

# CITY OF ST. AUGUSTINE

City Commission Workshop Meeting  
Monday July 13, 2009

The City Commission met in a formal session Monday, July 13, 2009 at 3:30 P.M. in the Alcazar Room at City Hall. The meeting was called to order by Vice Mayor Errol Jones, 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  
Paul K. Williamson, Director, Public Affairs  
Carlos E. Mendoza, Assistant City Attorney  
Loran Lueders, Police Chief  
Mike Arnold, Fire Chief  
Todd Grant, Deputy Director, Public Works  
Darlene Kirkland, Recording Secretary

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## **2. Discussion regarding the vendors in the plaza.**

Ron Brown, City Attorney, gave an overview regarding vending in the Plaza. He stated that current litigation involving Ordinance 22-6 was ruled as too broad, and as a result, Judge Howard ordered an injunction. He explained that the court had not defined visual arts but categorized them as painters, printers, sculptors and photography. He noted that Judge Howard said that if Ordinance 22-6 had better clarification as to limiting vending in the Plaza, the City may have fared better. He stated that Ordinance 22-6 had been ruled unconstitutional as applied, because it gave the police and City management too much discretion deciding what was art. He

described a case from New York that defined art as either having expressive content or utilitarian content, and another from Venice Beach that stated, if the object had a political, philosophical, and ideological or religious message it would be protected.<sup>1</sup> He stated that Venice Beach gave specific examples as follows:

Dominant expressive purpose and allowable:

- Newspapers
- Leaflets
- Pamphlets
- Bumper sticker
- Buttons

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<sup>1</sup> Mayor Boles arrived at 3:43 P.M.

Allowable items created by the vendor:

- Books
- Cassette Tapes
- Compact discs
- Digital video discs
- Photographs
- Sculptures

Dominant non-expressive purpose and not allowable:

- Appliances
- Clothing
- House wares
- Lotions
- Candles
- Perfume
- Sunglasses
- Auto parts
- Oils and incense
- Jewelry
- Toys
- Stuffed Animals

Mr. Brown stated that, by providing examples of what were allowable or not allowable, would provide enforcement with guidance how to enforce the ordinance, and some items might need to be handled on a case-by-case basis. He stated that there was a possibility of not allowing vending or setting reasonable time, place and manner restrictions. He noted that some courts accepted the following reasons:

- Affected tourism
- Resulted in economic and cultural losses
- Impeded movement of pedestrian traffic
- Limited crowd control
- Impeded emergency and safety vehicles
- Eroded City tax revenues
- Eliminated clutter, blight and impeded views of the City

Mr. Brown stated that for absolute certainty they could ban or allow everything,

because anything in between would create uncertainty.

Mayor Boles recalled that at one time there were specific spaces for specific vending and problems had occurred with fighting over space and confusion as to who needed a permit, and he questioned if that had been a temporary system.

Bill Harriss, City Manager, answered that the City tried to allow vending in the Plaza. He stated that it was difficult to determine whether an item being sold fell under the four allowable categories, so the City banned all vending in the Plaza, but they were sued. He noted that Judge Tinlin had ruled that the City could not allow only the four categories. He said subsequently the City tried to allow space in the Plaza on a rotating basis and also predetermined space to preserve the grass, which cost the City \$8,000 to replace.

Mr. Brown noted that the judge said if the average person could not determine which category an item fell, the ordinance would be considered unconstitutional.

Mayor Boles questioned whether it was possible to create a system that allowed vending under certain guidelines that the local court would support and be constitutionally protected.

Mr. Brown replied that certain types of items could be banned and the Venice Beach case gave some definition as to what could or could not be done; however, there would still be some question concerning certain items that would need to be reviewed on a case-by-case basis.

Commissioner Freeman stated that the all or nothing policy would be best;<sup>2</sup> however, she suggested that the Commission begin banning utilitarian items and then hold another workshop to discuss time, place and manner restrictions.

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<sup>2</sup> Statement amended during July 27, 2009 Commission Meeting.

Mr. Brown suggested possible venues as the bay front or possibly near the Visitor Information Center.

Commissioner Crichlow questioned if at one time the City allowed visual arts to be sold in the plaza and all other items were sold in the market.

Mr. Harriss replied that the situation resulted in lawsuits due to the fact there were no specific definitions of visual art.

Commissioner Crichlow stated that having a specified market for vendors might be better, because tourists could go there specifically to shop for art. He noted that some business owners questioned why a business license was not required when the same type of products were sold in stores but required licenses. He suggested leasing space at the parking garage to the Art Association or the Cultural Council, and they could in turn lease spaces to vendors and control the content of sales.

Mr. Brown replied that by locating vendors to the market would solve the problem of pedestrian and emergency traffic; however, there would be the question of whether that would promote tourism, be competitive with local businesses and what kind of appearance it would have. He stated that the city of San Antonio, Texas issued a limited number of licenses for vending in public places. He noted that he had not seen a case where there was a determination of value concerning whom could obtain a license, and most cities stayed away from that situation due to the question of content neutrality.

Mayor Boles questioned the potential problems if the City limited vending in the Market to painting, sculpture, printing and photography.

Mr. Brown replied that those items might not be the only items with expressive content.

Commissioner Crichlow suggested that the City could limit vending to the market and possibly allow vending in other areas during certain days or special events.

Commissioner Freeman stated that the City should begin by banning the items that could be banned, and give it some time before exploring the time, place and manner options.

Mayor Boles stated that most vendors preferred to be in the plaza near St. George Street.

Commissioner Crichlow suggested putting up a sign at the end of St. George Street directing tourist to the market.

Commissioner Sikes-Kline asked if the City limited food items whether it posed a problem with allowing a potential farmers market.

Mr. Brown replied that a farmers market could be considered a special event; however, allowing produce would suggest that all items could be sold.

Commissioner Crichlow stated that there was the possibility of banning everything, but he felt it would be a start to ban items that would not be considered unconstitutional.

Mayor Boles pointed out that vending permit fees could be charged for a designated area; however, protected commercial free speech could not.

Mr. Brown stated that he would draft an example vending Ordinance that included items that could be banned.

Mayor Boles stated that the only guaranteed way to avoid future lawsuits would be to take the all or nothing approach, but it might be possible to control vending by limiting time, place and manner restrictions.

### **3. Discussion regarding the Architectural Guidelines in Historic Districts.**

Mr. Harriss stated that due to the limited amount of time to discuss the issue, he suggested the Commission decide how to resolve the issue.

Mayor Boles stated that the Architectural Guidelines for Historic Preservation (AGHP) was a part of the Comprehensive Plan, and he questioned when the AGHP was established.

Mr. Harriss replied that the AGHP was developed during the 1960's to give the Historical Architectural Review Board a set of guidelines. He stated that the AGHP was adapted to the Comprehensive Plan during the 1980's. He noted that there was a provision that allowed changes in the AGHP by resolution, which was the part of the Ordinance that required amendment. He stated that, in 2003, the Commission decided that all districts in the Historic Preservation (HP) districts should follow the AGHP guidelines.

Mayor Boles questioned what the process would be if the Commission decided to change a portion of the Comprehensive Plan.

Mr. Harriss replied that it could possibly take two ordinances to amend the HP districts, and the process would take six months to be reviewed by the DCA.

Commissioner Crichlow asked if the resolution requiring that all structures be Spanish Colonial was still in effect. He noted that there were current construction projects being held up, because they were awaiting a decision.

Commissioner Sikes-Kline suggested that all Commissioners review copies of Secretary Standards of Rehabilitation, Regulating New Construction in Historic

Districts and an article concerning the Secretary of Interior's standards.<sup>3</sup>

After a brief discussion it was decided to hold a public hearing to consider public comment.

### **3. Adjourn**

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MAYOR

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CITY CLERK, CMC

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<sup>3</sup> Attached to original minutes.