



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING JUNE 11, 2019

**7:00 PM, Shores Community Center, 3000 Bellemead Drive
Daytona Beach Shores, FL 32118**

Upon being recognized, a member of the public shall proceed to the podium and give his or her name and address and may, thereafter, speak for a maximum of three minutes on any matter relevant to a specific agenda item. During "Audience Comments," a member of the public may speak on any matter relevant to City business which is not on the agenda, for a maximum of three minutes in accordance with Section 2-1.1(d) and 2-2 of the City Code. In accordance with Section 2-2, during periods set aside for public discussion any person desiring to speak shall secure a form located at the agenda table, complete the form and present it to the City Clerk so the speaker can be recognized by the presiding officer. The use of profanity, obscene language, threats or any violent or abusive conduct by any person shall constitute a violation of this section. It shall be the duty of the Director of Public Safety, upon the order of the presiding officer at any such meeting, to forcibly, if necessary, evict any person violating the provisions of this section from the Council Meeting Hall. Any such violation shall subject the offender, upon conviction thereof, to a fine and/or imprisonment as prescribed by Section 1-8.

CALL TO ORDER BY MAYOR

ROLL CALL BY CITY CLERK

CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

1. APPROVAL OF MINUTES

- A. City Council Meeting May 28, 2019

2. CONSENT AGENDA:

3. REPORTS OF THE CITY ATTORNEY:

4. REPORTS OF THE CITY MANAGER:

OLD BUSINESS:

NEW BUSINESS:

- A. Ordinance 2019-05 AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO PROCESSES, MEETING NOTICES, AGENDAS, OPEN GOVERNMENT AND MINUTES PERTAINING TO CITY BOARDS, COMMISSIONS OR COMMITTEES; PROVIDING FOR THE AMENDMENT OF SECTION 2-8, SECTION 14-62 THROUGH SECTION 14-64 AND SECTION 14-68 AND THE REPEAL OF SECTIONS 5-15, SECTION 8½-31 THROUGH SECTION 8½-34, SECTION 2-51 THROUGH SECTION 2-53 AND SECTION 14-70 OF THE CITY CODE OF THE CITY OF DAYTONA BEACH SHORES; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR PROCESSES AND PROCEDURES; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS AND RESPONSIBILITY FOR IMPLEMENTATION; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.
- B. Select Voting Delegate for Florida League of Cities Conference, August 15-17, 2019
- C. Discussion on dog protection against tethering
- D. Discussion on creating an Economic Development Group
- E. Discussion of City Attorney Memo dated May 28, 2019 regarding music licensing, 50/50 raffles and city contracts.
- F. Discussion regarding electronic written communications between City Councilmembers
- 5. **COUNCIL COMMENTS:**
- 6. **AUDIENCE REMARKS/PUBLIC COMMENTS:**
- 7. **ITEMS RECOMMENDED FOR THE NEXT AGENDA:**
- 8. **ADJOURNMENT:**

Notice is hereby given to all interested parties that if a person should decide to appeal any decision made at the aforementioned meeting of the City Council, such person will need a recording of the proceedings conducted at such meeting, and for such purpose he or she may need to ensure that a verbatim record of the proceedings was made; such record to include testimony and evidence upon which any appeal shall be based. Please be advised that all City Council Meetings are recorded. Note: Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations for this public meeting should contact the Office of the City Clerk at 2990 S. Atlantic Avenue, Daytona Beach Shores, FL 32118, or telephone 386-763-5364 at least seven working days prior to the meeting.

MINUTES
CITY COUNCIL MEETING
May 28, 2019
3000 Bellemead Drive Daytona Beach Shores, FL 32118

Present: Mayor Nancy Miller, Vice Mayor Richard Bryan, Council Member Richard Frizalone, CouncilMember Mel Lindauer and CouncilMember Michael Politis. **Staff:** *City Manager Michael T. Booker, City Clerk Cheri Schwab, City Attorney Lonnie Groot, City Planner Stewart Cruz, Community Services Director Fred Hiatt, Finance Director Kurt Swartzlander, and Public Safety Director Stephan Dembinsky.*

1. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES: None.

2. APPROVAL OF THE MINUTES:

City Council Workshop May 14, 2019
City Council Meeting May 14, 2019

CMBR POLITIS moved, seconded by CMBR LINDAUER to approve the minutes of May 14, 2019

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

3. CONSENT AGENDA:

- Monthly Departmental Reports
- Monthly Financial Report

CMBR POLITIS moved, seconded by CMBR BRYAN to approve the consent agenda.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

4. REPORTS OF THE CITY ATTORNEY: The City Attorney mentioned that he had sent many emails recently and he asked that council take the time to review them.

5. REPORTS OF THE CITY MANAGER: The City Manager announced that the city's new website went live today. He encouraged everyone to visit the site and to utilize the "Notify me" feature of upcoming meetings and events. The city has also been implementing agenda software and the next meeting will go live. Max Daytona has submitted their plans and hope to break ground in the next few months. The dog park is currently open for use but the grand opening is next Wednesday, June 5th.

CMBR Lindauer stated that he had met with the City Manager recently to discuss the proposed business development group. He knows of volunteers that would like to be part of the group and they are ready to begin. It was decided to agenda this topic for the next City Council meeting.

OLD BUSINESS: None.

NEW BUSINESS:

6. Resolution 2019-10 A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO REAL PROPERTY WHICH IS LOCATED WITHIN THE CITY OF DAYTONA BEACH SHORES IN VOLUSIA COUNTY, FLORIDA AND PROVIDING GENERAL PUBLIC NOTICE AS TO POTENTIAL ISSUES UNDER THE *AMERICANS WITH DISABILITIES ACT* AND RELATED LAWS; PROVIDING FOR RECORDING OF THIS RESOLUTION IN THE PUBLIC RECORDS (LAND RECORDS) AND OTHER IMPLEMENTING ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. First Reading & Public Hearing.

Audience member Linda Toffolone explained that she had recently discovered that the Festhaus had to close due to an ADA lawsuit against them. The landlord refused to make any renovations to assist the tenant.

CMBR Politis explained that he had recently defended a few businesses regarding ADA claims.

CMBR POLITIS moved, seconded by CMBR FRIZALONE to adopt Resolution 2019-10 on first reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

7. Quasi-Judicial/Public Hearing - Consideration for extension of SPEX 12017006, WD Plaza LLC/Chuckles LLC

City Planner Stewart Cruz explained that the original Special Exception was granted in 2017 and allowed five one-year extensions. The facility solely supports the beach concession as an office and storage. The first extension was granted last year in 2018. Staff recommended approval for the second extension.

CMBR POLITIS moved, seconded by CMBR BRYAN to approve the extension of SPX 12017006.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

8. Quasi-Judicial/Public Hearing – Special Exception SPEX 12019011 Fantasy Island Resorts II, Mural Request

City Planner Stewart Cruz explained that the applicant was requesting to keep an “after the fact” mural that has been painted on two western facing walls of the resort. The murals in question are palm trees that are approximately 50 feet tall and 9 – 10 feet wide. City staff discovered the murals back in January and contacted Bluegreen Vacation Corporation. The application was submitted in March. Murals are not permitted in the “T Hotel/Motel” zoning district by right. Mr. Cruz explained that there are two criteria that must be met for the special exception, and they had been. The Planning & Zoning Board recommended approval with the condition of allowing city access.

CMBR BRYAN moved, seconded by CMBR LINDAUER to approve the Special Exception SPEX 12019011 for Fantasy Island Resorts II as presented with the proposed development order.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

9. Consideration of Nonconforming Sign Removal Grant -Island Beachwear 3154 S. Atlantic Avenue

City Planner Stewart Cruz provided background information on the grant application. It was turned in to the department in March and meets all the sign grant criteria. The applicant did receive three bids and prefers the one from Central Sign. Staff recommended approval on the condition that the sign meets all requirements of the City sign code and that the property in question shall not be the subject of any code enforcement violation prior to the distribution of City sign grant funds.

CMBR POLITIS moved, seconded by CMBR LINDAUER to approve the sign grant in the amount of \$3,900 to Island Beachwear.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

10. Discussion on citywide email listing

CMBR Lindauer stated that the new website would allow residents to have access to meeting agendas in advance once again. The residents must understand that their emails become public record. Vice Mayor Bryan explained that it had not been a problem in the past with the few email lists the city maintained. He would like to have a citywide email listing for all residents. He suggested an article in the next Pelican requesting the information. Information could be provided to ensure residents used strong filters in their email to prevent spam.

- 11. COUNCIL COMMENTS:** CMBR Lindauer inquired about a letter he received from CMBR Persis of Ormond Beach regarding dog protection. He asked that it be put on the next agenda for discussion. CMBR Frizalone provided an update on the weekly economic development meetings. He would like the council to hold a discussion on stricter enforcement for boarded up buildings and developing economic incentives for future businesses. The council decided to meet at 6:00 pm on June 11th for the discussion. He recently toured the old museum and will work with staff to ensure the contents are preserved. CMBR Lindauer asked for discussion on the museum contents and it will be placed on the June 25th agenda. Mayor Miller has toured the new dog park and she thanked staff for their hard work. Vice Mayor Bryan requested his comments be added to the minutes regarding written communications among council members outside of a regular council meeting.
- 12. AUDIENCE REMARKS/PUBLIC COMMENTS:** None.
- 13. ITEMS RECOMMENDED FOR THE NEXT AGENDA:** economic development group discussion, dog protection
- 14. ADJOURNMENT:** The meeting ended at 7:50 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB

TO BE INCLUDED VERBATIM IN THE MINUTES OF THE 28 MAY CITY COUNCIL MEETING - RICHARD BRYAN

There seems to have been confusion as to what I am asking the City Council to do with regard to potential written communications among council members outside of regular council meetings. Such written communications would be properly noticed and available to the public via the internet and would provide verbatim minutes.

I am merely asking the question of each council member: **"If such a capability is legal or becomes legal, would you find it useful in fulfilling your duties as a council member?"** It is clear that this is not a question of law but merely a solicitation of opinions as to whether the capability would be useful. **It is clearly not a proposal to implement such a capability before it is deemed legal** (e.g., through controlling case law or by a clarification or modification of the Sunshine Law by the FL legislature.)

Since this confusion has existed, I propose we delay asking the above question until another council meeting.

I had hoped that Lonnie and I could have good faith discussions as to the current state of the law with regard to such a capability so that I could better understand whether there was controlling law and, if so, what it said. He has not provided any controlling law that is "on-point" that addresses the capability. For now, I am assuming that such case law does not exist. Even if there were controlling law, the Legislature has to power to clarify or modify the Sunshine Law to make it clear that the capability is consistent with the Sunshine Law. It seems that they have already allowed digital communications to occur between state agencies (including the Governor and his Cabinet). It is possible that it would not be viewed as a big step to allow local governments to do so as well if that were desired by local boards. Furthermore, most FL state legislators must think an even broader capability is valuable to a legislative body since they carved out an exception to the Sunshine Law for themselves.

Sometimes an analogy is useful to aid understanding. I think the above question is analogous to asking "do you believe that women should have the right to vote?" before the 19th Amendment was passed. That is clearly not a legal question.

To avoid the ambiguity of phrases like "virtual meetings" and "digital communications" I have more specifically defined the capability below and in previous communications. This does not mean it would have to be implemented exactly as defined, but the definition is specific and has a "walk before you run" quality and provides for relatively easy implementation as well as easy ADA compliance.

The capability that I am defining is simply written communications among council members that the public can view at any time they wish. If you are familiar with blogs, the capability is like a blog with only the council members having the ability to contribute to the blog (text only for ease of ADA compliance). It would only be for discussion and not for decision making. It would be self-documenting as there would be verbatim minutes. It would be properly noticed. If a member of the public wants to send emails to one or more councilmembers, they would be free to do so as they are now.

My belief is that if I am to do my job of setting policy and providing oversight, the capability would be very useful. I believe that it would be very valuable to the other council members as well. It provides for thoughtful deliberation and the gathering of needed facts that is often not possible within the confines of a one- or 3-hour council meeting for complex issues. (I have asked more than half a dozen council members from other cities and they said it would be useful to them.)

Since there would be 24/7 access to the entire discussion, I think it provides much more "sunshine" than does the requirement to attend a 1-3-hour physical council meeting with minutes that capture a tiny portion of the discussion.

I think the time is long overdue to bring the Sunshine Law into the Internet Age.

Again I am merely asking that **we delay asking the question ("If such a capability is legal or becomes legal, would you find it useful in fulfilling your duties as a council member?") to another council meeting to allow time for the council members to consider how they would answer the question.**



CITY COUNCIL AGENDA MEMORANDUM JUNE 11, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Ordinance 2019-05 AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO PROCESSES, MEETING NOTICES, AGENDAS, OPEN GOVERNMENT AND MINUTES PERTAINING TO CITY BOARDS, COMMISSIONS OR COMMITTEES; PROVIDING FOR THE AMENDMENT OF SECTION 2-8, SECTION 14-62 THROUGH SECTION 14-64 AND SECTION 14-68 AND THE REPEAL OF SECTIONS 5-15, SECTION 8½-31 THROUGH SECTION 8½-34, SECTION 2-51 THROUGH SECTION 2-53 AND SECTION 14-70 OF THE CITY CODE OF THE CITY OF DAYTONA BEACH SHORES; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR PROCESSES AND PROCEDURES; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS AND RESPONSIBILITY FOR IMPLEMENTATION; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

SYNOPSIS:

This Ordinance provides for the re-organization of City appointed boards.

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

At present, an array of inconsistent, antiquated and unnecessary provisions relating to City boards, commissions and committees are spread out throughout the *City Code*. Additionally, vacancies on those bodies occur at inconsistent and non-uniform times throughout each year. A primary purpose of this Ordinance is to eliminate duplication of effort and non-uniform *City Code* provisions while abolishing bodies that do not provide cost-effective benefits to the citizens of the City and which require the dedication of City staff time that would be better directed toward other efforts to serve the public. The board reform process in the City of Sanford worked in a

manner that greatly benefitted that City. The enactment of this Ordinance should provide the Mayor and the City Council the enhanced ability to provide the citizens of the City with a responsive and accountable local government that meets the needs and expectations of the citizens while operating in a streamlined and economical manner.

For example, the requirement that boards, commissions and committees be created, to the maximum extent practicable, by means of resolutions and not ordinances avoids the codification of matters that are, by and large, administrative in nature and the significant costs that result from such codification. The resolutions creating the various boards, commissions and committees of the City that may be necessary and expedient to establish from time-to-time shall identify, at a minimum, the scope of authority, the membership, the term of existence and the processes and procedures to be implemented for the particular body. All such bodies shall be subject to the ethics laws of the State of Florida as well as the provisions of State law relating to public meetings and public records. Absent a specific provision set forth in a resolution creating such a body, the body shall not adopt independent bylaws or rules of procedure which sometimes involve jurisdiction expansion without authorization by the City Council. Also, the proposed Ordinance provides for the uniformity of terms office, the process relating to vacancies, removal from office, the appointment of officers, term limits, absences, alternate members, etc.

The Ordinance also provides for transitional provisions and other administrative matters that will be implemented by City staff.

RECOMMENDATION:

SUGGESTED MOTION:

I move to approve Ordinance 2019-05 on first reading.

ATTACHMENT: 1. Ord 2019-05 City Board reorganization 5-31-19 Ing

ORDINANCE 2019-05

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO PROCESSES, MEETING NOTICES, AGENDAS, OPEN GOVERNMENT AND MINUTES PERTAINING TO CITY BOARDS, COMMISSIONS OR COMMITTEES; PROVIDING FOR THE AMENDMENT OF SECTION 2-8, SECTION 14-62 THROUGH SECTION 14-64 AND SECTION 14-68 AND THE REPEAL OF SECTIONS 5-15, SECTION 8½-31 THROUGH SECTION 8½-34, SECTION 2-51 THROUGH SECTION 2-53 AND SECTION 14-70 OF THE *CITY CODE OF THE CITY OF DAYTONA BEACH SHORES*; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR PROCESSES AND PROCEDURES; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS AND RESPONSIBILITY FOR IMPLEMENTATION; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Daytona Beach Shores as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*; Chapter 166, *Florida Statutes*, and other applicable controlling law; and

WHEREAS, in this Ordinance, when text is being amended, ~~strikethrough~~—text represents deletions from the current text of the *Code of Ordinances of the City of Daytona Beach Shores* while underlined text represents deletions.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: LEGISLATIVE AND ADMINISTRATIVE FINDINGS AND INTENT.

(a). The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the recitals (whereas clauses) set forth herein as the legislative

Underlined text is added language to *City Code* and ~~strikethrough~~ text is deleted language to *City Code*.
When all new text is presented, no underlining is shown.

and administrative findings and intent of the City Council.

(b). The City Council of the City of Daytona Beach Shores hereby reaffirms its commitment to being a government that operates “in the Sunshine” for the benefit of its citizens and the general public.

(c). The provisions of this Ordinance are enacted pursuant to the statutory and home rule powers of the City of the City of Daytona Beach Shores to establish and maintain the appropriate operations of City to ensure the utmost engagement of the public in City decision making processes and transparency of actions for the benefit of the public.

(d). The City Council of the City of Daytona Beach Shores appreciates the public service provided by the members of the various City boards, commissions and committees and desires and directs that such bodies operate under normative and consistent administrative processes and procedures and receive the training and support that they require in order to accomplish the role and function of local government assigned to each such body.

(e). The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.

SECTION TWO. SUBSTANTIAL REVISION AND AMENDMENT TO SECTION 2-8, CODE OF ORDINANCES OF THE CITY OF DAYTONA BEACH SHORES RELATING TO ORGANIZATIONAL PROVISIONS PERTAINING TO CITY BOARDS, COMMISSIONS OR COMMITTEES. Section 2-8 of the *Code of Ordinances of the City of Daytona Beach Shores* is amended to read as follows:

Sec. 2-8. - General provisions relating to City Council appointed boards, commissions and committees and Council appointments.

(a). *Applicability.* This section applies to all boards, commissions or committees, except to the extent otherwise specified in Federal or State law or otherwise provided in this

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

Code. This Section shall not apply to any City canvassing board, as may be established from time-to-time, or any ad hoc City staff committee or ad hoc group of citizens accomplishing a specific purpose, but not acting in a governmental collegial nature; provided, however, that the provisions of State law relative to public records, public meetings, public notices, participation by the public, the creation and approval of minutes and similar procedural requirements shall be applicable as to all City activities involving collegial decision making or recommendations.

(b). *Positions; qualifications; residency.* Each member shall be appointed to a specific numbered position by the City Council. No member may be a paid or elected official or employee of the City. Absent a controlling provision in Federal, State, County or City law, ordinance, rule or regulation, every appointee must, at the time of appointment, be a resident of the City and an elector of Volusia County; provided, however, that this requirement may be waived by a fourth-fifths vote of the City Council if it is found in the best interests of the City to do so. A member who ceases to meet a requirement for qualification, shall be deemed to have resigned upon the failure to maintain the qualification for office and shall be replaced at any time thereafter by the City Council, but may continue to serve on an interim basis until a successor is qualified and appointed if the member's interim service is approved by a fourth-fifths vote of the City Council.

(c). *Terms.* Each position shall have a 3-year term of office with each beginning on October 1 of a calendar year. Each member appointed shall serve for the specific term, or the unexpired portion thereof, of the specific position to which the member is appointed. A qualified member shall also serve after the expiration of a term of office until a successor is appointed.

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

(d). *Vacancies.* In the event of death, resignation, removal from office or any other vacancy, a successor shall be appointed to serve the remaining unexpired portion of the specific term of office of the vacant position.

(e). *Removal.* The City Council may, by majority vote, remove a member for cause upon written charges after notice and public hearing by reason of (i) 3 unexcused absences within a 12-month period as determined by the City Council or (ii) misfeasance, malfeasance or dereliction of duty or such other conduct that provides for removal under a controlling provision of law.

(f). *Officers.* The City Council may, from time-to-time, designate one member as the presiding officer who shall serve until another presiding officer is designated. A chairperson and vice-chairperson shall be elected from the members at the first meeting of each calendar year and may serve in that capacity for no more than 2 consecutive terms unless service of more consecutive terms are approved by a fourth-fifths vote of the City Council.

(g). *No compensation.* Members shall receive no compensation for their services, but may be reimbursed for travel and other expenses associated with their duties.

(h). *Quorum.* A quorum is half the number of the voting membership, including alternate members who are participating as voting members, of the board, commission or committee. The only appropriate action in the event of a non-quorum is to continue the meeting; provided, however, that the attending members of the body may discuss matters of a non-quasi-judicial nature and matters that are not, and will not be, the subject of a noticed public hearing. Continuances of meetings and hearings may be accomplished administratively without the vote

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

of a quorum due to inclement weather conditions, emergency circumstances and administrative necessity when the Chairperson of the body concurs in such action proposed by City staff and, in such circumstances, a designated member of City staff shall attend the meeting, if possible, and announce a continuance of the meeting or hearing to a date that is approved by the Chairperson. In the event of the unavailability of the Chairperson to make decisions as set forth in this Subsection, the Vice-Chairperson or, if no Vice-Chairperson is in office, the member with the longest service on the body shall make such determinations. In the event of a continuance under the provisions of this Subsection, City staff shall take all reasonable and appropriate actions to notice the meeting or hearing and to ensure that all affected parties are advised of the new date of the meeting or hearing.

(i). Term limits. No member shall serve more than 3 consecutive terms on the same board, commission, or committee unless service of more consecutive terms are approved by a fourth-fifths vote of the City Council.

(j). Absences. Each regular member and each alternate member shall notify the designated City staff liaison when it is anticipated that the member will be absent from a meeting. At the meeting, the body may vote to excuse the absence provided that the staff liaison was notified at least 24 hours prior to the scheduled meeting; provided, however, that less notice will be acceptable in the event of exigent circumstances facing the member and causing the absence.

(k). Alternate members. In addition to appointing regular members, the City Council may also appoint alternate members in such numbers as it deems appropriate to serve in the

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

event of absences by regular members. Alternate members shall have all of the rights and privileges of regular members and shall be subject to the same requirements as regular members. Alternate members may attend all meetings of the body to which appointed, but may only vote when filling the position of an absent member either for an entire meeting or a particular vote or set of votes at a meeting depending upon the duration of the absence of a member; provided, however, that once a member is absent from a meeting, that member shall not regain his or her seat on the body unless a quorum is lacking in the meeting subsequent to his or her absence. Alternate members shall not participate in the debate on matters that are quasi-judicial in nature when not sitting as a voting member, but the chairperson, in his or her discretion, may permit participation of alternate members when matters are advisory in nature. Alternate members may serve in the absence of a member of the body whether for an entire meeting or for a particular vote or set of votes at a meeting. If more than one alternate is appointed to a body, they shall serve in a rotational method or by means of the order of appointment if no rotation has been established with the first appointed alternate member serving first. It is the duty of members to advise the staff liaison of their expected absence from a meeting as early as possible.

(l). *Method of creation.* Advisory bodies shall be created by resolution as opposed to ordinance except in unusual circumstances or in the event that controlling law requires otherwise.

(m). *Rules of procedure.* All proceedings shall be guided by the latest edition of Roberts Rules of Order in a manner which allows the body to function in an organized manner, but without technical adherence thereto. Motions for reconsideration may only be heard at the

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

next session of a body occurring after the meeting at which the vote desired to be reconsidered occurred. Any member of the body, regardless of whether he or she voted at the prior meeting, may move for reconsideration provided that such moving member did not vote on the non-prevailing side at the prior meeting with regard to such vote. If a matter that was determined at an advertised public hearing is later determined to be reconsidered, public notice shall be published consistent with the requirements that were applicable when the vote that is to reconsidered was taken and an explanation of the reconsideration process shall be incorporated into the public notices relating to the matter.

(n). *Bylaws; applicable laws.* Unless otherwise empowered by Federal, State, County or City law, ordinance, rule or regulation, no bylaws shall be adopted by the body and matters within the jurisdiction of the body shall be implemented in accordance with the provisions of the creating *City Code* provision, ordinance or resolution. The provisions of Florida law relating to public records, public notices, participation by the public, the creation and approval of minutes and public meetings shall apply to all City board, commissions and committees except to the extent explicitly provided otherwise in state law. If Federal law requires certain processes and procedures, then the board, commission or committee subject to such requirement, shall ensure that full compliance is maintained. All actions and activities of each body shall be accomplished in full compliance with the requirements of open and transparent government under the guidance of the City Attorney who shall also guide and direct adherence to the requirements of law relative to quasi-judicial proceedings of all bodies. The City Clerk shall endeavor to maximize public notice of meetings and hearings of the City as well and public information relative to the

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

actions taken at such meetings and hearings to include, but not be limited to, the use of technology for the provision of notices and records relating to the boards, commissions or committees of the City insofar as practicable.

(o). *Staff support; compliance with controlling law.* The City Manager shall provide staff support and other operational support to a board, committee or commission consistent with a determination as to the needs of the body and the availability of staff and other resources. The City Attorney shall provide legal guidance to all boards, committees, and commissions to ensure that each body, in accordance with the processes and procedures promulgated by the City Clerk, provides approved and executed minutes for each meeting, that all agendas and minutes comport with controlling law, that public participation is allowed in all appropriate circumstances and that the controlling provisions of law relating to open government are honored and respected. The City Manager shall be responsible for appointing a City staff liaison for each board, commission or committee. Designated staff liaisons are authorized to provide support and assistance for each board, commission or committee, including expenditures budgeted for that purpose. The City Council may require a report of the activities of a body at any time.

(p). *Permanent bodies.* The following boards of the City of Daytona Beach Shores currently exist in accordance with the provisions of this Code and other controlling law:

(1). *Planning and Zoning Board.*

(2). *Board of Adjustments.*

(q). *Other bodies.* Other boards, committees, and commissions, by whatever name (such as task forces) may be created or appointed from time-to-time under authority of the City

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

Council and their actions shall be subject to the provisions of this Code and controlling State law relative to the noticing of hearings/meetings and the maintenance of minutes of such activities unless the body is an ad hoc body of volunteers functioning in a manner which operates a program or event.

(r). *Transitional provision; repealers; amendments.*

(1). Commencing on the effective date of this Ordinance, all members of City bodies shall continue to serve in their appointed capacity. If consistent with the requirements of State law, each appointed member whose appointment is made after the term of a current member concludes, shall be appointed for a term of office which terminates on September 30 of a year and, in the event that a term in excess of the normative term is necessary to provide for such termination date with the appointee serving a full term, then the initial term of appointment to establish such termination date shall be for a term in excess of the normative term duration which will end on the following September 30. It is permissible if the result of this transitioning provision results in non-staggering terms notwithstanding any other provision of the *City Code* to the contrary.

(2). All provisions of Section 5-15 of the *Code of Ordinances of the City of Daytona Beach Shores* relating to the Beautification Advisory Board are hereby repealed; provided, however, that the members of that Board shall continue in service as the Public Arts and Beautification Committee as created by resolution of the City Council. Further, all provisions of the *Code of Ordinances of the City of Daytona Beach Shores* are hereby repealed which relate to the Board with regard to land development regulation within the City.

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

(3). All provisions of Section 8½-31 through Section 8½-34 of the Code of Ordinances of the City of Daytona Beach Shores relating to the Culture and Entertainment Board are hereby repealed and all funds appropriated to that Board, which are not encumbered, shall be transferred to fund the programs and projects of the City's Community Center.

(4). Section 2-51 through Section 2-53 of the Code of Ordinances of the City of Daytona Beach Shores relating to the Planning and Zoning Board are hereby repealed; provided, however that the following Sections of the Code of Ordinances of the City of Daytona Beach Shores are amended as follows:

Sec. 14-62. - Creation of the planning and zoning board.

The City Council establishes a planning and zoning board which shall consist of five (5) members to be known as "The Daytona Beach Shores Planning and Zoning Board." The jurisdiction of the said planning and zoning board shall be throughout the incorporated areas of the City. ~~The board members shall be appointed for a term of three (3) years and shall serve at the pleasure of the city council; provided, however, that initial appointments shall be made as follows: two (2) members shall be appointed for a term of one (1) year; two (2) members shall be appointed for terms of two (2) years; and one (1) member shall be appointed for a term of three (3) years. Not less than three (3) board members shall be residents of Daytona Beach Shores and the remaining regular and alternate members must directly or indirectly own real property in the City. In the event an appointed member moves outside the City which results in less than three (3) resident members or a nonresident member no longer directly or indirectly owning real property in the City, a vacancy shall be said to exist and a reappointment to such position made.~~

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

~~The City Council may appoint two (2) alternate members to the Planning and Zoning Board, who shall serve three (3) year terms. Alternate members shall be governed by section 2-8 of the Code of Ordinances, including the two (2) consecutive term limitation. Alternate members attending a board meeting shall have the right to participate as a regular member except that an alternate member cannot vote unless the alternate is sitting for an absent or disqualified regular member. Alternate members not sitting at the dais for an absent or disqualified regular member, shall sit at the staff table during the board meeting.~~

Sec. 14-63. -Planning and zoning ~~Zoning~~ board functions, powers and duties.

The functions, powers and duties of the planning and zoning board shall be as follows:

1. Acquire and maintain such information and materials as are necessary to an understanding of past trends, present conditions and forces at work to cause changes in these conditions. Such information and material may include maps and photographs of manmade and natural physical features of the area concerned, statistics on past trends and present conditions with respect to the population, property values, economic base, land use, environmental impact and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the area and its various parts and necessary protection therefor.

2. Recommend principles and policies for guiding action in the development and protection of Daytona Beach Shores.

3. Hear requests, whether initiated by the commission or otherwise, for creation of new zoning classifications or changes or amendments in the zoning regulations or zoning

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

classifications, or for new or different uses in any zoning classification, and to make recommendations to the City Council concerning the same.

4. Serve as the City's Local Planning Agency pursuant to Section 163.3174, *Florida Statutes*, and have all powers set forth therein.

Sec. 14-64. - General rules of procedure.

1. ~~The board shall elect a chairman, vice chairman and secretary among its members.~~

2. ~~The board shall meet at regular intervals to be determined by it in order to carry out its responsibilities, and at such other times as the board shall determine. It shall adopt such rules as are consistent with this ordinance for the transaction of its business and keep a properly indexed record of its resolutions, transactions, findings and determinations, which records shall be public. Such rules shall become effective upon approval of the City Council.~~

2. 3. The A quorum shall be necessary before the board can vote on any matter. A quorum shall consist of three (3) members. However the affirmative vote of three (3) members shall be required to take any action as to make any recommendation to the City Council.

4. ~~The City Manager, or other designated alternate, shall be responsible for taking the minutes, maintaining the records and preparing reports for the Planning and Zoning Board.~~

(4). Section 14-70 of the *Code of Ordinances of the City of Daytona Beach Shores* relating to the Board of Adjustments is hereby repealed and Section 14-68 of the *Code of Ordinances of the City of Daytona Beach Shores*, relating to that Board, is hereby amended to read as follows:

Sec. 14-68. - Board of adjustments created; composition.

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.
When all new text is presented, no underlining is shown.

1. The Board of Adjustments shall be made up of five (5) members and such alternate members as appointed by the City Council. ~~All members shall be appointed by the City Council. No member of the Board of Adjustments shall be a paid or elected official or employee of the City of Daytona Beach Shores. At least three (3) members of the Board of Adjustments shall be residents of the City of Daytona Beach Shores and the others shall be real property taxpayers of the City. The City Council may appoint not more than two (2) alternative members, designating them as such and these alternative members shall be residents or real property taxpayers of the City. These alternative members may act in the temporary absence or disability of any regular member or may act when a regular member is otherwise disqualified in a particular case that may be presented to the Board.~~
2. ~~Members of the Board of Adjustments shall serve for overlapping terms of not less than three (3), nor more than five (5), years thereafter until their successors are appointed. One (1) member shall serve for five (5) years, two (2) members for four (4) years, and two (2) members for three (3) years. Any vacancy occurring during the unexpired term of office of any member shall be filled by the City Council for the remainder of the term. Such vacancies shall be filled within thirty (30) days after the vacancy occurs.~~
3. ~~The Board of Adjustments shall elect a chair and a vice chair from among its members. The terms of all such officers shall be for one (1) year with eligibility for reelection without limitation.~~

Sec. 14-70. -- Procedure, board of adjustments.

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

~~The Board of Adjustments may establish such procedures as it deems necessary for hearing matters before it in accordance with the controlling provisions of law relative to administrative due process under the guidance of the City Attorney.~~

{Editor's Note: The following is the deleted text from the current Section 2-8/:

~~(1) — Terms of office.~~

~~(a) — Members shall serve with no limit to number of terms, subject to the approval of the city council for future appointments.~~

~~(b) — A member shall not serve on more than one board at a time. A "board" shall mean any board created by the City of Daytona Beach Shores ordinances or resolutions.~~

~~(c) — The term limitation set forth in subparagraph (a) above shall only apply to consecutive terms as a regular member of a board or as an alternate member of a board. Said term limitation shall not prohibit an alternate member from serving as a regular member or a regular member from serving as an alternate member even though the combined consecutive terms would exceed the above limitation.~~

~~(2) — Attendance. The Charter of the City of Daytona Beach Shores governs the council's attendance as follows:~~

~~"Absence from three consecutive regular meetings of the council shall operate to vacate the seat of a member unless a leave of absence is first granted by the council or such absence is excused by the council by motion setting forth the fact of such excuse, duly entered in the minutes."~~

~~The members of the board shall adhere to the same standards of attendance as stated for council members.~~

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

~~Board members shall submit a request for leave of absences or request for the excusal of absence to the city manager for placement on the council agenda when three absences are anticipated.~~

~~(3) — Chairman.~~

~~(a) — Each board shall annually elect its chairman and vice-chairman from among its members. While preference should be given to those members who have had a minimum of one year's service on the board, the board may elect as its chairman a member with less than one year's service on the board. The chairman shall serve a term of one year and may not serve more than two consecutive terms as chairman on the same board.~~

~~(b) — The board chairman or his designee shall attend one monthly regularly scheduled meeting of the city council.~~

~~(c) — The chairman's duties shall also apply to the position of vice-chairman when serving in the chairman's absence.~~

~~(4) — Orientation.~~

~~(a) — Upon acceptance of appointment to a city board or multi-jurisdictional board, each new board member shall be required to attend an orientation session. This orientation session will acquaint the new members with items such as, but not limited to the following:~~

~~History and organization of city government and of the applicable city or multi-jurisdictional board;~~

~~Responsibilities of board members;~~

~~Explanation of "Government in the Sunshine" and Financial Disclosure Laws; and~~

~~Presentation of the city's growth management plan and its relationship to all boards.~~

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

~~(b) — The city council encourages the departments and agencies providing guidance and staff support to each respective board or commission to provide initial and ongoing orientation assistance for the board members.~~

~~(5) — Annual report. Each board shall prepare an annual report on its activities and provide said report to the city council by September 30th of each year.~~

SECTION THREE: IMPLEMENTING ADMINISTRATIVE ACTIONS.

The City Manager, City Clerk and City Attorney are hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to bring into effect the provisions of this Ordinance and to provide support, training and guidance to the boards, commissions or committees of the City as such Charter officials may deem appropriate in their respective roles and functions under the *City Charter* and, further, to agendaize matters before a Code Enforcement Special Magistrate in accordance in accordance with the needs of the City.

SECTION FOUR: SAVINGS; EFFECT OF ORDINANCE.

The prior actions of the City of Daytona Beach Shores in terms of the matters relating to the operations of boards, commissions and committees, within the City of Daytona Beach Shores and any and all actions of the City of Daytona Beach Shores pertaining thereto, as well as any and all related matters and processes and procedures of the City of an associated nature, are hereby ratified and affirmed.

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.

SECTION FIVE: CODIFICATION; SCRIVENER'S ERRORS.

(a). The provisions Section Two of this Ordinance be codified while the remaining sections shall not be codified; provided, however, that the Code codifier shall take all actions necessary to implement the provisions of this Ordinance.

(b). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

SECTION SIX: CONFLICTS.

All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION SEVEN: SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION EIGHT: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY J. MILLER, MAYOR

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.
When all new text is presented, no underlining is shown.

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

LONNIE GROOT, CITY ATTORNEY

Passed on first reading this __ day of _____, 2019.

Adopted on second reading this ____ day of _____, 2019.

Underlined text is added language to *City Code* and strikethrough text is deleted language to *City Code*.

When all new text is presented, no underlining is shown.



CITY COUNCIL AGENDA MEMORANDUM
JUNE 11, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council

FROM: Michael Booker, City Manager

PREPARED BY: Jan McMahan, Exec. Assistant

SUBJECT: Select Voting Delegate for Florida League of Cities Conference, August 15-17, 2019

SYNOPSIS:

The Florida League of Cities Annual Conference will be held in Orlando, FL, on August 15-17, 2019. Each City designates one official to be the voting delegate. Election of League leadership and adoption of resolutions are undertaken during the business meeting. One official from each municipality will make decisions that determine the direction of the League.

FISCAL IMPACT STATEMENT:

None

BACKGROUND:

LEGAL REVIEW:

RECOMMENDATION:

SUGGESTED MOTION:

Motion to select City Council member to serve as the voting delegate to the Florida League of Cities Annual Conference in Orlando, FL, on August 15-17, 2019.

ATTACHMENT: None



CITY COUNCIL AGENDA MEMORANDUM JUNE 11, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council
FROM:
PREPARED BY: Cheri Schwab, City Clerk
SUBJECT: Discussion on dog protection against tethering

SYNOPSIS:

CMBR Lindauer requested this item be added to the agenda. The City of Ormond Beach recently adopted the attached Ordinance.

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

During the recently ended Legislative Session, Committee Substitute for Senate Bill 1738 (copy attached) was introduced, but failed to pass. The bill would have provided law enforcement the ability to charge people with animal cruelty if they restrained their dogs outside and left them unattended during disasters, such as hurricanes or tornadoes. The violation would have been a first-degree misdemeanor, punishable by up to a year in prison or a fine of up to \$5,000.

The legislation defined its salient terms as follows:

- (a). Man-made disaster: "A situation in which a person has received notice from a local or governmental authority that an event attributed in part or entirely to human intent, error, or negligence, or involving the failure of a manmade system, which results in significant damage has occurred, is occurring, or may soon occur in the person's vicinity"
- (b). Natural disaster: "A situation in which a hurricane, tropical storm, or tornado warning has been issued for a municipality or a county by the National Weather Service, or the municipality or county is under a mandatory or voluntary evacuation order"
- (c). Restraint: "A chain, rope, tether, leash, cable, or other device that attaches a dog to a stationary object or trolley system."

The City Council could, of course, engage in action by enacting an ordinance similar to the Ormond Beach ordinance. Or, it could urge the Florida Legislature to enact appropriate legislation to address the issue of tethering in a comprehensive and statewide manner. The provisions of Chapter 828, *Florida Statutes*, relating to animals: cruelty; sales; animal enterprise protection, although addressing an

array of prohibitions, do not specifically address tethering.

RECOMMENDATION:

SUGGESTED MOTION:

- ATTACHMENT:**
1. OB ord on tethering animals
 2. CS for SB 1738

ORDINANCE NO. 2019-12

AN ORDINANCE AMENDING SECTION 5-1, DEFINITIONS, AND SECTION 5-5, CRUELTY, OF CHAPTER 5, ANIMALS AND FOWL, ARTICLE I, IN GENERAL, OF THE CODE OF ORDINANCES OF THE CITY OF ORMOND BEACH BY PROHIBITING THE TETHERING OF ANIMALS; PROVIDING EXCEPTIONS AND CONDITIONS FOR THE HUMANE TETHERING OF ANIMALS; PROVIDING FOR ENFORCEMENT; PROVIDING PENALTIES FOR VIOLATORS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

WHEREAS, the City of Ormond Beach desires to protect animals from abuse and neglect; and

WHEREAS, the improper and unsafe tethering of animals is a form of abuse or neglect, and

WHEREAS, the improper and unsafe tethering of animals may place them in harm's way, including the risk of injury or death; and

WHEREAS, tethered animals that are left unattended without supervision may show increased aggressiveness; and

WHEREAS, the city commission of the city of Ormond Beach hereby finds that it will serve the best interests of the general health, safety and welfare of the community to adopt regulations that will prevent abuse and neglect of animals by prohibiting the tethering of animals except as otherwise allowed under certain conditions; now therefore,

BE IT ENACTED BY THE PEOPLE OF THE CITY OF ORMOND BEACH, FLORIDA, THAT:

SECTION ONE. Section 5-1, Definitions, of Chapter 5, Animals and Fowl, Article III, Dogs and Cats; Other Animals, of the City of Ormond Beach, *Code of Ordinances*, is hereby amended to add the following definitions:

Sec. 5-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Tether shall mean a trolley cable, cord, rope, chain, strap, or any other linear thing that restrains, limits or confines the free unimpeded movement of a dog, cat, or other animal to a limited space or area.

Tethering or tethered shall mean the act of affixing or attaching a tether to a dog, cat, or other animal. The act of "tethering" shall not include the use of a leash or other restraint when utilized by a person while walking or exercising a dog, cat, or other animal; nor shall it include commercial safety restraint devices that are designed for use in vehicles for the protection of animals while they are being transported from one location to another.

[... all other definitions remain unchanged ...]

SECTION TWO. Section 5-5, Cruelty, of Chapter 5, Animals and Fowl, Article III, Dogs and Cats; Other Animals, of the City of Ormond Beach, Florida, *Code of Ordinances*, is hereby amended to read as follows:

Sec. 5-5. Cruelty; tethering of animals prohibited; exceptions.

- (1) No person shall unnecessarily overload, overdrive, torment, deprive of necessary sustenance or shelter, or unnecessarily or cruelly beat, mutilate, or kill any animal, or cause the same to done, or carry in or upon any vehicle, or otherwise, any animal in cruel or inhumane manner.
- (2) No person shall tether a dog, cat, or other animal on private property except as allowed in accordance with the following conditions:
 - (a) The tether must be made of a material, thickness, size, strength, and weight that is reasonable to safely secure the dog, cat, or other animal without placing or causing excessive strain or stress on the animal.
 - (b) Each end of the tether must have affixed to it a closed-end spring clip, carabiner clip, coupling, or other type of closed-end clip that is securely affixed to a

swivel or pivot, all the components of which are made of high-strength metal, steel or composite material, and that allows the ends of the tether to freely rotate 360 degrees.

- (c) The tether shall be at least five feet in length and no more than ten feet in length.
- (d) The tether shall be no higher in elevation than the height of the tethered animal.
- (e) One end of the tether must be securely attached to a commercially designed pet tie-out stake, commonly referred to as a spiral ground anchor or ground corkscrew, or some other commercial or non-commercial device that allows a tethered dog, cat or other animal to freely walk or move about the tie-out stake or device in a circular manner. The other end of the tether must be securely attached to the animal's collar or harness.
- (f) The pet tie-out stake or device and tether must be placed in a location that prevents the dog, cat, or other animal from becoming entangled with objects or other tethered animals, and must not be placed in a location that prevents the tethered animal from accessing water, dry ground, shade, or shelter.
- (g) The dog, cat, or other animal must at all times be provided clean water, dry ground, and shelter for protection from the sun, hot and cold weather, rain, and other inclement weather events.
- (h) The dog, cat, or other animal shall not be tethered in extreme weather conditions, which shall be defined as being hot weather in excess of eighty-five degrees (85°), cold weather lower than fifty degrees (50°), thunderstorms, lightning, hail, hurricanes, tornados, tropical storms, flood waters, winds in excess of twenty miles per hour, and other natural and manmade calamities.
- (i) The dog, cat, or other animal must at all times be accompanied while outside by, and be within visual range of, its owner or other person who is responsible for supervising the tethered animal, except that a tethered animal may be left unattended for short periods of time not to exceed thirty minutes in duration.
- (j) In no event shall the owner or other person who is responsible for supervising the animal leave the property while the dog, cat, or other animal is tethered outside.
- (k) A dog, cat, or other animal may never be tethered on unoccupied, vacant, or abandoned property.
- (l) A dog, cat, or other animal may never be tethered or left unattended inside any structure that is unsafe, dilapidated, or has been abandoned.
- (m) The dog, cat, or other animal must be at least six months of age; and must not be sick, injured, or afflicted with contagious disease.
- (n) If multiple dogs, cats, or other animals are to be tethered, each animal must be tethered separately from the others, and tethered in a location that prevents them from becoming entangled with the other tethered animals.
- (o) Tethering shall be prohibited between the hours of dusk and dawn.
- (p) Tethering on public property shall be prohibited at all times.

- (3) Violations of this section shall be subject to enforcement in accordance with the special master code enforcement system as provided in chapter 2, article VII of this Code and/or criminal prosecution as provided by section 828.12, Florida Statutes, if applicable.

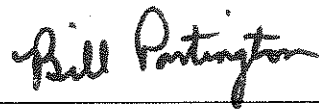
SECTION THREE. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION FOUR. Any section, paragraph, sentence, clause and phrase of this Ordinance is severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION FIVE. This Ordinance shall take effect immediately upon its adoption.

PASSED UPON at the first reading of the City Commission, this 2nd day of April, 2019.

PASSED UPON at the second and final reading of the City Commission, this 7th day of May, 2019.



BILL PARTINGTON
Mayor

ATTEST:



COLBY CILENTO
City Clerk

By the Committee on Agriculture; and Senator Gruters

575-03188-19

20191738c1

A bill to be entitled
An act relating to animal welfare; amending s.
474.2165, F.S.; authorizing a veterinarian to report
suspected patient criminal violations to certain
officers and agents without notice to or authorization
from a client under specified circumstances; providing
an exception; prohibiting the report from including
written medical records except under certain
circumstances; amending s. 828.12, F.S.; prohibiting a
person from restraining a dog outside and unattended
during a manmade disaster or a natural disaster;
providing a criminal penalty; providing a fine;
defining terms; creating s. 828.261, F.S.; authorizing
a contract for the sale of a horse to include a
covenant for the continuing care of the horse;
providing requirements for such a covenant;
authorizing the Department of Agriculture and Consumer
Services to adopt rules that meet certain
requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 474.2165, Florida
Statutes, is amended to read:

474.2165 Ownership and control of veterinary medical
patient records; report or copies of records to be furnished.—

(4) Except as otherwise provided in this section, a
veterinarian may not furnish written patient medical ~~such~~
~~records may not be furnished to,~~ and may not discuss the medical

575-03188-19

20191738c1

condition of a patient ~~may not be discussed~~ with, any person other than the client or the client's legal representative or other veterinarians involved in the care or treatment of the patient, unless the veterinarian has received ~~except upon~~ written authorization of the client. However, such records may be furnished without written authorization under the following circumstances:

(a) To any person, firm, or corporation that has procured or furnished such examination or treatment with the client's consent.

(b) In any civil ~~or criminal~~ action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and ~~proper~~ notice to the client or the client's legal representative by the party seeking such records.

(c) In any criminal action or a situation where a veterinarian suspects a criminal violation. If criminal violation is suspected, a veterinarian may, without notice to or authorization from the client, discuss the condition of the patient with and report the violation to a law enforcement officer, an animal control officer who is certified pursuant to s. 828.27(4)(a), or an agent appointed under s. 828.03. However, if a suspected violation occurs on a commercial food-producing animal operation on land classified as agricultural under s. 193.461, the veterinarian must provide notice to the client or the client's legal representative before reporting the suspected violation to an officer or agent under this paragraph. The report may not include written medical records except upon the issuance of an order from a court of competent jurisdiction.

(d) ~~(e)~~ For statistical and scientific research, provided

575-03188-19

20191738c1

the information is abstracted in such a way as to protect the identity of the patient and the client, or provided written permission is received from the client or the client's legal representative.

Section 2. Present subsection (6) of section 828.12, Florida Statutes, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

828.12 Cruelty to animals.—

(6) A person who leaves a dog outside and unattended by use of a restraint during a manmade disaster or a natural disaster commits animal cruelty, a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than \$5,000, or both. As used in this subsection, the term:

(a) "Manmade disaster" means a situation in which a person has received notice from a local or governmental authority that an event attributed in part or entirely to human intent, error, or negligence, or involving the failure of a manmade system, which results in significant damage has occurred, is occurring, or may soon occur in the person's vicinity.

(b) "Natural disaster" means a situation in which a hurricane, tropical storm, or tornado warning has been issued for a municipality or a county by the National Weather Service, or the municipality or county is under a mandatory or voluntary evacuation order.

(c) "Restraint" means a chain, rope, tether, leash, cable, or other device that attaches a dog to a stationary object or trolley system.

Section 3. Section 828.261, Florida Statutes, is created to read:

575-03188-19

20191738c1

88 828.261 Ongoing horse care covenants.—

89 (1) Notwithstanding any other provision of law, a contract
90 for the sale of a horse may include a covenant for the
91 continuing care of the horse, subject to the following
92 provisions:

93 (a) The obligations under the covenant may be provided by a
94 third party that is obligated to provide services and care to an
95 animal that is retired from ownership, for an actuarially
96 appropriate charge, and is not subject to chapter 624.

97 (b) A covenant is valid and annexed to the horse, runs with
98 the horse, and is binding and enforceable upon the purchaser and
99 all future subpurchasers.

100 (c) A covenant must require notice, in writing, before
101 purchase of any subsequent purchaser and must be acknowledged in
102 writing by all such subsequent purchasers, before consummation
103 of the purchase of a covered horse.

104 (d) A covenant may include liquidated damages for failing
105 to comply with the provisions of the covenant.

106 (e) A covenant must allow any owner to retire the horse
107 into the care and treatment of the third party provider of
108 services under the covenant.

109 (2) An owner is not required to include a covenant for the
110 continuing care of a horse in a contract for the sale of the
111 horse and a purchaser is not required to purchase a horse that
112 includes such a covenant.

113 (3) The Department of Agriculture and Consumer Services may
114 adopt rules adopting the American Association of Equine
115 Practitioners care guidelines for equine rescue and retirement
116 facilities and may include additional standards for the ethical

575-03188-19

20191738c1

117 treatment of horses by third party providers of a covenant for
118 the continuing care of the horse. The rules must:

119 (a) Require third party providers to make available a
120 request hotline during normal business hours to be used by an
121 owner that voluntarily decides to retire a horse and effectuate
122 its care under a covenant.

123 (b) Include provisions for the appropriate diet, shelter,
124 pasture, and medical care of horses that are retired under this
125 section.

126 (c) Allow all prior owners of a horse to have notice of the
127 retirement of the horse, along with the address where the horse
128 will be cared for, and the ability to visit the horse during
129 normal business hours 7 days a week.

130 (d) Require submission of an actuarial report and evidence
131 indicating the maintenance of adequate reserves by a third party
132 provider to adequately care for a horse subject to a covenant
133 under this section.

134 (4) This section does not create any covenants that annex
135 to or travel with any other chattel.

136 Section 4. This act shall take effect July 1, 2019.



CITY COUNCIL AGENDA MEMORANDUM JUNE 11, 2019 AGENDA

TO: Honorable Mayor and Members of the City Council
FROM: Michael Booker, City Manager
PREPARED BY: Cheri Schwab, City Clerk
SUBJECT: Discussion on creating an Economic Development Group

SYNOPSIS:

In an effort to be inclusive, yet flexible, I suggest that an economic development group be formed to provide guidance and advice regarding possible City efforts to foster business growth. I believe this will be best accomplished with an informal group that can operate freely and discuss openly potential alternatives which may be of benefit to our overall ED strategy.

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

The activities of an ad hoc group of citizens relative to civic issues does not implicate the Sunshine Law and the mandatory requirements of controlling State law relating to meeting notices, meeting minutes and public participation. The group would, on the other hand, have no legal standing. Many jurisdictions have economic development advisory committees and the like which are created as legal bodies under the governance of the respective county or city governing body. The reason for that is to provide some legal standing when the body makes recommendations, participates in funding opportunities and the like. Some jurisdictions which started out with ad hoc groups of citizens have later moved to creation of a formal body. The Sanford City Manager, for example, recently formalized the creation of such a body. Some provisions of State law require such a body when a county or city takes certain actions. All the above being said, this is a policy decision of the City Council and the City Council should carefully consider this important decision.

RECOMMENDATION:

SUGGESTED MOTION:

ATTACHMENT: None



**CITY COUNCIL AGENDA MEMORANDUM
JUNE 11, 2019 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Discussion of City Attorney Memo dated May 28, 2019 regarding music licensing, 50/50 raffles and city contracts.

SYNOPSIS:

CMBR Lindauer requested this item be added to the agenda.

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

The City Attorney issued a legal memorandum which is attached and no additional comments are needed at this time.

RECOMMENDATION:

SUGGESTED MOTION:

ATTACHMENT: 1. Memo Re Contracts Etc.-LNG-5-25-19



Legal Memorandum

To: Mike Booker City Manager
Copies To: Honorable Mayor and Members of the City Council
Cheri Schwab, City Clerk
Kurt Swartzlander; Director of Finance
From: Lonnie N. Groot, City Attorney
Date: May 28, 2019
Subject: Music, Etc. Licensing; "50/50" Raffles; City Contracts; Related Matters

(A). PURPOSE OF MEMORANDUM:

The purpose of this memorandum is to

- (1). Specifically address, as requested, the email inquiry that was transmitted relative to the legal issues relating music, etc., licensing (please see prior email just transmitted to you); and
- (2). Specifically address, as requested, the legalities of "50/50" raffles vis-à-vis the City; and
- (3). Generally address issues relative to City contracts and preventative law matters.

I will attempt to be concise in this communication, but the above subjects, particularly the general matter relative to contracts, are not easy subjects to address in a concise manner.

Initially, I do want to state that I view our City family as a true family in which issues can be candidly addressed. Thus, nothing that I state should be considered as criticizing others although I might have a position that is different from those of others. My goal is to express my views, as I must as a professional, and let policy makers and administrators make their decisions with whatever degree of agreement with my views as they may deem appropriate and whatever degree of legal risk and vulnerability they desire to undertake and accept.

Mark Twain once referred to contracts as "'chloroform in print.'" Accordingly, I do not expect this writing to be gripping to you although it relates to very important issues.

In advance, thank you for your attention to the matters and policy issues addressed below.

B. MUSIC, ETC. LICENSES:

The City recently received the communication from Michele McKinney of the American Society of Composers, Authors and Publishers (ASCAP) which was attached to the prior email that I just sent to you prior to the email that transmitted this legal memorandum to you. The inquiry relates to the licensing of music such as music played at City concerts.

ASCAP and Broadcast Music Inc. (BMI), Pro Music Rights, Global Music Rights and Society of European Stage Authors and Composers (SESAC) are performing rights organizations. In the music industry, a music publisher (performing rights organization or publishing company) is responsible for ensuring the songwriters and composers receive payment when their compositions are used commercially. They collect license fees on behalf of songwriters, composers, and music publishers and distribute them as royalties to those members whose works have been performed. Through an agreement called a publishing contract, a songwriter or composer "assigns" the copyright of their composition to a publishing company (performing rights organization). In return, the company licenses compositions, helps monitor where compositions are used, collects royalties and distributes them to the composers. They also secure commissions for music and promote existing compositions to recording artists, film and television. For example, it was reported that in 2018 BMI collected \$1.199 billion in licensing fees and distributed \$1.12 billion in royalties resulting from BMI's repertoire which includes over 900,000 songwriters and 14 million compositions.

ASCAP contacted the City to seek the City to license music which ASCAP controls in order that artists will be paid for their works commercially performed or used by others at City venues.

Only recently, at my urging, were City contract forms being used that provide that it is the obligation of the band or performing artist(s) to obtain approval to perform the songs, etc. that they would perform. However, recently, Ms. Deborah Carothers of the Silver Creek group wrote to the City and stated as follows:

In my previous email to Kim I said that "copyright laws have nothing to do with performance", but had previously added "unless you are referring to BMI or ASCAP licensing." The article you sent pertains to ASCAP and BMI licensing of copyrighted music. **As I mentioned in my previous email to Kim, if the copyright provision in the contract pertains to the payment of licensing fees, the venue at which the music is performed is responsible for paying for licensing, not the entertainer.** The licensing agencies do not require entertainers to obtain licenses, but rather look to the venue for payment of licensing fees because they have determined the venue is

the one that ultimately receives the greater benefit of offering public performances and is the one who is in a better position to pay the fees. In the entertainment industry, it is not customary (and I would add unreasonable) to require an entertainer who is being paid \$450 for a performance to indemnify a city for damages if a city does not obtain a license for music events the city offers to the public. **It's my understanding that most municipalities obtain a blanket license.** Do you know if Daytona Beach Shores has a blanket licensing agreement with ASCAP and BMI for performances of music?

The City ceased to engage Silver Creek who refused to sign the City's contract form. That was great work by Kim and her staff in weeding out potential problems. That being said, however, the reality of the matter is that all who participate in, or are responsible for, performances of music are legally responsible. That would, of course, include the City in allowing commercial performances of the use of music at its facilities without ensuring that the works are licensed for use. In any event, if a contract provision provides that the artist will obtain appropriate approvals, etc., as to performances accomplished at City sites, who will check up on that having actually occurred?

I have been providing information to the City for several years relative to this issue. I have advised the City that the International Municipal Lawyers Association (IMLA), of which I am a member, offers music licensing agreements for local governmental entities. I highly recommend that the City strongly consider procuring music licenses if it going to continue to engage persons who use works of music in commercial activities at City facilities.

C. "50/50" RAFFLES:

A "raffle" is a game of chance where raffle tickets are sold, a winner(s) is determined by randomly drawing a ticket stub from a container and a prize is awarded. A "50-50" drawing is a raffle. A raffle is where the organization sells tickets, separately from tickets for admission to an event, and one of the tickets is drawn from all tickets to win a prize. If everyone attending an event is eligible to win a prize drawing, then it's a door prize, not a raffle. As a general rule in Florida, raffles, lotteries and other drawings by chance are considered a form of gambling and prohibited by law.

However, an exception to this rule applies to certain nonprofit organizations that have obtained Federal 501(c) (3) organizational status from the Internal Revenue Service (IRS).

Thus, a "50-50" is a raffle and must be licensed by an organized and IRS approved 501(c) (3) entity.

The question as to the type of organization that may conduct raffled was discussed by the Attorney General of Florida in Advisory Legal Opinion (AGO) Number: AGO 97-54, dated: August 13, 1997 to Mike Fasano who was a Member of the Florida House of Representatives from New Port Richey. The Attorney General states as follows:

An "[o]rganization" is defined for purposes of the statute as one that is "exempt from federal income taxation pursuant to 26 U.S.C. s. 501(c)(3), (4), (7), (8), (10), or (19), and which has a current determination letter from the Internal Revenue Service, and its bona fide members or officers." [3] The title to the act indicates that the purpose of the legislation was to "provid[e] additional tax-exempt organizations which are authorized to conduct drawings by chance under said section, including civic organizations, employees' associations, clubs, fraternal benefit societies, fraternal lodges, and armed forces and veterans' organizations[.]" [4]

More particularly, an organization reference chart provided by the Internal Revenue Service gives an overview of 501(c) corporations. This chart indicates that 501(c) (4) corporations include civic leagues, social welfare organizations, and local associations of employees. These organizations promote community welfare, and are in the nature of charitable, educational, or recreational groups. The 501(c) (7) organizations are social and recreation clubs formed for pleasure, recreation and social activities. Organizations qualifying under 501(c) (8) are fraternal beneficiary societies and associations. Their lodges provide for the payment of life, sickness, accident, or other benefits to members. Domestic fraternal societies and associations would qualify as 501(c) (10) organizations and lodges, for these organizations devote their net earnings to charitable, fraternal, and other specified purposes. No life, sickness, or accident benefits are provided to members by 501(c) (10) organizations. Finally, 501(c) (19) groups are posts or organizations of past or present members of the U.S. armed forces whose activities are implied by the nature of the organization.

Section 849.0935, Florida Statutes (1996 Supplement), limits the organizations that may conduct drawings by chance. The amendment of section 849.0935 by Chapter 97-108, Laws of Florida, expands the range of organizations that may conduct drawings of chance or raffles to include additional 501(c) corporations.

Section 849.0935 (7), *Florida Statutes*, provides that "[a]ny organization that engages in any act or practice in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any organization or other person who sells or offers for sale in this state a ticket or entry blank for a raffle or other drawing by chance, without complying with the requirements of paragraph (3)(d), commits a misdemeanor of the second degree, punishable by fine only as provided in s. 775.083." Accordingly, it is a crime to unlawfully conduct a raffle. The issue that arises, of course, is whether a complaint will be filed and a charge perfected. That may be improbable, but should not a governmental entity which engages in aggressive code enforcement on its own accord and expects its citizens adhere to its codes and ordinances ensure that it, likewise, adhere to controlling law?

The overall statutory requirements relative to raffles can be summarized as follows:

- (1). The charitable organization must have a current exemption letter from the IRS under certain specified Internal Revenue Code sections, including Code section 501(c)(3).
- (2). The charitable organization cannot require payment in any form for the raffle tickets; however, a minimum donation may be suggested. In my experience, many raffles run by charitable organizations fail this requirement.
- (3). All advertisements, notices, tickets, or entry blanks for the raffle must contain the following information: (a) rules governing the conduct and operation of the raffle; (b) full name of the organization and its principal place of business; (c) source of funds used to award cash prizes or to purchase prizes; (d) date, hour, and place where the winner will be chosen (unless tickets are not offered to the public more than three days prior to the raffle drawing); (e) prizes to be awarded; and (f) a statement that no purchase or contribution is necessary. This is another requirement that charitable organizations often fail to meet.
- (4). The winner of the raffle cannot be predetermined.
- (5). The raffle cannot be conditioned on a minimum number of tickets being distributed or a minimum number of contributions.
- (6). There can be no discrimination between entrants who gave contributions (or suggested donations) and those who did not.
- (7). The winner of the raffle must be promptly notified.
- (9). The offered prize or prizes must be awarded. An organization cannot fail to award prizes under any circumstances.

These issues have been discussed with the City in the past, but can be brought to a policy conclusion as appropriate.

D. CONTRACTS GENERALLY; RISK MANAGEMENT; PREVENTATIVE LAW:

As has been discussed in our discussions relative to the *City Charter*, Section 4.01 of the *City Charter* relates to the duties and responsibilities of the City Attorney and provides as follows:

The City Council shall appoint a City Attorney who shall act as the legal adviser to, and attorney and counselor for the City and all of its elected and appointed officers, all departments and divisions of the City government, and all regulatory and advisory boards in all legal matters relating to their official duties. **The City Attorney shall prepare and/or review all contracts, bonds and other instruments in which the municipality is concerned, and shall endorse on each his or her approval of the form and correctness thereof.** (Emphasis added).

The **emphasized text** is not occurring. The City Attorney can only review documents that are submitted for review. If the City Attorney does not know that a document exists or that a contract was not required when one should have been, that is not something that the City Attorney has control over. That being said, the City Attorney has no accountability for

any liabilities, damages, costs, etc. that may arise against the City which could have been prevented had normative contract or document review been implemented.

There are no “small cities”, “little contracts” or “we have had no trouble in the past” exceptions to good legal practice or defenses when claims are asserted. I have seen a city pay an over \$400,000.00 judgment because a “good idea little contract” was approved by a city commission without legal review and have seen what is now recognized as a horrible deal approved with only cursory last minute legal review which (at least!) prevented the deal from resulting in the city’s staff not being able to access the front door of city hall from the employee parking lot.

The above being said, it is a policy decision as to whether the City desires to engage in risk management and legal review and to what extent. In my view however, the following principles are those to which I adhere:

- (1). The City should use its own form of contracts and not use vendor contracts.
- (2). The provision of all goods and services to the City should occur only under some type of contract document using City forms.
- (3). All persons using City facilities should do so under some type of contract or legal framework (under the legal concept of adopted rules or issued permits).
- (4). Trainer agreements for those using City facilities for their own profit should be in place as they are clearly a risk management and fund accountability issue – not to mention policy issues as to who pays for classes, who is paid for conducting classes, cash management, what the City is paid for the use of its facilities, etc. I would note that a city that I am familiar with recently had cash management issues which resulted in the termination of an assistant city clerk.

In my judgment, these are all matters that need to be evaluated as policy issues.

E. CONCLUSION:

I have raised policy issues relative to the matters set forth above and will leave the matters at this point for decisions and actions by others as I have done my job as legal counselor.

The application of preventative law is the way that I practice law – to prevent my clients from getting into costly legal issues. I trust that the above is indicative of that commitment.

Thank you very much for your attention to this matter. I stand ready to assist in any way that I can.



**CITY COUNCIL AGENDA MEMORANDUM
JUNE 11, 2019 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Discussion regarding electronic written communications between City Councilmembers

SYNOPSIS:

At the Council Meeting held on May 28, 2019, Vice Mayor Bryan submitted the attached document and requested it be placed on the next council meeting for discussion.

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

The City Attorney has expended a great deal of time and has commented to a large extent as to this matter. The City Attorney renews his offer to seek an Advisory Legal Opinion from the Attorney General of the State of Florida as to this legal issue (without charging any legal fees to the City for the legal work). The City Attorney has discussed this issue with the leading Sunshine Law and open government attorney in the State, Ms. Pat Gleason, and the City Attorney and Ms. Gleason have a unified and consistent view of the law as to this legal issue.

RECOMMENDATION:

SUGGESTED MOTION:

ATTACHMENT: 1. bryan comments 5-28-19

TO BE INCLUDED VERBATIM IN THE MINUTES OF THE 28 MAY CITY COUNCIL MEETING - RICHARD BRYAN

There seems to have been confusion as to what I am asking the City Council to do with regard to potential written communications among council members outside of regular council meetings. Such written communications would be properly noticed and available to the public via the internet and would provide verbatim minutes.

I am merely asking the question of each council member: **"If such a capability is legal or becomes legal, would you find it useful in fulfilling your duties as a council member?"** It is clear that this is not a question of law but merely a solicitation of opinions as to whether the capability would be useful. **It is clearly not a proposal to implement such a capability before it is deemed legal** (e.g., through controlling case law or by a clarification or modification of the Sunshine Law by the FL legislature.)

Since this confusion has existed, I propose we delay asking the above question until another council meeting.

I had hoped that Lonnie and I could have good faith discussions as to the current state of the law with regard to such a capability so that I could better understand whether there was controlling law and, if so, what it said. He has not provided any controlling law that is "on-point" that addresses the capability. For now, I am assuming that such case law does not exist. Even if there were controlling law, the Legislature has to power to clarify or modify the Sunshine Law to make it clear that the capability is consistent with the Sunshine Law. It seems that they have already allowed digital communications to occur between state agencies (including the Governor and his Cabinet). It is possible that it would not be viewed as a big step to allow local governments to do so as well if that were desired by local boards. Furthermore, most FL state legislators must think an even broader capability is valuable to a legislative body since they carved out an exception to the Sunshine Law for themselves.

Sometimes an analogy is useful to aid understanding. I think the above question is analogous to asking "do you believe that women should have the right to vote?" before the 19th Amendment was passed. That is clearly not a legal question.

To avoid the ambiguity of phrases like "virtual meetings" and "digital communications" I have more specifically defined the capability below and in previous communications. This does not mean it would have to be implemented exactly as defined, but the definition is specific and has a "walk before you run" quality and provides for relatively easy implementation as well as easy ADA compliance.

The capability that I am defining is simply written communications among council members that the public can view at any time they wish. If you are familiar with blogs, the capability is like a blog with only the council members having the ability to contribute to the blog (text only for ease of ADA compliance). It would only be for discussion and not for decision making. It would be self-documenting as there would be verbatim minutes. It would be properly noticed. If a member of the public wants to send emails to one or more councilmembers, they would be free to do so as they are now.

My belief is that if I am to do my job of setting policy and providing oversight, the capability would be very useful. I believe that it would be very valuable to the other council members as well. It provides for thoughtful deliberation and the gathering of needed facts that is often not possible within the confines of a one- or 3-hour council meeting for complex issues. (I have asked more than half a dozen council members from other cities and they said it would be useful to them.)

Since there would be 24/7 access to the entire discussion, I think it provides much more "sunshine" than does the requirement to attend a 1-3-hour physical council meeting with minutes that capture a tiny portion of the discussion.

I think the time is long overdue to bring the Sunshine Law into the Internet Age.

Again I am merely asking that **we delay asking the question ("If such a capability is legal or becomes legal, would you find it useful in fulfilling your duties as a council member?") to another council meeting to allow time for the council members to consider how they would answer the question.**