

MINUTES
CITY COUNCIL MEETING
September 24, 2019
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

CALL TO ORDER BY MAYOR

Present: Mayor Nancy Miller, Councilmember Mel Lindauer, Vice Mayor Richard Bryan, Councilmember Michael Politis, Councilmember Richard Frizalone

Staff: City Manager Michael T. Booker, City Clerk Cheri Schwab, City Attorney William Colbert, Community Services Director Fred Hiatt, City Planner Stewart Cruz, Finance Director Kurt Swartzlander, and Public Safety Director Stephan Dembinsky.

ROLL CALL BY CITY CLERK

CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

- A. R-19-2019 A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, ADOPTING THE FINAL LEVYING OF AD VALOREM TAXES FOR THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY FOR FISCAL YEAR 2019-2020; PROVIDING FOR AN EFFECTIVE DATE.

City Attorney Colbert read the Resolution by title for the record. The millage rate will be 5.23 mills. There had been no change from the last council meeting. CMBR Lindauer noted that the tax rate was the same rate as last year even though it is considered a tax increase.

VICE MAYOR RICHARD BRYAN moved, seconded by COUNCILMEMBER MEL LINDAUER to adopt Resolution 2019-19 on first reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

- B. R-20-2019 A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES OF VOLUSIA COUNTY, FLORIDA, ADOPTING THE FINAL BUDGET FOR FISCAL YEAR 2019-2020; PROVIDING FOR AN EFFECTIVE DATE.

City Attorney Colbert read the resolution by title for the record. There had been no changes to the proposed budget as shown on September 9th.

COUNCILMEMBER MEL LINDAUER moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to adopt Resolution 2019-20 on first reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone,

1. APPROVAL OF MINUTES

- A. City Council Minutes September 9, 2019

COUNCILMEMBER MEL LINDAUER moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to approve the City Council Minutes September 9, 2019.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

2. CONSENT AGENDA:

- A. Public Safety Monthly Report
- B. Community Services July and August Monthly Report 2019
- C. Building Division Monthly Report- July and August 2019
- D. Monthly Finance Report - July
- E. August Public Safety monthly report
- F. New Purchasing Card Contract

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to approve the consent agenda.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

3. REPORTS OF THE CITY ATTORNEY:

Attorney William Colbert introduced himself. He provided a brief history of the city under their direction and guidance. The firm had assisted with the adoption of the adult entertainment ordinance, renovating A1A, underground utilities and much more. He explained that Attorney Groot had requested that a new first chair be assigned to the city. The resume for Raymond Branch was distributed. He has been with the firm since 2011. The attorney report was distributed to the councilmembers.

4. REPORTS OF THE CITY MANAGER:

City Manager Booker read from his report. The Halifax Health lease will start on April 1,

2020. It would provide time to relocate the museum items and allow the demolition. He had recently met with Don Large regarding the relocation of the museum and reorganizing the articles into the different decades. City Staff held a Hurricane Dorian post storm assessment that was very productive. Staff had recently met with representatives of Chase Bank. They are interested in purchasing the property adjacent to City Hall. The city would then purchase a portion of the back property to relocate the bocce courts and shuffle board. The dedication of the Veteran's Park will be held on November 9th. The guest speaker will be State Representative Michael Waltz. This event will be combined with the annual resident cookout.

OLD BUSINESS:

- A. Ordinance 2019-11 AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA IMPLEMENTING SECTION 3.05 (4) OF THE *CITY OF DAYTONA BEACH SHORES CITY CHARTER* RELATING DUTIES OF THE CITY MANAGER AND THE ADOPTION OF CITY BUDGETS BY ORDINANCE; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS, PROVIDING FOR A SAVINGS PROVISION AND THE EFFECT OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by VICE MAYOR RICHARD BRYAN to adopt Ordinance 2019-11 on second reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

NEW BUSINESS:

- A. Award of RFP and approval of staff authority to enter into formal negotiations of a development agreement regarding City-owned real property located at 2900 South Atlantic Avenue.

The city only received one response to the RFP to purchase the property at 2900 S. Atlantic Avenue. CMBR Frizalone explained that the conceptual plan included 24-25 high quality townhomes and that they would be a great addition to the city.

Audience member Julie Mills, who is a resident of Cloverleaf North, had some concerns regarding the property. She inquired about creating a berm, having an entrance on Ridge Road instead of Oceans West, and were the palm trees remaining. She also was concerned about any type of large vehicle and its ability to maneuver along Oceans West without having a space to turn around.

Staff explained that at this stage, they were not able to address her concerns.

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by VICE MAYOR RICHARD BRYAN to award the RFP to and approve staff to enter into formal negotiations of a development agreement regarding the City-owned real property located at 2900 South Atlantic Avenue..

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

- B. Ordinance 2019-12: Shores 109, LLC Development Agreement; redevelopment of 109 Dunlawton Boulevard

City Planner Stewart Cruz read from his staff report. He explained that the proposed development agreement was unique. The site has not had an operating commercial business since 2004. There are five deviations from the Land Development Code requested by the property owner as the site has many constraints. The first is that the owner shall be permitted to have up to 40 dining seats in an outdoor dining patio area. The second is that the allowable square footage for signage can exceed the permitted footage for a commemorative sign. The third item would be that the owner will not be required to provide landscape buffers on the site. The fourth item would be that the owner shall not be required to provide the minimum fifteen feet turning radius in back up areas. The fifth and final item would be that the owner is permitted to have a two foot front yard setback to construct the outdoor dining area. In return, the city would receive seven public benefits consisting of a permanent utility easement, access easement, additional green area, a commemorative sign, architectural enhancements to the building, addition of a commercial opportunity, and the redevelopment and beautification of an abandoned, outmoded and unsightly commercial property along the gateway to the city. The owner plans to redevelop the entire site. The Planning & Zoning Board and staff recommend approval. Brendan Galbreath, the property owner, was very excited about the project. He explained that he would interview tenants to find the perfect fit with the city.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to approve Ordinance 2019-12 on first reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

- C. Ordinance 2019-13: Comprehensive Plan Amendment CPA12019026, Amending the Future Land Use Element to establish a Transfer of Development Rights Program.

Mayor Miller postponed this item to a future agenda.

- D. Non-Conforming Sign Removal Incentive Grant Application: Mike's Gift Shop/Dino Paspalakis, 3500 S. Atlantic Avenue

City Planner Stewart Cruz provided the details for the sign grant. All the requirements for the grant had been met. The property owner did obtain three bids but only two of them met the requirements for the grant. The owner preferred the bid from Kenko's. The award can not go over \$3900 this year and there are adequate funds in the budget. Staff recommended approval of the sign grant on the condition that the new sign meets all the requirements of the applicable City sign standards and that no code enforcement violation exist prior to the disbursement of City grant funds.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to approve the Non-Conforming Sign Removal Incentive Grant for Mike's Gift Shop on the condition that the new sign meets all the requirements of the applicable City sign standards and that no code enforcement violation exist prior to the disbursement of City grant funds.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

E. Consideration to award contract to Compensation & Classification firm

City Manager Booker explained that the city had not utilized an outside study of the job descriptions and compensation for some time. Staff reviewed the responses and recommended the Evergreen firm. The cost for the study is \$23,500. The RFP included an additional charge of \$5,000 to evaluate the employee evaluation form. The total cost would be \$28,500. It is expected to take 6 months.

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by COUNCILMEMBER MEL LINDAUER to award the contract for a Compensation & Classification study to Evergreen.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

F. Consideration of City Council policy regarding actions of individual City Council Members.

Vice Mayor Bryan distributed a written statement for the council to consider. He read aloud text that he would like included in the draft policy.

Mayor Miller explained that the way the policy was currently written, she felt she couldn't talk with the press and would like it made clear. None of the council want to infringe on anyone's freedom of speech, but there is an expectation when you take office, that you are representing the entire body when you speak in public. There was a brief discussion on when a council person is being independent of the office or if he is ever considered independent while in office. No one wants to disrespect the office they hold. CMBR Politis did not care for the additional wording proposed by the Vice Mayor as he felt it was too confusing. Attorney Colbert explained that if the council could come to a consensus, a new policy could be brought forward at a later date. The Mayor decided to postpone any further discussion on the item.

G. Consideration of board appointments: Planning & Zoning Board and Public Art &

Mayor Miller explained that the board interviews were performed on September 20th during a public workshop.

VICE MAYOR RICHARD BRYAN moved, seconded by COUNCILMEMBER MEL LINDAUER to appoint the following to the Planning & Zoning Board: Rick deLange from alternate to regular member, Van Alder as regular member and Tony Rembrewski as alternate member. Karen Bullard is appointed as regular member to the Public Art & Beautification Committee.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

H. Consideration to select firm as Special Magistrate for Code Enforcement Cases

The council also interviewed all three candidates on September 20th during a public workshop.

VICE MAYOR RICHARD BRYAN moved, seconded by COUNCILMEMBER MEL LINDAUER to Appoint Steven deLaroche as Special Magistrate for Code Enforcement Cases.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

I. Discussion on formation and composition of Auditor Selection Committee.

It was explained that the purpose of this discussion was to determine the composition of the audit selection committee. Recent changes in the state legislature have changed the requirements for the audit committee. Mayor Miller suggested one councilmember and two residents with a background in finance or holding a CPA. CMBR Lindauer felt the entire council should be responsible and wanted at least three councilmembers to site on a five member board. CMBR Frizalone was not in agreement as he felt the remaining two councilmembers would have no input. Vice Mayor Bryan would like the full council plus two residents. There was a discussion between CMBR Lindauer and Finance Director Swartzlander regarding the duties of the committee. The Finance Director stated the purpose was to only review and recommend an audit firm once the RFQ was put out. CMBR Lindauer felt there were additional duties during the actual audit. CMBR Politis volunteered to be on the committee due to his previous work in corporate finance. He suggested the addition of two residents. A resolution will be drafted for the formation of the audit selection committee and brought back to council at a later date.

J. Consideration to approve the purchase of new fire apparatus

Finance Director Swartzlander explained that through negotiations and having a trade in truck, the final price with the optional items requested is \$528,675. It is under the revised budget amount.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER MEL LINDAUER to approve the purchase of the new fire apparatus.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

5. COUNCIL COMMENTS:

Mayor Miller thanked the council for working together during the previous workshops. She reminded the audience of the free concert on Friday, September 27th. She announced an upcoming indoors Arts and crafts show on October 26th. She also reminded everyone that the Veteran's Park dedication is on November 9th.

6. AUDIENCE REMARKS/PUBLIC COMMENTS:

Don Large felt the council should utilize technology more and display photographs or videos when describing a piece of property.

7. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

Vice Mayor Bryan would like to discuss the City Manager evaluation procedure. The Mayor explained that she had spoken with Lynn Tipton from the Florida League of Cities. The best practice is to complete the evaluation privately, meet one on one with the City Manager to review, and then provide a summary at a public meeting.

8. ADJOURNMENT:

The meeting ended at 8:39.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB

STATEMENT BY RICHARD BRYAN TO BE ADDED VERBATIM TO THE MINUTES

24 September 2019

An excerpt from the minutes of the 11 June Council Meeting follows:

“COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER MEL LINDAUER to prohibit any councilmember from any activity that would affect the City Council and the City of Daytona Beach Shores.”

The motion passed by a vote of 4 to 1.

Every council member has been in violation of the above wording very many times since June 11. It is impossible not to violate the wording since attending a Council Meeting violates the wording and not attending a Council Meeting would violate the wording.

In addition to being very problematic, the wording is in violation of at least the First Amendment of the Constitution.

At a subsequent meeting, the Mayor said that she had discussed the wording with the City Attorney sometime after June 11. The City Attorney apologized for not objecting to the wording on June 11.

In my opinion, any attempt to regulate the speech (except for the Sunshine Law) of a Council Member would likely be in violation of the First Amendment.

I think there are some lessons to be learned from this event. Decisions that are made in haste (particularly in an emotionally charged atmosphere) can easily be bad decisions. The general rule of not voting on matters that are not on the agenda helps prevent hasty decisions in addition to informing the public on matters that will be decided.

We could correct the situation by merely rescinding the “resolution.” However, I think it might add more clarity to replace the above wording with words something like the following (in red):

Only a majority vote at a noticed public meeting expresses the will of the city council. The Mayor, Vice Mayor, or any other councilmember speaks only for herself or himself and does not (and cannot) speak for the majority of the city council. He/she can reference a majority vote duly taken but that is different from speaking for the city council.

The city council prefers that a council member only make statements that are consistent with a past majority vote, but recognizes that each council member has a First Amendment right to disagree with the majority.

Certainly, one should feel free to speak out against problematic and/or unconstitutional “policies”.