza, there had been no violations regarding vending.

Commissioner Crichlow suggested a provision be included that would allow for an art festival or street performances on occasion or during special events.

MOTION

Commissioner Crichlow MOVED to have Ordinance 2010-03 placed on second reading, read by title only and passed. The motion was SECONDED by Commissioner Jones.

Mr. Brown read Ordinance 2010-03 as follows:

ORDINANCE NO. 2010-03

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA CREATING SECTION 22-15 OF THE CODE OF THE CITY OF ST. AUGUSTINE PROVIDING FOR REGULATION OF VENDING ACTIVITIES AND STREET PERFORMER ACTIVITIES IN THE PONCE DE LEON CIRCLE AND THE ANDERSON CIRCLE; MAKING FINDINGS; PROVIDING FOR

PENALTIES; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST. AUGUSTINE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

Commissioner Sikes-Kline stated that she had witnessed issues regarding vending around Anderson and Ponce de Leon Circles, and she expressed concern regarding public safety.

Commissioner Jones questioned whether the purpose of issuing permits to vend in the Market Place was to insure vendors were properly licensed and paid state sales tax, and the response was affirmative.

Commissioner Sikes-Kline stated that the Plaza regulation affecting artists was not her vision for the City; however, regulating vendors was necessary, and she would continue to explore options for artists.

VOTE ON MOTION

**AYES: Crichlow, Jones, Sikes-Kline
Freeman, Boles**

NAYES: None

MOTION APPROVED UNANIMOUSLY³

5.B.4/ Public Hearing - Ordinance 2010-04, amending City Code Section 24-14 prohibiting sales and solicitations in traffic lanes.

Mr. Brown explained that there were select intersections in the City where solicitation and sales had been prohibited due to public safety and other issues, and Ordinance 2010-04 regulated those activities in the intersection of King and Malaga Streets. He pointed out that solicitation of any type was a protected First Amendment activity; however, it could be regulated through time, place and manner restrictions.

³ Brief recess from 7:37 P.M. to 8:11 P.M.

Sergeant Mike Ethridge was sworn and testified to the following:

- Observed transients holding signs soliciting money and food from motorists
- Solicitors blocking sidewalks
- Solicitors stepping into the street to approach vehicles
- Solicitors activating the pedestrian crosswalk light; thereby, impeding the regular flow of traffic

Dana Ste. Claire remained under oath and explained the possible negative economic impact on the City resulting from transient solicitors in certain areas. He stated that St. Augustine was a national historic destination, and if the visitor experience was compromised, it would typically shorten their stay and reduce the financial benefit to the City. He summarized that aggressive solicitation would compromise a visitor's experience; thereby affecting the local economy.

Mr. Brown stated that complaints had been received from Joe Tringali, owner of Carmello's, located at the intersection in question, who had observed solicitors activating the pedestrian crosswalk signal to stop traffic. He noted that the Ordinance would not ban solicitation throughout the City, as there were other venues available for solicitation and sales activities.

Public hearing opened.

B. J. Kalaidi questioned whether solicitation would be regulated in other intersections along King Street.

Mayor Boles clarified that the Ordinance applied only to the intersection of King and Malaga Streets, and 50 yards in each direction.

Commissioner Jones questioned whether the Ordinance was created to protect public safety and maintain the flow of traffic, and the response was affirmative.

Commissioner Freeman questioned whether Ordinances could be created to regulate other intersections in the event the same issues occurred.

Mr. Brown replied that solicitation activities could not be banned City wide, and the City was required to have venues where the activities could take place.

Gregory Travous expressed concern that the Ordinance violated freedom of expression. He stated that an artist selling their art was protected by the First Amendment. He questioned whether a protest could be held in the intersection of King and Malaga Streets.

Mayor Boles replied that the Ordinance would not affect legal protests.

Charles Dickenson questioned whether the Ordinance would prevent an artist from painting within the area.

Mayor Boles replied that an artist could paint as long as public right-of-ways were not blocked.

Public hearing closed.

Commissioner Freeman questioned what police could do in the event a solicitor was aggressive or created a public safety issue.

Mr. Brown replied that the City had an Ordinance against aggressive solicitations; however, an officer would have to observe the behavior or a citizen would have to file a report and submit an affidavit in order to prosecute. He stated that having an Ordinance regulating solicitations within certain areas would reduce the burden of prosecuting cases.

Commissioner Freeman questioned whether aggressive solicitations could be addressed throughout the City.

Mr. Brown stated that solicitation activity could not be banned city wide; however, complainants should be encouraged to file

a police report if they felt they had been harassed by a solicitor.

Commissioner Sikes-Kline stated that she had received complaints from citizens concerning aggressive solicitors, and she expressed concern regarding the City's inability to eliminate solicitation activities city wide.

MOTION

Commissioner Crichlow MOVED to have Ordinance 2010-04 placed on second reading, read by title only and passed. The motion was SECONDED by Commissioner Sikes-Kline.

Mr. Brown read Ordinance 2010-04 as follows:

ORDINANCE NO. 2010-04

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA AMENDING SECTION 24-14 OF THE CODE OF THE CITY OF ST. AUGUSTINE PROHIBITING SALES AND SOLICITATIONS IN TRAFFIC LANES; ENLARGING THE AREA OF PROHIBITION TO INCLUDE THE INTERSECTION OF THE RIGHT-OF-WAY OF STATE ROAD 5-A, ALSO KNOWN AS KING STREET AND MALAGA STREET AND FOR A DISTANCE OF 50 YARDS IN EITHER DIRECTION FROM THE INTERSECTION; MAKING FINDINGS; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST. AUGUSTINE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION

AYES: Crichlow, Sikes-Kline, Jones Freeman, Boles

NAYES: None

MOTION APPROVED UNANIMOUSLY

5.B.5/ Public Hearing - Ordinance 2010-05, amending Section 8-402 if the City Code to eliminate use criteria as it pertains to floodplain management for existing non-residential structures.

Mark Knight, Director, Planning and Building, stated that Ordinance 2010-05 repealed a use clause in the floodplain management section of the City Code. He noted that the City had adopted the 1997 building code published by the Southern Building Code Congress International (SBCCI) including an optional floodplain management code. He explained that the publication had a clause referring to the use of a structure, and when a change of use application was made, the City required an evaluation of the structure regarding FEMA flood requirements. He stated that the requirements could become a hardship for some business owners, but the proposed Ordinance eliminated the evaluation of use related to floodplain management.

Commissioner Crichlow pointed out that there were a number of older structures throughout the City that could not meet current building, handicap and fire codes. He stated that the City had to have measures in place requiring those facilities to comply with the current codes. He explained that proposed Ordinance 2010-05 would not eliminate the public and safety code requirements; however, it would eliminate the requirement to raise the finished floor elevation, which could be very costly. He further explained that if renovations were over 50% of a structure's value, the FEMA finished floor elevation would be required for any structure, commercial or residential.

Public hearing opened.

Hank Whetstone supported the Ordinance, and he stated that historically there had not been issues regarding the flooding of structures. He stated that in certain change of use cases business owners

would be unable to use a building if floor elevation was required.

B. J. Kalaidi questioned whether the proposed Ordinance applied to new construction or residential structures. She stated that the City had street flooding issues, and she felt that FEMA requirements were in place to protect the City and residents.

Commissioner Crichlow clarified that renovating a residential structure would not be a change of use; therefore, the Ordinance would not apply.

Public hearing closed.

MOTION

Commissioner Crichlow MOVED to have Ordinance 2010-05 placed on second reading, read by title only and passed. The motion was SECONDED by Commissioner Sikes-Kline.

Mr. Brown read Ordinance 2010-05 as follows:

ORDINANCE NO. 2010-05

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA AMENDING SECTION 8-402 OF THE CODE OF THE CITY OF ST. AUGUSTINE TO ELIMINATE USE CRITERIA AS IT PERTAINS TO FLOODPLAIN MANAGEMENT FOR EXISTING NON-RESIDENTIAL STRUCTURES; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST. AUGUSTINE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

VOTE ON MOTION

**AYES: Crichlow, Sikes-Kline, Freeman
Jones, Boles**

NAYES: None

MOTION APPROVED UNANIMOUSLY

5.C/ Resolutions

(None)

6. General Public Comments and Presentations

6.A/ General Public Comments (3 minutes per individual)

B. J. Kalaidi stated that the retrofitted lighting at the Visitors Information Center parking garage should be contracted out as a cost saving measure for the City, and the City should encourage energy conservation. She felt that issues regarding parking were a result of the Police and Code Enforcement's failure to enforce laws. She stated that there were Code and law violations regarding 9 Newcomb Street.⁴

Yannick Burklin requested that the Commission allow artists to paint murals on the sound attenuation wall at the Hamilton Upchurch Skate Park, and he suggested some possibilities.

Mayor Boles questioned whether the wall would be covered with vegetation as an added sound attenuation measure.

Mr. Harriss replied that vegetation was included in the wall plan, and eliminating it could possibly cause an increase in the sound decibel levels.

Bruce McGuire commented on the noise Ordinance, and quoted St. Augustine Beach's noise Ordinance. He stated that the same protection should apply to transient guests as permanent residents. He felt that quality of life included the right

⁴ Photo and report attached to original minutes

to relax and enjoy quiet regardless of where a person resides.

6.B/ Presentations (15 minutes per presentation)

(None)

7. Resolutions and Ordinances- No Public Hearing Required

7.A/ Ordinances – First Reading

7.A.1/ Introduction and consideration of Ordinance 2010-06, prohibiting the parking of certain types of vehicles on public streets and rights-of-way within residential districts in residential districts in the City.

Carlos Mendoza, Assistant City Attorney, stated that proposed Ordinance 2010-06 would repeal the current Section 24-47 of the City Code, and create Section 24-47. He said that there were concerns regarding residential areas of the City, in which certain types of vehicles were being parked in public rights-of-ways. He stated that the City had conducted a review of the current ordinance, and discussed the issue with law enforcement. He explained that the current Code allowed a vehicle owner to simply move the vehicle a short distance to comply; thereby, not providing for a resolution if the vehicle was creating an issue. He noted that the proposed Ordinance would not apply to vehicles parked on private property. He stated that boats, recreational vehicles (RVs), trailers and heavy commercial vehicles weighing in excess of 12,000 pounds would not be allowed to be stored or parked along public rights-of-ways. He reviewed examples of commercial vehicles.⁵ He stated that there would be consideration for vehicles used to accomplish a municipal purpose, and a 24 hour period would be allowed for a resident to prepare their RV. He concluded that the Ordinance provided standard provisions for enforcement regarding violations.

⁵ Attached to original minutes

Commissioner Sikes-Kline questioned whether the proposed Ordinance applied only to public rights-of-way, and the response was affirmative.

MOTION

Commissioner Sikes-Kline MOVED to have Ordinance 2010-06 placed on first reading, read by title only and passed. The motion was SECONDED by Commissioner Crichlow.

Mr. Brown read Ordinance 2010-06 as follows:

ORDINANCE NO. 2010-06

AN ORDINANCE OF THE CITY OF ST AUGUSTINE, FLORIDA REPEALING SECTION 24-47 OF THE CODE OF THE CITY OF ST AUGUSTINE AND CREATING SECTION 24-47 TO PROHIBIT THE PARKING OF CERTAIN TYPES OF VEHICLES ON PUBLIC STREETS AND ON PUBLIC RIGHTS-OF-WAY WITHIN RESIDENTIAL DISTRICTS IN THE CITY; EXEMPTING CERTAIN VEHICLES; PROVIDING FOR PENALTIES; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST AUGUSTINE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; AND PROVIDING AN EFFECTIVE DATE

VOTE ON MOTION

**AYES: Sikes-Kline, Crichlow, Jones
Freeman, Boles**

NAYES: None

MOTION APPROVED UNANIMOUSLY

7.A.2/ Introduction and consideration of Ordinance 2010-07, repealing Sections 8-401 and 8-402 of the Code of the City of St. Augustine and creating Sections 8-401 through 8-437 to establish a floodplain management code.

Mr. Harriss explained that if Ordinance 2010-07 was placed on first reading and passed, it would then be sent to FEMA for review, after which it would be brought back to the Commission for second reading.

Mr. Knight stated that the primary reason that Ordinance 2010-07 had been developed was because the current floodplain management code was based on a 1997 SBCCI publication adopted by the City. He explained that the SBCCI was no longer in existence; thereby, making it difficult to obtain copies of the publication. He said that by adopting the Ordinance directly into the City Code would allow the floodplain management information to be readily available. He reviewed modifications in the floodplain management Code as follows:

- Improvements could be made up to 50% of a structures market value before floor elevations would be required
- Included a 5-year cumulative improvement clause so property owners would not be able to avoid bringing a structure up to current safety codes
- Backflow preventers required when sewer lines were replaced
- FEMA guidelines implemented directly into City Code
- Property values determined by St. Johns County Property Appraiser

Mr. Knight explained that there were many ways to earn points toward the community rating system, and for every 500 points earned the City's rating increased possibly giving all City property owners an additional 5% flood insurance premium discount. He stated that currently the City was in the 8 point range, and the goal was to reach a rating of 7. He noted that there were regulatory standards available for earning points, which could possibly burden property owners. He stated that discussions had taken place with private engineers that work with FEMA to

determine cost estimates for various programs to earn points. He described examples of a community outreach program as follows:

- Flood warning program
- Quarterly or annual pamphlet publication⁶
- Develop an information website

Mr. Knight noted that along with adoption of the Ordinance, an outreach program had to be developed for the City to earn enough points to reach its goal. He stated that the estimated cost to develop a community outreach program would be \$25,000.

Commissioner Freeman questioned what information the publication would contain, and whether FEMA would provide the information.

Mr. Harriss replied that there would be certain criteria included that had to specifically pertain to St. Augustine.

Commissioner Sikes-Kline questioned whether the program was primarily to educate the public.

Mr. Harriss responded affirmatively, and added that the program would also include flood data.

Commissioner Crichlow questioned whether the market value applied to the structure only, and what would be considered a substantial improvement.

Mr. Knight replied that Section 8-412 of the proposed Ordinance included a list of substantial improvements, taken from a FEMA publication.

⁶ Sample pamphlet attached to original minutes

MOTION

Commissioner Jones MOVED to have Ordinance 2010-07 placed on first reading, read by title only and passed. The motion was SECONDED by Commissioner Freeman.

Mr. Brown read Ordinance 2010-07 as follows:

ORDINANCE NO. 2010-07

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA REPEALING SECTIONS 8-401 AND 8-402 OF THE CODE OF THE CITY OF ST. AUGUSTINE AND CREATING SECTIONS 8-401 THROUGH 8-437 TO ESTABLISH A FLOODPLAIN MANAGEMENT CODE; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST. AUGUSTINE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

VOTE ON MOTION

**AYES: Jones, Freeman, Crichlow
Sikes-Kline, Boles**

NAYES: None

MOTION APPROVED UNANIMOUSLY

7.B/ Resolutions

7.B.1/ Consideration of Resolution 2010-02, authorizing the granting of a Temporary Easement to the Florida Department of Transportation for removal of the temporary bridge structure over the Matanzas River.

John Regan, Chief Operations Officer, stated that the Florida Department of Transportation had been granted a temporary administrative easement for construction of the temporary bridge while the Bridge of Lions was restored, which had expired in October 2009. He explained that Resolution 2010-02 would

grant an extension until October 2011 to provide for demolition of the temporary bridge.

MOTION

Commissioner Jones MOVED to pass Resolution 2010-02. The motion was SECONDED by Commissioner Sikes-Kline

VOTE ON MOTION

**AYES: Jones, Crichlow, Sikes-Kline
Freeman, Boles**

NAYES: None

MOTION APPROVED UNANIMOUSLY

Mr. Regan stated that the opening of the Bridge of Lions could occur during February or March; however, issues had been raised regarding removal of the concrete pilings for the temporary bridge, as removal would be nearly impossible without creating an environmental impact. He stated that through negotiations with Skanska to determine a resolution to the piling issue, a possible environmental project had been proposed for consideration by the Commission. He explained the project as follows:

- Cut pilings two feet below the mud-line
- Contractor would provide \$25,000
- Recycle piling material as an enclosure for the Riberia landfill area, which could reduce the City's financial responsibility for approximately \$600,000

Mr. Regan stated that the project could reduce the carbon footprint for the City and Skanska. He requested Commission consensus to allow the City Manager to enter into an agreement with Skanska to move forward with the project.

There was Commission consensus to authorize the City Manager to move forward with the agreement.

Commissioner Crichlow questioned whether Skanska was required to leave the pilings.

Mr. Regan replied that leaving the pilings required City approval, because the City owned the bottom lands

7.B.2/ Consideration of Resolution 2010-03, and Application for Forest Health Improvement Initiative Grand.

Martha Graham, Public Works Director, stated that Resolution 2010-03 addressed approval for application of a Division of Forestry grant in the amount of \$24,000 for tree corrective pruning and amelioration. She reported that upon meeting with the Street Tree Advisory Committee, revisions and recommendations were made, and the locations were as follows:⁷

- Magnolia Avenue tree canopy
 - Corrective pruning
 - Aeration and root collar excavation
 - mulching
- Government House and Plaza garden
 - Corrective pruning
 - Decaying tree removal
 - Site amelioration
- 50 Bridge Street
 - Corrective pruning
 - Site amelioration

Ms. Graham pointed out that the grant could be an additional local economic stimulus because the grant required hiring a contractor and a certified arborist. She stated that in the event the contract was granted, the project would be completed by September 2011.

⁷ Revision attached to original minutes

MOTION

Commissioner Jones MOVED to pass Resolution 2010-03. The motion was SECONDED by Commissioner Sikes-Kline and approved by UNANIMOUS VOICE VOTE.

7.B.3/ Consideration of Resolution 2010-04, authorizing City Manager to apply for a grant through the Florida Energy and Climate Commission known as the "American Recovery and Reinvestment Act of 2009 Energy Efficiency and Conservation Block Grant."

Mr. Regan explained that research had been conducted to find the most energy efficient lighting system. He stated that the City could apply for a \$250,000 grant through the Florida Energy and Climate Commission to install LED lighting in the Visitors Information Center parking facility. He advised that the grant required a match by the City of \$50,000; however, the annual energy savings cost could be approximately \$103,000 per year. He noted that the energy savings could possibly reduce the Heritage Tourism deficit by half, and the lighting maintenance, because LED lighting lasted considerably longer. He concluded that the project could have a positive economic and environmental impact.

MOTION

Commissioner Jones MOVED to pass Resolution 2010-04. The motion was SECONDED by Commissioner Crichlow and approved by UNANIMOUS VOICE VOTE.

8. Staff Reports and Presentations

9. ITEMS BY CITY ATTORNEY

9.A/ Discussion relevant to Echo House.

Mr. Brown stated that the property located on Dr. Martin Luther King Jr. Drive was originally held by the City, and title to the

property had been conveyed to the non-profit Echo House Incorporated. He explained that recently conveyance issues had arisen regarding the disuse and disrepair of the structure; however, the City retained a reverter clause in which the City could seek a court order to regain title to the property in the event the property was not used for a non-for-profit purpose. He stated that the current owners had to appear before Code Enforcement regarding violations, which required the stabilization and securing of the building. He advised that there was possible interest by community organizations regarding the acquisition of title to use the property for a non-for-profit purpose. He explained that the City as an interest holder of title could sign-off on the deed to another entity while retaining reverter interest, and implement plan and property requirements.

Mayor Boles expressed concern regarding the security of the structure. He questioned whether the Commission was immediately required to approve a transfer from the Mills estate to another entity or whether a general approval could be made requiring that the building remain secured.

Mr. Brown replied that Code Enforcement had approved a short term plan to secure the building; however, a long term plan had not been accomplished. He stated that there was a proposal to convey the property and the Echo House had expressed interest in the proposal, which would require the Commission's approval, at which time the Commission could establish requirements regarding use and development of the property.

Commissioner Jones questioned whether a time limit would be required, and Mr. Brown replied that the Commission could determine whether to establish a time limit; however, it was not required.

Commissioner Jones stated that the building should be preserved because of its history, and the City should ensure that the building was safe and secure. He felt

that the City should convey the property to a local entity, and allow them ample time to find funding sources to restore the structure.

MOTION

Commissioner Jones MOVED to allow staff to do what was necessary to preserve the structure.

Commissioner Freeman stated that the structure was the center of history for Lincolnton, and renovating the structure would improve the value of the surrounding community. She suggested the Commission allow the AME Church the opportunity to preserve the building for use within a reasonable timeframe.

Commissioner Jones agreed that the opportunity should be allowed; however, a timeframe could place a burden on the organization.

Mayor Boles pointed out that the reverter clause would allow the City to retain ownership in the event the organization was not complying with the use requirements, and the structure was falling further into disrepair.

Commissioner Crichlow stated that while the structure had been secured, he felt that the restoration should be addressed; however, he agreed that the restoration should be completed in a reasonable timeframe.

There was a consensus of the Commission to allow the conveyance of the property to the St. Pauls AME Church with a reverter clause.

9.B/ Discussion relevant to Noise Ordinance.

Mr. Brown stated that during the previous Commission meeting there had been discussions regarding the City's noise Ordinance and concern regarding whether hotel/motel rooms should be considered a

commercial structure or residential. He explained that the maximum decibel levels were higher for commercial structures than residents. He noted that the reason for the Code to address hotel/motel rooms as commercial was due to the close proximity of commercial and residential properties, and the uses of residential structures for commercial purposes. He stated that there had been complaints of noise ordinance violations, and occasionally citations had been issued.

Mr. Harriss stated that a review of the noise Ordinance had been requested in response to concerns of a local hotel/motel owner.

Chief Loran Leuders, SAPD, presented zone maps and a summary of excessive noise complaints received during 2009.⁸ He reviewed the number of complaints in each zone.

After a brief discussion it was determined that the Commission would review the information and discuss the issue during a subsequent meeting.

10. ITEMS BY CITY CLERK

10.A/ Notification of Proclamations.

(None)

11. ITEMS BY CITY MANAGER (Includes Consent Agenda

11.A/ Consent Agenda

11.A.1/ Preview of upcoming Commission meetings.

11.A.2/ Consideration of Release of Lien on a Unit Connection Fee Mortgage.

(None)

11.A.3/ Notification of two (2) term expirations on the Historic Architectural Review Board.

⁸ Attached to original minutes

11.B/ Discussion Items.

12. Items by Mayor and Commissioners

Commissioner Sikes-Kline commented on an article in the St. Augustine record regarding the City's newsletter, The St. Augustine Report. She stated that the newsletter was intended to keep the public informed. She expressed concern regarding the cost of producing the newsletter versus the number of subscribers. She suggested researching ways to reduce costs and increasing circulations, such as possibly mailing it along with the utility bills.

Mr. Harriss stated that the cost to print the newsletter was \$.08 per copy, and the cost to include it with the City's utility bills would be approximately \$1,000 each time issues were mailed. He pointed out that the St. Augustine Report was for current information and events; therefore, mailing the newsletter quarterly could result in outdated information.

After a brief discussion it was determined that efforts would be made to increase circulation and subscription.

13. Adjournment

There being no further business, the meeting was adjourned at 10:41 P.M.⁹

MAYOR

CITY CLERK, CMC

⁹ Transcribed by Darlene Kirkland