

The regular meeting of the Lake Wales City Commission was held on August 2, 2011 at approximately 6:02 p.m. in the Commission Chambers at the Municipal Administration Building. The meeting was called to order by Mayor Michael S. Carter following the Invocation and Pledge of Allegiance.

INVOCATION

The invocation was given by Dr. Jim Moyer.

PLEDGE OF ALLEGIANCE

COMMISSIONERS PRESENT: Terrye Y. Howell; Jonathan Thornhill; John Paul Rogers; Betty Wojcik; Michael S. Carter, Mayor

COMMISSIONERS ABSENT: None.

CITY REPRESENTATIVES PRESENT: Judith H. Delmar, City Manager; Albert C. Galloway, Jr., City Attorney; Clara VanBlargan, City Clerk; Jacquie Hawkins, Deputy City Clerk.

[Minutes are recorded but are not transcribed verbatim.]

MAYOR

APPROVAL OF MINUTES

**Agenda Item 5. Approval of Minutes:
 July 19, 2011, Regular Meeting**

Commissioner Howell made a motion to approve the minutes for the July 19, 2011 regular meeting. The motion was seconded by Commissioner Rogers.

By Voice Vote:

| | |
|------------------------|-------|
| Commissioner Howell | "YES" |
| Commissioner Rogers | "YES" |
| Commissioner Wojcik | "YES" |
| Commissioner Thornhill | "YES" |
| Mayor Carter | "YES" |

The motion carried 5-0.

NEW BUSINESS

**Agenda Item 6. Ordinance 2011-13, Operating of radios or other mechanical sound making
 devices or instruments in vehicles – 1st Reading**

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

Staff is recommending a change to the Code of Ordinances to allow Police Officers to exercise the City's police powers as they relate to regulating sound making devices and motor vehicles.

RECOMMENDATION

Staff recommends that the Mayor and the City Commission approve Ordinance 2011-13 after first reading.

BACKGROUND

A recent decision of the Second District Court of Appeal in the case of State of Florida vs. Richard Catalano et.al. (2nd DCA, Case No. 2D1-973) has ruled that the Florida Statute concerning loud music from motor vehicles is unconstitutionally vague and thus unenforceable. The current city ordinance which deals with sound making devices in vehicles mirrors the provisions of State Statute and as such suffers from the same infirmities as the statute. The critical failures of the Statute, as the Court saw them, are that it seeks to prohibit content-based speech which is in violation of the First Amendment of the Constitution of the United States and that the term "Plainly Audible" as used in the statute was not sufficiently defined to prevent an arbitrary enforcement of the law. The Court reasoned that by providing exemptions to the statute for Political or Business related purposes, the statute had the effect of encouraging a subjective standard to be placed on the noise rather than a uniform restriction of the noise.

The proposed ordinance moves the restriction of noise from vehicles from the nuisance chapter of the Lake Wales Code of Ordinances and places it in the Traffic section of the Code of Ordinances for the purpose of narrowly defining the conduct we seek to prohibit, and providing clear direction as to the standards which enforcement personnel will use to uniformly enforce the provisions of the ordinance.

Staff Recommends approval.

OTHER OPTIONS

The Commission may choose not to make any changes; this will result in a situation where the Police Officers have few options to provide redress of noise disturbances from motor vehicles.

FISCAL IMPACTS

None

[End agenda memo]

Ms. VanBlargan read Ordinance 2011-13 by title only.

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES CHAPTER 12, HEALTH, SANITATION, NUISANCES, DIVISION 3, NOISE CONTROL, BY ELIMINATING PROVISIONS RELATING TO NOISE EMANATING FROM MOTOR VEHICLES; AMENDING CHAPTER 20, TRAFFIC AND MOTOR VEHICLES BY ADDING PROVISIONS RELATING TO NOISE EMANATING FROM MOTOR VEHICLES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ANY CONFLICTING ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE.

Police Captain Patrick Quinn reviewed Agenda Item 6.

Commissioner Wojcik said the ordinance was well written and met all the objectives requested by the Commission.

Commissioner Thornhill said he received many calls from the public about this issue and the consensus was that they thought the fines were too small. Their fear was that those involved in illegal activities would just pay the fine without concern. Commissioner Thornhill said he thought their point was valid because those that participate in broadcasting loud music show a complete lack of respect for others. One resident, speaking on behalf of his neighborhood, told him that those coming into his neighborhood

blaring loud music are doing so purposely to rattle the windows. He asked that there be an even more severe penalty for blaring music after dark.

Captain Quinn said the Supreme Court protects freedom of speech, which is a good thing as people can say what they have on their minds, so the City needs to be very careful when seeking to regulate that freedom. If you have different fines for different timeframes you open it up for challenges in court. Therefore, the ordinance was constructed with a narrow scope, simply saying this type activity is not allowed at any time because it is a nuisance, robbing people of enjoyment in their homes and affecting the legitimate means of its citizens. As far as the dollar amount of the fines, Captain Quinn said he used the fines from the old ordinance and he personally felt that \$100 was a lot of money. He said the City can write into the ordinance any amount it wants but the County judge does not have to use that amount. He can lower it or even have them spend four hours in chamber listening to classical music instead of paying the fine.

Mayor Carter said he agreed with Commissioner Thornhill that the fines are not stiff enough. He said the City should have a no tolerance policy. If it is publicized that the first offence will be \$250 and the second offense \$500, it would get their attention. Captain Quinn said, though that would be a legislative policy, he would have no objections.

Commissioner Rogers said he saw a young man get out of his car recently where children were present, leaving his radio blaring so loud it rattled the windows, the songs using the most inappropriate language for young children. He said he understood the right to free speech. A person has a right to extend his hand to the right or left, but when that hand gets in his own face his rights supersede the rights of that other person. If a person wants to listen to that kind of music in the confines of his home or car that is his business, but not when someone else is forced to listen to it. He said he was in favor of a strong ordinance that will meet all the tenants of the court and enforcement to the letter of the law.

Commissioner Howell asked if the way it was written would be enforceable locally, statewide and everywhere else and Captain Quinn said he went through the court ruling and said he narrowly tailored it to be on the sound side of government interest. Commissioner Howell said she saw no problem with increasing the fine as high as it can go if the courts will uphold it, but increasing it would do no good if it can't be enforced and we end up having to lower it.

Mayor Carter asked if the car had to be moving to be in violation and if the ordinance applied to cars parked in the owner's driveway. Captain Quinn said the car did not have to be moving and the ordinance did not apply to cars in one's own driveway, though there is recourse. If neighbors bothered by the loud music sign a complaint, the loud music will be in breach of the peace, which is a state law. If police happen to go by and hear the loud music they can inform the person that there is an ordinance against it and ask them to lower the volume.

City Attorney Chuck Galloway said the ordinance was not challenge proof and it could very well be challenged so he wanted the Commission to be aware that if an indigent person challenged the ruling in court, the City would have to pay for the defense. Mayor Carter asked if that was the same with other city ordinances and Mr. Galloway said only if it winds up in court. Captain Quinn said the open container ordinance was another such ordinance. The Mayor said that we then already have that liability.

Commissioner Howell said that during events like Mardi Gras there is a lot of noise, and though she does not mind it during these events, she asked how the ordinance would affect it because she did not want someone getting a fine. Captain Quinn said it would have no bearing because the streets affected by the parade are closed to non-parade traffic.

Commissioner Thornhill recommended leaving the ordinance as written, with the \$100 fine, and later, if they find the fee ineffective, they can bring the ordinance back for revision.

PUBLIC COMMENT

David Smith, Babson Park, asked Captain Quinn how the ordinance would be enforced. Captain Quinn said that if the music can be heard unaided, for example without a hearing aid, 50 feet from the vehicle, which is about three car lengths, it is against the ordinance and the person can be fined. If the loud music is coming from a parked vehicle in one's own driveway the police will tell them there is an ordinance against it and ask them to turn down their music.

Commissioner Thornhill made a motion to approve Ordinance 2011-13 after first reading. The motion was seconded by Commissioner Howell.

By Roll Call Vote:

| | |
|------------------------|-------|
| Commissioner Thornhill | "YES" |
| Commissioner Howell | "YES" |
| Commissioner Wojcik | "YES" |
| Commissioner Rogers | "YES" |
| Mayor Carter | "YES" |

The motion carried 5-0.

Agenda Item 7. Second Public Hearing CDBG

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

This is the required second public hearing regarding the City's CDBG application for funding for the C Street Sewer project.

RECOMMENDATION

It is recommended that the City Commission take the following action:

1. Approve Resolution 2011-12 authorizing the mayor to sign and submit an application in the Neighborhood Revitalization CDBG grant categories for \$750,000 towards replacing sewer lines in the C Street area.
2. Approve Resolution 2011-13 authorizing City funds (local match) to be combined with CDBG funds in order to fund the full cost of phase 1 of the project.

BACKGROUND

On July 5th 2011 the first public hearing on the CDBG grant application was held and was conducted by the City's grant consultant, Andy Easton. The City Commission authorized the preparation of an application in one of the four categories and approved the use of \$250,000 of expenditures for the C Street Sewer project as local match for the 2011-2012 CDBG application.

On June 20, 2011 the Citizens Advisory Task Force met and voted unanimously to recommend to the City Commission that they apply for the CDBG Neighborhood Revitalization grant category to replace sewer lines in the C Street area.

The City of Lake Wales is eligible to receive up to \$750,000 in CDBG funds through the Small Cities Program. These funds must be used for one of the following purposes:

1. To benefit low and moderate income persons;

2. To aid in the prevention or elimination of slums or blight; or
3. To meet other community development needs of recent origin having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and where other financial resources are not available to meet such needs.

The categories of activities for which these funds may be used are: housing, neighborhood revitalization, commercial revitalization, or economic development including such improvement activities as acquisition of real property, loans to private-for-profit business, purchase of machinery and equipment, construction of infrastructure, rehabilitation of houses and commercial buildings, and energy conservation.

OTHER OPTIONS

Do not apply for a 2011-2012 Small Cities Program grant. Since the City has missed the deadline for reentering the County's program, no CDBG funds could be expected in FY11'12.

FISCAL IMPACT

\$250,000 of the City's expenditures on this project will be used as match as approved by the City Commission.

[End agenda memo]

Ms. VanBlargan read Resolution 2011-12 by title only.

RESOLUTION OF THE CITY COMMISSION OF LAKE WALES, FLORIDA, AUTHORIZING THE MAYOR TO MAKE APPLICATION TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS FOR APPROVAL OF A COMMUNITY DEVELOPMENT BLOCK GRANT SPONSORED BY THE CITY OF LAKE WALES; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Special Projects Administrator Jennifer Nanek reviewed Agenda Item 7.

Commissioners Rogers, Wojcik and Thornhill made comments in favor of moving forward on the project.

OPENED PUBLIC HEARING

There were no comments from the public.

CLOSED PUBLIC HEARING

Commissioner Howell made a motion to adopt Resolution 2011-12 authorizing the mayor to sign and submit an application in the Neighborhood Revitalization CDBG grant categories for \$750,000 towards replacing sewer lines in the C Street area. The motion was seconded by Commissioner Thornhill.

Roll Call Vote:

| | |
|------------------------|-------|
| Commissioner Howell | "YES" |
| Commissioner Thornhill | "YES" |
| Commissioner Wojcik | "YES" |
| Commissioner Rogers | "YES" |
| Mayor Carter | "YES" |

The motion carried 5-0.

Ms. VanBlargan read Resolution 2011-13 by title only.

2011-446

RESOLUTION OF THE CITY COMMISSION OF LAKE WALES, FLORIDA, AUTHORIZING FUNDS FOR THE PROPOSED SEWER LINE AND RELATED FACILITIES IMPROVEMENTS TO BE COMBINED WITH THE ANTICIPATED CDBG NEIGHBORHOOD REVITALIZATION GRANT

Commissioner Rogers said he was in favor of this resolution and asked if there were funds to pay for it.

City Manager Judith Delmar said there was enough on hand to do Phase I. She pointed out, for the record, that this was a project the Commission said it was committed to with or without the award of CDBG grants or any other grant. Grants that are received will just lower the cost.

Commissioner Wojcik said that in order to move forward with all possible speed, knowing we will have to face difficult financial issues over the next couple of years, we should go ahead and start the application process so we can get the 1% interest rate and make sure the dollars are there to get the project done. Ms. Delmar agreed. She said that if the Commission is committed to doing a project in excess of \$3 million dollars, we should at least start making application to SRF for full funding of the remainder, knowing that we would only have to pay for the portion that is actually drawn-down. She added that this was one of the few CIP projects that are eligible for SRF funding and we should take advantage of it. Commissioner Wojcik said this was a project that will benefit the community for a number of years and it makes sense to pay for it over its 30-year use at 1% interest.

Commissioner Wojcik said that a number of CIP projects were listed in the budget packet they received that will not qualify for SRF funding and if we can get the C Street project underway we can go forward with those other projects. Ms. Delmar concurred. Finance Director Dorothy Pendergrass said that she had asked the Commission if they wanted the City to apply for SRF funding at several past meetings and in December she provided the application cost for the fees associated with that funding application. She said she could recalculate the numbers and bring it back to the Commission along with a timeline if they so directed. Ms. Delmar concurred that there were fees associated with the SRF application and said there are strict benchmarks that need to be met by certain dates. She said the City was in a good position as far as the application process was concerned because we have gone through the engineering process and we know what our needs are, so if there is any likelihood at all that we will need this funding source we need to move on it.

OPENED PUBLIC HEARING

There were no comments from the public.

CLOSED PUBLIC HEARING

Commissioner Howell made a motion to adopt Resolution 2011-13 authorizing funds for the proposed sewer line and related facilities improvements to be combined with the anticipated CDBG Neighborhood Revitalization Grant. The motion was seconded by Commissioner Rogers.

Roll Call Vote:

| | |
|------------------------|-------|
| Commissioner Howell | "YES" |
| Commissioner Rogers | "YES" |
| Commissioner Wojcik | "YES" |
| Commissioner Thornhill | "YES" |
| Mayor Carter | "YES" |

The motion carried 5-0.

Mayor Carter suggested, while the topic was fresh on their minds, having a discussion to find out if the Commission wants to use SRF as a funding source so they can give staff their needed direction. Commissioner Howell asked if they could apply for next year's CDBG Grant once they secure the SRF

funding as she did not want them to miss another cycle like before. Andy Easton, Grant Administrator, said the City cannot apply for another CDBG Grant until the work on this grant is finished, the money is spent, and the grant is closed out, which would be in a couple years. Commissioner Wojcik said they could apply the CDBG Grant to Phase I and we could apply again for Phase II and each successive phase. Ms. Delmar concurred but said you can't use grant money for the match so we would have to have other sources for that. Mr. Easton said there was plenty enough money to use as match for another grant. Ms. Delmar said it was a timing issue. The consensus for staff was to go forward with the SRF application.

Mr. Galloway suggested they put the consensus in the form of a motion.

Commissioner Howell made a motion to have staff proceed with the SRI application process. The motion was seconded by Commissioner Rogers.

Roll Call Vote:

| | |
|------------------------|-------|
| Commissioner Howell | "YES" |
| Commissioner Rogers | "YES" |
| Commissioner Wojcik | "YES" |
| Commissioner Thornhill | "YES" |
| Mayor Carter | "YES" |

The motion carried 5-0.

Agenda Item 8. Fire Dispatch Service Agreement

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

The City Commission will consider approval of the Fire Dispatch Agreement between the City and Polk County Sheriff's Office for fire dispatch services.

RECOMMENDATION

It is recommended that the City Commission authorize the City Manager to execute the attached Fire Dispatch Agreement which states that the City of Lake Wales will pay Polk County Sheriff's Office at the rate of \$27,100 for the fiscal year beginning October 01, 2010 through September 30, 2011, and \$27,100 for services for the fiscal year beginning October 01, 2011 through September 30, 2012.

BACKGROUND

All 911 calls are received at the 911 Call Center on Jim Keene Blvd. in Winter Haven, regardless of whether they originate inside or outside of the city limits of Lake Wales. Emergency calls are then transferred to the Fire/EMS dispatchers at the same location. Dispatchers notify the fire department by radio pager and continue communications with responding personnel and equipment for the duration of the emergency call.

This agreement is similar to the agreements instated by the cities of Winter Haven, Haines City, Auburndale, Frostproof, Fort Meade, Davenport, and Mulberry.

OTHER OPTIONS

Do not approve the agreement and hire full time dispatch personnel.

FISCAL IMPACT

The \$27,100 is included in the FY 2010-2011 budget and the proposed FY 2011-2012 budget.

[End agenda memo]

Fire Chief Jerry Brown reviewed Agenda Item 8.

Mayor Carter asked for confirmation that this was only for EMS and Fire and that according to Sheriff Judd, the price will be going up. It was confirmed.

Commissioner Howell asked if they were being charged the same as two years ago. Chief Brown said yes for the 2012 budget but meetings and negotiations are being planned for the 2013 budget.

Mayor Carter asked what he thought about bringing the dispatch back to the City. Chief Brown was not in favor of it. He said they paid the County \$10,000 the first year, \$17,000 the second year, and this year will be \$27,100, which was still a bargain as that would not pay for even one fulltime employee, and regardless, all 911 calls would go to the Sheriff's office because that portion is paid for through the 911 fee tacked onto telephone bills. Mayor Carter said that when combined with the Police Department's share, we may be able to afford an employee. Chief Brown said that they might want to take a look at it in the future, after the 2013 negotiations determine the new charge.

Mayor Carter said there were problems with what he called the dislocated dispatch and gave an example of a time he called 911 and they would not send anyone out without an address. Chief Brown said that is a more recent problem because years ago when someone dialed 911 the address and phone number of the caller popped up on the screen. Now so many people use cell phones that the information is no longer guaranteed.

PUBLIC COMMENT

There were comments by the public.

Commissioner Wojcik made a motion to authorize the City Manager to execute the attached Fire Dispatch Agreement for the fiscal year beginning October 1, 2011 through September 30, 2012.
The motion was seconded by Commissioner Howell.

By Voice Vote:

| | |
|------------------------|-------|
| Commissioner Wojcik | "YES" |
| Commissioner Howell | "YES" |
| Commissioner Rogers | "YES" |
| Commissioner Thornhill | "YES" |
| Mayor Carter | "YES" |

The motion carried 5-0.

Agenda Item 9. Interlocal Agreement Amendment #2 – Winter Haven Area Transit System (WHAT)

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

The Commission will consider expenditure of \$5,433 for FY11'12 as the City's "fair share" contribution to the Winter Haven Area Transit System.

RECOMMENDATION

It is recommended that the City Commission take the following action:

1. Approve the expenditure of \$5,433.00 for FY11'12 as the City's "fair-share" contribution to the Winter Haven Area Transit System for continued transportation services in the Lake Wales area; and
2. Authorize the Mayor to execute Amendment #2 to the Interlocal Agreement, expiring on September 30, 2012, with the Polk County Board of County Commissioners committing to the \$5,433.00 "fair-share" contribution.

BACKGROUND

The Winter Haven Area Transit System is currently providing transportation service to six municipalities, one of which is Lake Wales. Service level forecasts for the WHAT system for FY11'12 are based on each municipality's commitment. This commitment is critical to the continuation of service at near current service levels. Although, the Polk Transit Authority is projecting minimal cost increases to maintain its current level of service, the City's fair share for FY11'12 will remain the same as FY10'11; i.e., \$5,433.00.

In August 2009, the City Commission approved the original Interlocal Agreement with the Polk County Board of County Commissioners. This second extension to that agreement will expire on September 30, 2012.

OTHER OPTIONS

Do not approve the \$5,433 contribution and Amendment #2 to the Interlocal Agreement with Polk County.

FISCAL IMPACT

The fiscal impact is \$5,433 and is included in the proposed FY11'12 budget.

[End agenda memo]

City Clerk Clara VanBlargan reviewed Agenda Item 9.

Commissioner Wojcik asked why they wanted approval now, before the City has a chance to look at its overall budget. Ms. VanBlargan said because Polk County was in their budget process and the agreement expires in September.

Commissioner Howell said it was a good service and many residents use it, including students going to Polk State College.

PUBLIC COMMENT

There were no comments by the public.

Commissioner Rogers made a motion to take the following action:

1. Approve the expenditure of \$5,433.00 for FY11'12 as the City's "fair-share" contribution to the Winter Haven Area Transit System for continued transportation services in the Lake Wales area;
2. Authorize the Mayor to execute Amendment #2 to the Interlocal Agreement, expiring on September 30, 2012, with the Polk County Board of County Commissioners committing to the \$5,433.00 "fair-share" contribution.

The motion was seconded by Commissioner Howell.

By Voice Vote:

| | |
|------------------------|-------|
| Commissioner Howell | "YES" |
| Commissioner Rogers | "YES" |
| Commissioner Thornhill | "YES" |
| Commissioner Carter | "YES" |
| Commissioner Wojcik | "YES" |

The motion carried 5-0.

Agenda Item 10. Outdoor Seating on Public Property – Stuart Avenue Sidewalk – Gary Quinn

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

RECOMMENDATION

Staff recommends approval of two tables to be located on the public sidewalk in front of Smokey's Piano Bar (216 Stuart Avenue) downtown as shown on the site plan.

The Planning and Zoning Board considered this request at their July 26th meeting as required by code (sec. 23-353). The Board forwards this to City Commission with a recommendation for approval.

BACKGROUND

Gary Quinn, owner of Smokey's Piano Bar is requesting permission to provide two tables outside on the public sidewalk for his patrons. The sidewalk is approximately nine feet wide in the proposed location which will allow for the tables and maintain the required ADA pedestrian passageway.

Since the tables are located in City right-of-way, City Commission approval is required.

The applicant will provide proof of insurance showing the City as an additional insured. The owners have executed an Indemnification Agreement drafted by the City Attorney.

FISCAL IMPACT

None

OTHER OPTIONS

Commission may choose to deny the request or modify the number of tables allowed.

[End agenda memo]

Planning & Development Director Margaret Swanson reviewed Agenda Item 10.

Mayor Carter expressed the following concerns:

- Inconsistencies: The city was not being consistent because the business next door to them did not have a permit. He said the City was trying to be business friendly by not making it difficult for them and their customers need a place to sit down to eat. He recommended tabling the item so the Main Street organization could make recommendations as to what they think seating in the downtown area should be. Ms. Swanson said the business next door to them did not receive permission for outdoor tables and so were in violation, and staff would talk with them about it. Ms. Swanson said the Commission could change the ordinance if it did not want to require Commission permission, but right now, outdoor seating on public sidewalks requires Commission approval.
- Alcohol outdoors: As a piano bar, customers would bring drinks outside with them and then they might take the open container with them to their car or down the sidewalk, for which they could be arrested. He suggested that a new, larger sidewalk area be set aside for tables with umbrellas that could be shared with all restaurants. Ms. Swanson said customers would not be bringing alcoholic drinks outside because it is not an approved area. If they do, the restaurant would be out of compliance for allowing it. Ms. Delmar said the restaurant would be in violation of their liquor license if they do that because the restaurant owner has to make sure no one exits their establishment with alcohol. Self policing has worked in the past because restaurant owners don't want to lose their license.

Commissioner Wojcik said that the City should be consistent and if tables are on city property, all businesses should have to go through the same procedure for approval. She said if businesses want to put tables in a common area such as the Market Place, they should be able to do so. She said she would like to encourage businesses to put tables out front on the sidewalk because it gives a sense of vitality to the downtown area. She did not think alcohol would be a problem because businesses would know they could lose their liquor license,

Commissioner Thornhill said they want the City to be business friendly and seeing people eating outside encourages others to do the same. He did not want alcohol to be a problem and he didn't think it would because restaurant owners know that once they lose a liquor license it is very hard to get it back.

Commissioner Howell said she saw nothing wrong with taking a drink to the table outside, but it is a law. What happens inside or outside of a restaurant is the owner's responsibility and they would take all the risk if they want tables outside, though most people know they can't take alcohol outside. She said when she passes by and sees people sitting outside having a good time she wants to eat there too because it is very inviting.

PUBLIC COMMENT

Greg Massey, Massey's Place on Lincoln Ave., said that an ordinance already passed allowing outdoor seating of restaurants and bars so it is feasible and appropriate for them to do so. Ms. Swanson said, theoretically, the piano bar can apply for an extension of their state license for outdoor service if they have a barrier, fence or way to define an area for that purpose, but she did not think the state would issue an alcoholic beverage license otherwise. She said in this case, there would not be enough room for them to put a barrier on the sidewalk as there is only about a four-foot space for pedestrians to pass. Commissioner Wojcik said the restaurant in the Market Place serves wine but they have a barrier. City Attorney Chuck Galloway said there are signs saying that by city ordinance you can't go beyond this area with alcoholic beverages.

David Smith, Babson Park, asked how far the restaurant was from the church and Ms. Swanson said that the distance rule does not apply to restaurants.

Commissioner Wojcik made a motion to approve two tables to be located on the public sidewalk in front of Smokey's Piano Bar (216 Stuart Avenue) downtown as shown on the site plan. The motion was seconded by Commissioner Howell.

By Voice Vote:

| | |
|------------------------|-------|
| Commissioner Wojcik | "YES" |
| Commissioner Howell | "YES" |
| Commissioner Rogers | "YES" |
| Commissioner Thornhill | "YES" |
| Mayor Carter | "YES" |

The motion carried 5-0.

Commissioner Wojcik asked that someone inform the owner of Beans-N-Brushes of the process if they would like to have outdoor tables. Ms. Delmar said someone would do that.

Agenda Item 11. Appointments – Boards, Committees & Commissions

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

The appointments will fill vacancies due to resignations, expirations of terms, newly established boards, etc.

RECOMMENDATION

It is recommended that the City Commission make the appointments as deemed appropriate.

BACKGROUND

Vacancies exist on various Boards, Commissions, and Committees due to resignations, expirations of terms, newly established boards, etc. The City Commission is asked to make the appointments as deemed appropriate.

Airport Authority Board– Members are appointed by the City Commission. The Board consists of seven (7) members. At least four (4) members must be qualified electors of the City, and one member is a City Commissioner who is a non-voting member. (3-year term)

There is no interview process requirement for applicants applying for appointment to this board.

1 vacancy: Term expires 07/01/14

Applying for appointment: None

Applying for re-appointment: Dale W. Marks, resident

A vacancy is due to the expiring term of Dale W. Marks.

Commissioner Howell made a motion to reappoint Dale W. Marks to serve as a member on the Airport Authority Board for a term expiring 7/1/14. The motion was seconded by Commissioner Rogers.

By Voice Vote:

| | |
|---------------------|-------|
| Commissioner Howell | "YES" |
| Commissioner Rogers | "YES" |

| | |
|------------------------|-------|
| Commissioner Thornhill | "YES" |
| Commissioner Wojcik | "YES" |
| Mayor Carter | "YES" |

The motion carried 5-0.

Code Enforcement Board – Members are appointed by the City Commission. The board consists of seven (7) members. Whenever possible, membership shall include an architect, a businessperson, a realtor, an engineer, a general contractor, and a subcontractor. Members must be residents. (3-year term)

An interview process is necessary for new applicants only. The recommendation of the Chairman of the Code Enforcement Board, William Follett, and the Asst. Planning and Development Director, Kathy Bangley, is to appoint Roderick T. Parker, Sr. to serve as a member to the Board. It is not mandatory that the Commission follow this recommendation.

Roderick T. Parker, Sr. is currently a member of the Board of Zoning Adjustments & Appeals and understands that he must resign his membership to that Board if appointed to the Code Enforcement Board.

2 vacancies: 1 term expires 07/01/12
 1 term expires 07/01/13

Applying for appointment: Roderick T. Parker, Sr., resident

Vacancies are due to the expiring term of Juanita Branch, who did not wish to be re-appointed, and the passing of Ted Manley.

Commissioner Howell made a motion to appoint Roderick T. Parker, Sr. to serve as a member on the Code Enforcement Board for a term expiring 7/1/13. The motion was seconded by Commissioner Rogers.

By Voice Vote:

| | |
|------------------------|-------|
| Commissioner Howell | "YES" |
| Commissioner Rogers | "YES" |
| Commissioner Thornhill | "YES" |
| Commissioner Wojcik | "YES" |
| Mayor Carter | "YES" |

The motion carried 5-0.

Lakes Advisory Commission - Members are appointed by the Mayor and confirmed by the City Commission. The Lakes Advisory Commission consists of seven (7) members. At least six (6) members must reside in the City, and no more than one (1) member may reside outside the City. (3-year term)

There is no interview process requirement for applicants applying for appointment to this board.

2 vacancies: 1 term expires 07/01/13
 1 term expires 07/01/14

Applying for appointment: Nancy Kalher, resident

Applying for re-appointment: None

Nancy Kalher previously served three consecutive terms on the Lakes Advisory Board. After one year off the board, Ms. Kalher is now eligible to serve on the Board if appointed.

Mayor Carter appointed Nancy Kahler to serve as a member on the Lakes Advisory Commission for a term expiring 7/1/14. Commissioner Thornhill made a motion to confirm the appointment made by the Mayor. Commissioner Rogers seconded the motion.

By Voice Vote:

| | |
|------------------------|-------|
| Commissioner Thornhill | "YES" |
| Commissioner Rogers | "YES" |
| Commissioner Howell | "YES" |
| Commissioner Wojcik | "YES" |
| Mayor Carter | "YES" |

The motion carried 5-0.

OTHER VACANCIES

Staff received no applications to fill the vacancies on the following boards, committees & commissions:

| | |
|--|---|
| Bicycle/Pedestrian Advisory Commission | Historic District Regulatory Board |
| Board of Zoning Adjustments & Appeals | Historic Preservation Board |
| Drug & Prostitution-Related Nuisance Abatement Board | Parks & Community Appearance Adv. Board |

Board Applications are considered for appointment by the City Commission at various times of the year. Regulatory Boards require an interview process for all new applicants before being considered for appointment by the City Commission.

FISCAL IMPACT

None. These are volunteer citizen boards.

OTHER OPTIONS

Do not appoint the applicants named above and seek other applicants; however, it may be difficult for the board to obtain a quorum until vacancies are filled.

[End agenda memo]

Commissioner Wojcik asked if candidates were ever invited to come to City Commission meetings so they could introduce themselves to the Commissioners and Ms. VanBlargan said they are invited; some can come and some can't.

Mayor Carter asked for ideas to get citizens interested in filling board vacancies. Ms. Delmar said that in the past, Commissioners were proactive in recruiting. There was better success when Commissioners directly worked to fill those slots. She commented that Commissioner Rogers has gotten several citizens to serve on various boards.

Commissioner Howell asked why some board appointments are appointed by the Commission, and others are appointed by the Mayor. She said she would like all of them to be appointed by the Commission as the Commission may not like the Mayor's choice. Ms. Delmar said that individual ordinances would have to be amended to reflect that. She said the Housing Authority was an exception because it is regulated by State Statute and requires the mayor's appointment with the confirmation of the City Commission. City Attorney Chuck Galloway said that if the Mayor makes a motion for a candidate unacceptable to the other Commissioners, there would be no second to the motion. If there is a second but three Commissioners don't vote for that candidate, the Mayor would have to appoint a different candidate. Therefore the motion would die either for lack of a second or lack of three votes.

Commissioner Wojcik reminded them that the Charter change that will take effect in 2013 places more of the responsibility for board appointments on the Mayor.

Following are some reasons given for boards not being filled and suggestions for improvement:

- The Board of Appeals presently meets at 9 AM which would be hard for an employed citizen to fill. They may have to consider changing the meeting time as that time period limits the pool.
- Some of the board vacancies call for specific individuals like business persons, a realtor or an engineer and those wanting to serve may not fit into those categories. The Historic Preservation Board, Code Enforcement Board and Board of Appeals are examples. Ms. Delmar said those boards are regulated by state statute and not city ordinance, though the statute states that they should be used, "to the extent possible".
- A Commissioner could be delegated as the Commission recruiter. People feel that it is more of an honor to serve when personally recruited.
- Each Commissioner could choose two or three boards and attend the meeting once a quarter to show that they are interested in what the board does. All the boards are important, especially the regulatory boards which are critical and when a quorum cannot be met, holds up the applicants. At one time the applicant was held up for three months for lack of a quorum.
- Ask the advisory boards to accept some of the responsibility and recruit members because they would know other citizens with like interests.
- Let Main Street know of the vacancy on the Historic Regulatory Board because they are the ones that have to review everything downtown.

Commissioner Howell listed the vacancies and urged viewers to volunteer.

Agenda Item 12. Discussion of Preliminary Financial Statements for June 30, 2011

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

The preliminary financial statements report revenues received and expenditures made through the end of June 2011.

The unaudited financial statements for the City of Lake Wales for the Period Ending June 30, 2011 are presented to the City Commission for review. At the end of June 30, 2011 the City was 75% into the fiscal year. Twenty of twenty-six payrolls (76.94%) have been expensed through June 30th. Revenue and expenditure budgets have been adjusted to reflect changes through Budget Amendment #3.

Effective June 2, 2011, all department directors received notice of a freeze on spending and hiring from the City Manager. No purchases are to be made unless department operations cannot continue without the purchase. No vacant positions are to be filled unless department operations will cease to function or the safety of the public or other department employees will be placed in jeopardy. It is necessary to bring spending to a minimum for the remainder of this fiscal year.

Analysis of Cash & Investment Changes:

| | GENERAL | SPECIAL REVENUE | UTILITY SYSTEM | TOTAL |
|-----------------------------------|----------------|----------------------------|---------------------------|--------------|
| Cash & investments YTD 2009-2010* | 3,577,624 | 2,656,557 | 27,566 | 6,261,747 |
| Cash & investments YTD 2010-2011* | 2,750,139 | 1,729,822 | 366,550 | 4,846,511 |
| CHANGE | -827,485 | -926,735 | +338,984 | -1,415,236 |

General Fund cash and investments in comparison to prior year showed a reduction of \$827,485. Essentially, 768,927 (92.9%) of this reduction is due to the following items:

- Reduction in ad valorem tax receipts compared to prior year of \$374,242.
- The "Due from CDBG Fund" receivable increased by \$358,585 during June. This money will be returned to the General Fund once the CDGB grant money is received.
- The "Due from the Airport Fund" receivable increased by \$36,100 during June.

Special Revenue Fund cash and investment in comparison to prior year showed a reduction of \$926,735. Essentially, \$918,313 (99.0%) of this reduction is due to the following items:

- Reductions in CRA ad valorem tax receipts compared to prior year of \$426,907.
- Reduction in CRA County Tax Increment receipts compared to prior year of \$339,846.
- A transfer from the CRA fund to the Utility Fund of \$332,984 in surplus 2008'09 revenues designated by the City Commission to be used on the C Street Project.
- Offsetting these revenue reductions are reductions in Community Policing expenditures compared to prior year of \$134,584 mainly due to reductions in personal services and capital outlay and reductions in Code Enforcement expenditures compared to prior year of \$46,840 mainly due to reductions in personal services.

Utility Fund cash and investments in comparison to prior year showed an increase of \$366,550 mainly due to the following:

- Charges for services (77.1%) and interest income (77.4%) are slightly above budget expectations.
- Operating expenditures are slightly below budget expectations, which include Utility Operations Payroll (74.7%), Water Division Operations (69.8%), and Wastewater Division Operations (60.5%).

Pool/Tax Anticipation Account:

The City has not borrowed any money from the Pool/Tax Anticipation Investment Account. The balance at the end of FY 07/08 when the account was created and the current balance are as follows:

| | 9/30/2008 | 6/30/2011 | Difference |
|-------------------------------|-----------|-----------|------------|
| Pool/Tax Anticipation Account | 1,037,822 | 1,065,313 | 27,491 |

Effective July 29, 2011, the City Commission established rules for administration and use of funds in emergency sinking accounts. Ordinance 2011-11 superseded Resolution 2008-11 to incorporate monies currently held in the Pool/Tax Anticipation Account into the General Fund Emergency Sinking Account.

Revenue & Expenditures Summary:

General Fund (page F-4):

Some General Fund revenues appear to be slightly below budgetary target expectations. Due to concerns relating to under-performance of some revenue sources (net negative effect equal to \$93,500) the following accounts will be watched over the next several months. (note: percentages shown below are comparisons to budget)

- Utility Service Tax of \$472,922 (57.4%) compared to prior year \$499,704 (52.7%) appears higher than expected. Estimated over performance compared to budgetary expectation is \$60,000.
- Communication Service Tax of \$433,125 (70.8%) compared to prior year \$441,902 (75.1%) appears lower than expected. Estimated under-performance compared to budgetary expectation is (\$37,500).

- Franchise Fees of \$550,591 (59.2%) compared to prior year \$750,729 (67.4%) appears lower than expected. Estimated under-performance compared to budgetary expectation is (\$90,000). This is mostly related to the Electric Franchise Fee.
- Site Development Permit & Inspections appear lower than expected. Estimated under-performance is (\$26,000).

Some General Fund departmental expenditures are above percentile expectation for both prior year comparison and budgetary comparison purposes. The City Manager, the Finance Director and department Directors are analyzing expenditures accounts which might require budget transfers or budgetary amendments.

Unanticipated expense that will necessitate a draw-down of fund balance and require a General Fund budget amendment includes:

- Non-Departmental (Other Misc. Expenses requires a budget amendment of \$18,092 for hurricane "Jeanne" reimbursement to state for overpayment received in prior year)
- Non- Department (Settlement Cost requires a budget amendment of \$55,000 for the settlement agreement relating to James Sims V.s the City)
- Police (Capital Outlay requires a budget amendment for \$28,749. On December 7, 2010, the City Commission authorized the purchase of two vehicles for undercover operations to be paid for by using impact fees. These vehicles are not impact fee eligible due to the current use of the vehicles.)
- Fire (Lease – Land for Substation requires a budget amendment of \$21,000 for lease of land).

Special Revenue Funds (page F-6):

Some Special Revenue Fund revenues appear to be slightly below budgetary target expectations. Expenditures appear reasonable compared to prior year and budgetary expectations.

Due to concerns relating to under-performance of some revenue sources (net negative effect equal to \$87,700) the following accounts will be watched over the next several months.

- CRA – Actual Ad Valorem Taxes revenues of \$649,629 compared to budgetary appropriations of \$718,799 are lower than expected. Estimated under-performance compared to budgetary expectation is \$69,170. A budget amendment reduction will be prepared for this revenue source.
- CRA – Actual County Tax Increment revenues of \$655,029 compared to budgetary appropriations of \$673,559 are lower than expected. Estimated under-performance compared to budgetary expectation is \$18,530. A budget amendment reduction will be prepared for this revenue source.
- Library - County PCLC & Books By Mail revenue of \$383,629 (76.0%) compared to prior year \$531,975 (100%) has been explained by Tina Peak, Library Director, as a timing difference relating to payment. The final Books By Mail payment of \$112,500 is expected.

Debt Service Fund (page F - 7):

Revenue sources appear reasonable compared to budgetary expectations. Expenditures appear reasonable compared to budgetary expectations.

Capital Project Fund (page F - 8):

Revenue sources appear reasonable compared to budgetary expectations. Expenditures appear reasonable compared to budgetary expectations.

Airport Fund (page F - 9):

Revenue sources appear reasonable compared to budgetary expectations. Expenditures appear reasonable compared to budgetary expectations.

Utility System Funds (page F - 11):

Revenue sources appear reasonable compared to budgetary expectations. Expenditures appear reasonable compared to budgetary expectations.

[End agenda memo]

Finance Director Dorothy Pendergrass reviewed Agenda Item 12.

Agenda Item 13. City Manager Applicants: Initial Phone Interviews

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

RECOMMENDATION

It is recommended that the City Commission decide on the number of applicants to interview by phone.

BACKGROUND

The Commissioners have submitted their choices of city manager applicants to include in the initial phone interview process. The number of "votes" received by each applicant on the list is as follows:

| | |
|--------------------|--|
| R. Dale Brown | 3 |
| Therese Leary | 3 |
| Richard Reade | 3 |
| Allen Barnes | 2 |
| James Coleman | 2 |
| Judith Jankosky | 2 |
| Gary William Boden | 1 |
| James Gleason | 1 (no longer available, has accepted a position) |
| Mike Konefal | 0 |

It is necessary that the City Commission decide how many applicants to include in the round of initial phone interviews. We will also ask for discussion about possible dates for one or more workshops to conduct the phone interviews.

[End agenda memo]

The following were discussed:

- **The number of workshops:** The consensus was to start with one and determine the need for more at that time.
- **The number of candidates to interview at the workshop:** The consensus was to start with the three top candidates as they were selected by three of the five Commissioners.
- **The amount of time to allow for each interview:** The consensus was about 45 minutes.
- **The date and time of the workshop:** The consensus was to have the first workshop on August 8th with a backup date of August 17th, starting at 5:00 p.m.

- **The location of the workshop:** The City Manager said the workshop would be held in the City Manager's conference room because it would be less formal than having it in the Commission Chamber, and there would be room for interested citizens to attend.
- **What questions to ask:** Should the questions be given to the candidates ahead of time? Should each candidate be asked all the questions on the list? The consensus was not to give the questions ahead of time and to choose from the list which questions to ask each candidate.

Mayor Carter asked if funds were budgeted this year for an assistant city manager and Ms. Delmar said no, it would have to be taken from Fund Balance.

The Commission was also asked to schedule a budget workshop. The consensus was to have it on August 22nd at 5:00 p.m. in the City Commission Chamber.

ADDENDUM

Agenda Item 14. Proposed Resolution 2011-14, Intergovernmental Exchange of Equipment

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

Staff is recommending approval of Resolution 2011-14 recognizing the transfer of equipment between the City of Lake Wales Police Department and the Polk County Sheriff's Office.

RECOMMENDATION

Staff recommends that the Mayor and the City Commission approve the attached resolution authorizing the exchange of the following pieces of equipment.

- a. Live Scan Fingerprinting Device
- b. Ford F-350 Pickup Truck
- c. 2004 Mobile Command Trailer

In exchange the Polk County Sheriff's Office will provide four (4) Pursuit Package Chevrolet Impalas. The vehicles will have less than forty-thousand miles on them.

BACKGROUND

As the Police Department has been restructured to place greater resources in the field operations, a need has arisen to acquire suitable police package vehicles. The Chief of Police has contacted the Sheriff who has agreed to exchange four police package Chevrolet Impalas for our Ford F350 pickup truck, mobile command post and Motorola Print-Trak Live Scan Device.

During our current economic conditions the acquisition of police vehicles is challenging. As a solution Command Staff at the Police Department has conducted a value estimation on the above pieces of equipment. The F350 and Mobile Command Post are used on a seldom basis; should the need arise to have a command post at the scene of a major incident the Polk County Sheriff's Office as well as Polk County Emergency Management have assets that we could request. The Live Scan Device, although convenient, is not practical for use at a municipal police agency

The Mobile Command Post was acquired by proceeds from the Edward Byrne Memorial Justice Assistance Grant and the Law Enforcement Forfeiture Fund. The Live Scan Device was acquired from a lease purchase approved by the City Commission. The lease purchase was subsequently refinanced by a bond issuance on

September 15, 2009. Because the Live Scan instrument was an asset of the bond issued, a resolution is necessary.

Staff Recommends approval.

OTHER OPTIONS

The Commission may choose not to authorize the exchange of equipment.

FISCAL IMPACT

Ms. VanBlargan read Resolution 2011-14 by title only.

A RESOLUTION OF THE CITY OF LAKE WALES, FLORIDA, RELATING TO THE CITY'S \$1,870,300 REFUNDING REVENUE NOTE, SERIES 2009, THAT CURRENTLY REFUNDED THE ISSUER'S EQUIPMENT LEASE-PURCHASE AGREEMENT #22904 WHICH ORIGINALLY FINANCED VARIOUS PIECES OF EQUIPMENT; PROVIDING FOR THE SUBSTITUTION OF CERTAIN EQUIPMENT BEING REFINANCED BY THE NOTE; AND PROVIDING FOR AN EFFECTIVE DATE.

Asset change from the Live Scan device to four (4) Police Cars.

[End agenda memo]

Police Chief Chris Velasquez reviewed Agenda Item 14.

Commissioner Rogers complimented the Police Chief for his innovation in swapping unused equipment for needed equipment and said he hoped other departments would follow suit.

Mayor Thornhill made a motion to approve the resolution authorizing the exchange of the three pieces of equipment for 4) Pursuit Package Chevrolet Impalas. The motion was seconded by Commissioner Howell.

By Roll Call Vote:

| | |
|------------------------|-------|
| Commissioner Thornhill | "YES" |
| Commissioner Howell | "YES" |
| Commissioner Rogers | "YES" |
| Commissioner Wojcik | "YES" |
| Mayor Carter | "YES" |

The motion carried 5-0.

CITY MANAGER'S REPORT

City Commission Tracking Report:

The City Manager reported no changes to the tracking report.

COMMUNICATIONS AND PETITIONS

Mimi Hardman, as member of the Bicycle/Pedestrian Advisory Commission, announced that the City of Lake Wales' Rails to Trails' has been designated as part of the Florida Greenway and Trails System, only two other cities in Polk County having received the honor, and signs would be placed at each end of the 2.5 mile trail informing users of that designation. She also announced that the Trailhead building was ready to be used.

Sarah Kirkland, Utilities Project Administrator, gave an update for clarification on the generator at Lake Ashton that was discussed at the July 19th City Commission meeting. She said the generator that was installed in 2007 was not new but came from an upgraded lift-station. Once the generator is taken off-line and repaired, it will be used as a portable generator mounted on a trailer for use at the smaller lift-stations.

Greg Massey, 1330 Morningside Drive, commended Chief Velasquez for the changes he made since taking over as Chief of Police. He said that, though he always tries to obey the law, without warning he was slandered and arrested for having a roll-up door when other businesses in existence longer than his are not in compliance with Florida Statutes, Chapter 8-23. He said that if he is being held accountable to that law, it should apply equally to all individuals and he asked that all other businesses in violation of the law be arrested.

CITY COMMISSION COMMENTS

Commissioner Howell made the following comments:

- She commended Code Enforcement for the work done in not allowing people to keep their garbage totes at the curb after pick up, but said there were many more not in compliance.
- She said, though the Police Chief said he is working on the problem, she wanted it on record that the message on the Police Station answering machine is very confusing, making it hard for citizens to reach a live person, which would make it hard for someone to report an illegal activity.
- She said she was told that somewhere on the internet Lake Wales is listed as 'a speed trap city'. Ms. Delmar said there are a number blog websites, (just google 'speed trap' and a list pop up), where people can report what they deem unfair speed traps. It is not anything official; there is no way a city can remove them, no way of verifying that the ticket was unjust; and just about every city is listed.

Mayor Carter commented on his concerns about the following issues:

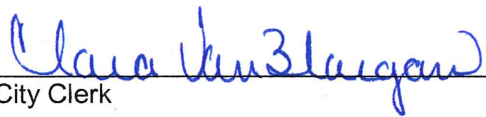
- The Mayor asked for an update on the Estes Electric Co. building that has been in violation, and a safety and health hazard for years. City Attorney Chuck Galloway said there is a claim against the City for damages on the property. Mr. Estes' attorney filed a tort claim notice letter which was sent to the City's insurer and who is now dealing with Mr. Estes' counsel. He said he was not aware of any other specific actions going on at this time. Mayor Carter asked why we don't enforce our own ordinance, allowing this to continue when it has been going on for a number of years. Planning & Development Director Margaret Swanson said she was not up on the issue but would check into it. Ms. Delmar said she would ask the Building Official to attend the next City Commission meeting to address his concerns.
- The Mayor asked why the City spent a great deal of money getting an arborist's opinion and then it doesn't enforce the policy, which is not allowing cars to park under trees around the lake, though he said he realized that parking around the lake is a real problem. Ms. Swanson said it was a gradual process that the Parks and Community Appearance Advisory Board is working on. She listed things that have been done or are in the process of being done such as pruning 62 trees with grant funds, purchasing \$2,000 worth of wood to put at the horseshoe area at Lake Wales Park as guard rails, designing areas with mulch and plantings, and designating where cars can be parked.

There being no further business, the meeting was adjourned at 7:34 p.m.



Mayor/Commissioner

ATTEST:



City Clerk