

The regular meeting of the Lake Wales City Commission was held on March 2, 2010 at 6:00 p.m. in the Commission Chambers at the Municipal Administration Building. The meeting was called to order by Mayor L. Jack Van Sickle.

INVOCATION

The invocation was given by Dr. Jim Moyer, Warner University

PLEDGE OF ALLEGIANCE

COMMISSIONERS PRESENT: Terrye Y. Howell; Lee A. Wheeler, III; John Paul Rogers; Jonathan Thornhill; Mayor L. Jack Van Sickle

COMMISSIONERS ABSENT: None.

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

CONSENT AGENDA

Agenda Item 5. Approval of Minutes: February 9, 2010, and February 16, 2010

Agenda Item 6. 4th of July Fireworks

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Jennifer Nanek, Grants Administrator]

SYNOPSIS

Acceptance of bid for 4th of July Fireworks for \$10,000

RECOMMENDATION

Staff recommends acceptance of the proposal from East Coast Pyrotechnics, Inc of \$10,000 to conduct the 4th of July fireworks on Sunday July 4th at 9 PM.

BACKGROUND

The City of Lake Wales included \$10,000 in the 09-10 Fiscal year budget for fireworks on the 4th of July. East Pyrotechnics, Inc formerly known as Melrose South Pyrotechnics has done our event the past few years and has done a good job. The show will be approximately 15-20 minutes. Two other companies also submitted bids. Here is a basic breakdown of the proposals.

East Coast Pyrotechnics – 20 minutes

- 1485 shells: 430 2" shells, 350 2½" shells, 480 3" shells, 115 4" shell, 65 5" shells, 45 6" shells
- 3 Barrage segments
- 4 Special effects

Zigmont Magic F/X Inc. - 20+ minutes

- 3000 shells: 1800 ½"-3" shells, 900 1"-1¾" shells, 300 ½"-1" shells

Bay Fireworks – 20 minutes

- 839 shells – 450 2½"-3" shells, 155 4" shells, 135 5" shells, 99 6" shells
- 865 special effect barrage

Staff is recommending awarding the contract to East Coast Pyrotechnics because their proposal includes larger shells and a greater variety of shells. We feel this will create a better program.

OTHER OPTIONS

Accept the proposal from one of the other companies

Do not accept the proposal.

FISCAL IMPACT

Cost of the fireworks is \$10,000

[End agenda memo]

END CONSENT AGENDA

Commissioner Wheeler made a motion to approve the Consent Agenda. The motion was seconded by Commissioner Howell.

By Voice Vote:

| | |
|------------------------|-------|
| Commissioner Wheeler | "Yes" |
| Commissioner Howell | "Yes" |
| Commissioner Rogers | "Yes" |
| Commissioner Thornhill | "Yes" |
| Mayor Van Sickle | "Yes" |

The motion carried 5-0.

OLD BUSINESS

Agenda Item 7. Ordinance 2010-02, Repealing Charge for Fire Protection Service – 2nd Reading & Public Hearing

Ms. Delmar reviewed Agenda Item 7. The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Judith H. Delmar, City Manager]

SYNOPSIS

The Commission will consider adopting an ordinance to repeal the monthly water fee currently charged for fire sprinkler systems.

RECOMMENDATION

It is recommended that the City Commission approve Ordinance 2010-02 after second reading and public hearing.

BACKGROUND

At the Commission workshop on January 12, there was lengthy discussion about the fee charged by the City for fire protection service. This is an "availability of service" charge based on the size of the fire line connected to the building's fire sprinkler system. The fee depends on the size of the line and can run from \$5 per month to \$120 per month for inside city customers.

The fee is highly unpopular among businesses because, unless the location actually experiences a fire, there is never any water used. Business owners have complained that they are required to install a system that they may never need, and then they are required to pay a monthly fee for having installed the system. The general complaint is that they are being penalized for complying with the law.

From the standpoint of the fire chief, the unpopular fee serves as a disincentive for installing a fire prevention system, and any fee that is viewed as a "penalty" for complying with fire code requirements is really not in the best interest of the public. If a structure has adequate fire sprinklers installed and that structure has a fire, fewer public resources –i.e., water supply, manpower, equipment costs, etc.– are expended in fighting the fire. For many reasons, it is in the public interest to encourage fire protection systems in all structures, but especially in commercial structures.

Accordingly, Ordinance 2010-02 is proposed to repeal the fee for fire protection services.

OTHER OPTIONS

Do not adopt Ordinance 2010-02, and the fee for fire protection services will remain in place.

FISCAL IMPACT

Revenue from the fee for fire protection services totaled \$28,478 in FY08'09. Repealing the fee would eliminate this source of revenue.

[End agenda memo]

Ms. VanBlargan read Ordinance 2010-02 by title only.

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES CHAPTER 21, UTILITIES, TO REPEAL THE CHARGE FOR FIRE PROTECTION SERVICE; PROVIDING FOR AN EFFECTIVE DATE

OPENED PUBLIC HEARING

There were no comments made by the public.

CLOSED PUBLIC HEARING

Commissioner Wheeler said this had been a sticky point with businesses in Lake Wales for quite a while so it would be a good move for the Commission to repeal it.

Commissioner Rogers made a motion to adopt Ordinance 2010-02 after second reading and public hearing. The motion was seconded by Commissioner Thornhill.

Roll Call Vote:

| | |
|------------------------|-------|
| Commissioner Rogers | "Yes" |
| Commissioner Thornhill | "Yes" |
| Commissioner Wheeler | "Yes" |
| Commissioner Howell | "Yes" |

Mayor Van Sickle

"Yes"

The motion carried 5-0.

Agenda Item 8. Ordinance 2010-03, FY09'10 Budget Amendment #2 – 2nd Reading & Public Hearing

Ms. Delmar reviewed Agenda Item 8. The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Judith H. Delmar, City Manager]

SYNOPSIS

Commissioners will consider the second amendment of the FY09'10 Budget adopted on September 15 2009.

RECOMMENDATION

It is recommended that the City Commission approve Ordinance 2010-03 after second reading and public hearing.

BACKGROUND

Ordinance 2009-21 estimating revenues and appropriating funds for Fiscal Year 2009-10 was adopted by the City Commission September 15, 2009 and amended on November 24. We are presenting for first reading a second amendment of Ordinance 2009-30 to modify the estimates of revenues and appropriations budgeted in various funds. Exhibits A and B and supporting attachments provide the detail for the proposed amendment. This budget amendment is based on unaudited financial reports for the accounting period ending on 9/30/09. The following is a summary of changes included in the proposed amendment:

| Revenues & Balances Fwd | Increase(Reduction) |
|--|---------------------|
| General Fund | 0 |
| Special Revenue Funds | 735,891 |
| Debt Service Fund | 0 |
| Capital Projects Fund | 0 |
| Airport Fund | 0 |
| Utility System Fund | 450,000 |
| Total Increase(Reduction) of Revenues & Balances Fwd | 1,185,891 |
| Appropriated Expenditures & Reserves | |
| General Fund | 73,700 |
| Special Revenue Funds | 1,123,844 |
| Debt Service Fund | 0 |
| Capital Projects Fund | 0 |
| Airport Fund | 193 |
| Utility System Fund | 462,272 |
| Reserves | (474,118) |
| Total Increase(Reduction) of Appropriated Expenditures & Reserves | 1,185,891 |

The proposed budget amendment increases the City's total budgeted expenditures by \$1,660,009 and decreases reserves by \$474,118, for a net increase in appropriated expenditures and reserves of \$1,185,89 (from \$43,259,138 to \$44,445,029).

This amendment is necessary to incorporate into the budget several items approved by the City Commission since October 1 as follows:

- Approval of the 1% lump sum cost of living "bonus" granted to employees:

| | |
|-----------------------|--------|
| General Fund | 58,354 |
| Special Revenue Funds | 12,308 |
| Utility Fund | 10,816 |
| Total | 81,478 |

- Allocation of remaining CRA bond proceeds:

| | |
|---|---------|
| Completion of Elevated Storage Tank | 200,000 |
| Engineering for Sewer Improvements "C" St and vicinity | 250,000 |
| Total | 450,000 |

- Allocation of remaining CRA revenues:

| | |
|--|---------|
| Expansion of MOTOMESH System | 52,000 |
| Downtown Drainage Improvements - alley between Central & Stuart | 200,000 |
| Downtown Parking Improvements | 80,000 |
| Total | 332,000 |

In addition, amendments are necessary that include:

- Appropriation of \$30,000 in additional Library revenue for the Books-by-Mail program and \$23,524 in additional revenue allocated by the Polk County Board of County Commissioners for the Polk County Library Cooperative
- Reallocation of \$200,000 from engineering of a ground storage tank for the reuse system to acquisition of land for location of a ground storage tank for the reuse system
- Law enforcement cost increases that include \$6,025 allocated as the City's cost for the Polk Regional Juvenile Assessment Center and \$6,550 to replace a police canine that was retired because of age-related health issues
- Reallocation of copier lease budgets necessitated by the new copier lease contract that reduced cost in some departments and increased cost in other departments for a net reduction of \$369
- Reallocation of funds designated for capital outlay to the operating category as a result of the police vehicle lease program approved by the City Commission instead of the outright purchase of vehicles

OTHER OPTIONS

With the exception of the reallocation of CRA resources, this is primarily a housekeeping ordinance to conform the budget to items approved by the City Commission. Reallocation of CRA resources were approved by the CRA board at their meeting on February 16, 2009.

FISCAL IMPACT

See Exhibit A and Exhibit B attached to Ordinance 2009-30.

[End agenda memo]

Ms. VanBlargan read Ordinance 2010-03 by title only.

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING ORDINANCE 2009-21 AS AMENDED BY ORDINANCE 2009-30 TO MODIFY THE ESTIMATES OF EXPENDITURES FOR THE OPERATION OF THE SEVERAL DEPARTMENTS OF SAID CITY FOR THE 2009-2010 FISCAL YEAR AND TO MODIFY THE APPROPRIATION OF FUNDS RAISED AND COLLECTED FROM ALL SOURCES SET FORTH IN THE ESTIMATE OF REVENUES FOR SAID FISCAL YEAR; REPEALING ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

OPENED PUBLIC HEARING

There were no comments made by the public.

CLOSED PUBLIC HEARING

Commissioner Rogers made a motion to adopt Ordinance 2010-03 after second reading and public hearing. The motion was seconded by Commissioner Howell.

Roll Call Vote:

| | |
|------------------------|-------|
| Commissioner Rogers | "Yes" |
| Commissioner Howell | "Yes" |
| Commissioner Wheeler | "Yes" |
| Commissioner Thornhill | "Yes" |
| Mayor Van Sickle | "Yes" |

The motion carried 5-0.

NEW BUSINESS

Agenda Item 9. Ordinance 2010-04 Cemetery Ordinance Additional Amendments – 1st Reading

Ms. Delmar reviewed Agenda Item 9. The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Judy Delmar, City Manager]

SYNOPSIS

The Commission will consider adopting an ordinance to eliminate the notice requirement for additional violations of the same cemetery rule or regulation and to repeal the provision in the cemetery ordinance allowing a confederate flag to be placed on the grave of a Civil War veteran.

RECOMMENDATION

It is recommended that the City Commission approve Ordinance 2010-04 after first reading.

BACKGROUND

On December 15, 2009, the City Commission approved Ordinance 2009-32 revising cemetery rules and regulations. When a violation of a cemetery rule occurs, section 2-645 of the ordinance requires that staff "flag" the grave site to provide notice of the violation and to allow 30 days for correction of the violation before it is corrected by staff.

This system has worked well so far, but leaves open the possibility of a repeat violation immediately after staff has made a correction, thus triggering another 30 day notice requirement. Proposed Ordinance 2010-04 removes the notice requirement for second and subsequent violations of the same rule or regulation.

Section 2-644 of Ordinance 2009-32 includes a provision that permits a Confederate flag be placed as a decoration upon the grave of a Civil War veteran on Confederate Memorial Day. It has been determined that there are no Civil War veterans buried in either of the Lake Wales cemeteries, thus making this provision unnecessary. Commissioner Howell and several members of the community have expressed the strong opinion that this provision should be eliminated. Proposed Ordinance 2010-04 includes the repeal of this provision for consideration by the Commission.

OTHER OPTIONS

Do not adopt Ordinance 2010-04, or amend one section and not the other.

FISCAL IMPACT

None.

[End agenda memo]

Ms. VanBlargan read Ordinance 2010-04 by title only.

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES CHAPTER 2, ADMINISTRATION, TO REPEAL PROVISION ALLOWING CONFEDERATE FLAG ON GRAVE OF CIVIL WAR VETERAN; TO ELIMINATE NOTICE REQUIREMENT FOR ADDITIONAL VIOLATIONS OF SAME CEMETERY RULE OR REGULATION; PROVIDING FOR AN EFFECTIVE DATE.

Commissioner Rogers said to his knowledge there were no Confederate Veterans in either cemetery and he did not think there was much chance that anyone would be buried there because they would be about 200 years old. He gave a brief history of the design of the Confederate flag. He said that the Commission sometimes has to discuss trivialities, and that this was one of those times, especially when compared to a newspaper article in the Lake Wales News stating that Polk City was about to have its sewer plant repossessed because they were two payments behind. He said he was just thankful the Lake Wales City Commission was not having to discuss their sewer plant being repossessed. Ms. Delmar said that was the good news.

Mayor Van Sickle said he also had concerns about the same section of the ordinance. He said that Commissioner Rogers was correct in saying that there were no Confederate Veterans buried in the cemetery and there should not be any veterans from the Civil War still living. However, someone might want to transfer a Confederate veteran to the cemetery. He gave a brief history of the Confederate flag. He said there were several laws they needed to look at. One was Public Law 85-425 adopted May 23,

1958, which he read aloud that basically said all veterans, by a Federal Act of Congress, are considered United States Citizens, deserving the same rights and honors. The other law, Florida Statutes 256.051, gave the Confederate flag the same status as the United States flag with the right to be flown in the same locations. Therefore, he said, if the United States flag is allowed to be flown in our cemeteries, we have to allow the Confederate flag the same right. Florida Statutes would override a city ordinance. He said he realized that this issue brought up ill feelings in many people and he was not trying to do that. He relayed some history as to the horrors of POW camps in both north and south where both Union and Confederate prisoners had been treated badly. He told of a POW camp in Indiana where the city had erected a monument to the POWs, which included the Black and Hispanic Confederates who died there. He said the point was that there are many different types of Veterans and they all need to be treated the same. He asked City Attorney Chuck Galloway for a legal interpretation of the statutes.

Mr. Galloway said the referenced provision stated you could not prevent the use of Confederate flags for decorative or patriotic purposes, meaning that a provision could not be drafted in such a way as to preclude the use of Confederate flags because it would violate the statutory provision. Our ordinance deals specifically with Confederate Memorial Day. As it has been determined that there are no Confederate soldiers buried in either cemetery, it would not make a great deal of difference whether this stays or is removed by the Commission. However, the Commission could not make a prohibition against the use of Confederate flags for decorative or patriotic purposes on Confederate Memorial Day.

Mayor Van Sickle said that the chances of someone moving an ancestor to the cemetery are slim, but he did not think the Commission should pass an ordinance that would discriminate against a sub-set of military veterans. He believed this would be done if the provision is nullified.

Ms. Delmar asked Mr. Galloway if the Florida Statute would trump the City Ordinance and he said it would. Mayor Van Sickle said if we removed the provision, it would be a moot point anyway because the state statute would still be there. Ms. Delmar said that in our ordinance we are saying that a Confederate flag could only be placed on a civil war veteran's grave on Confederate Memorial Day and that the statute implies that on any day the American flag is flown we also have to allow the Confederate flag to be flown. Mr. Galloway disagreed and said it did not go that far. Ms. Delmar said that the statute did not say anything about Confederate Memorial Day. Mr. Galloway said for decorative or patriotic purposes it would be appropriate, but not on a regular Memorial Day. He said that if she wanted him to research it further, he would.

Mayor Van Sickle said he preferred they not take out the present language. Chances of it ever happening would be slim, but it would keep the City in line with the Federal and Florida Statutes. He suggested cutting that recommendation in half and making a motion on adopting just the portion of the ordinance that would eliminate the notice requirements for additional violations of the same cemetery rules or regulations.

OPENED TO PUBLIC COMMENTS

David Smith, president of the Lake Wales Branch NAACP, said that at the first hearing [of the adopted ordinance] a resident wanted to use a Confederate flag for her red-neck son's grave and was voted down. Then it was voted in because somebody from the Daughters of Confederacy said they wanted some flags out there. He said he checked with the City Manager and with Teresa Allen, Public Service Administrator, and found there were no Confederate soldiers buried there. Therefore, the City has an ordinance that applies to no one. He said he received a cemetery pamphlet stating that anything insulting to the community should not be placed at the cemetery. He said the Confederate flag was an insult to him and to his family members that are buried there. He said it is insulting to have a Confederate flag that tried keeping his race in slavery for all those years. Mr. Smith asked that this part of the ordinance be taken out and to permit only the United States Glory flag to be flown. He said they just concluded almost three months of racial issue meetings and that this issue would divide the community just when the community needed to come together to make tough decisions.

Rev. J. J. Pierce, senior pastor of First Institutional Missionary Baptist Church, thanked the Commission for the privilege and opportunity to share his views on the issue. He said he hoped the Commission was as tired of having concerned citizens coming forward to address racial issues as they were tired of having a reason to come forward. He said the time would be better spent working on more important progressive issues that would make a better tomorrow. However, instead the community seemed to take one step forward and two steps backwards with racial issues. He wondered what it would take to bring the City out of the dark ages of racial insensitivity. He said the Confederate flag was more personal to Blacks than just representing the Confederacy as fighting another war. He said that when they as Black people see a Confederate flag flying it reminds them of a group of people with skin color lighter than theirs that held their race in slavery. He gave a brief history of what Blacks had to endure as slaves and then later in the 60's. He said that, as there were no Confederates buried in the cemetery, the argument should be taken off the table. He said that in all fairness, the action of the Commission should be to vote "no" to this request once-and-for-all. He added that though some parts of the City advocated racial hatred, most try continuously to move beyond that. He said that racial tension in the City had become so strong in recent months that it became necessary for leaders of the Black community and leaders of the City to meet with the State Justice Department to engage in mediation as an effort to try coming up with a plan and a solution that would put healing salve on the wounds of those on both sides. When considering all of this, he said it was clear to him that, though racism cannot be legislated out the hearts of people, the Commission should legislate against this issue by voting no.

Manuel Crespo, 850 Wildabon Avenue, said he was there to ask the Commission to correct something they had approved in error. He said the ordinance should never have been passed because there were no Confederate soldiers buried in the cemetery, which Commissioners should have found out before passing it. Therefore, it was wrong no matter which way he looked at it. He said the Commission is the last line of defense that residents have against untruthful, incorrect, and wrong information getting into the ordinances. He asked that they correct their error by removing it now.

Ed Bowlin, Circle Drive, said that soldiers had no choice as to which war they fought or which side they took. He said his family history included those who fought for both the north and the south. He believed that Ordinance 2010-03 was about honoring veterans for services rendered and that those who spilled their blood on the ground deserved to be honored. He said that dishonoring Confederate veterans now would not remove the memory of slavery or correct it. He felt that the men at the Commission meeting who came forward were sincere, but the Commission could not change the past by changing the ordinance. All veterans, in his opinion, should be honored.

CLOSED TO PUBLIC COMMENTS

Commission Rogers had no further comments.

Commissioner Howell said that she could not imagine someone wanting to transfer a Civil War Veteran to Lake Wales. She said she thought this part of the ordinance should be eliminated and should never have been passed in the first place. She said that the Confederate flag did not honor veterans, for that was done in one's own house. City cemeteries are public and we all are Americans. She said everyone knows the history of the Civil War, and no one was trying to change that, but she would like the City of Lake Wales to make some history of its own. It was not her intention to dishonor anyone who died. If you want to honor a veteran, you put an American flag on the grave because they all were Americans. If in the future there are those who want to transfer a Confederate Veteran to the Lake Wales cemetery, let them bring them from Virginia right on down. However, not with a Confederate flag waving, unless the Commission was willing to let every other kind of flag to be flown. She said she was not trying to break the laws but that those laws had been made years ago. There should be compassion for everyone buried in our cemeteries without regard to color. She said this was not about one's mind but one's heart and that some people have hearts that are still in a negative place.

Commissioner Wheeler said the Confederate flag was just a battle flag, for the real flag of the Confederacy was the Bonnie Blue. Nonetheless, the Confederate flag represented a way of life that made

slaves of a group of people. By removing the clause, it would be an olive branch saying to our minority community that we want unity. He was sure the Commission did not want to spit in their faces, which was what he thought leaving it in would do. He said that every Confederate veteran is legally recognized as an American War veteran, entitling them to wave their flag, which would be the United States flag. The American flag is the only flag of this country and the only one that should be flying on any veteran's grave. He said if we had German War veterans from WW II, they might want to put a swastika there, or someone else might want the rising-sun flag. Using the Confederate flag would be showing disrespect for an important segment of this community and he did not think we should do that. There might be some conflicts with Florida State law, but if someone does not like that, he said to let them take us to court. Leaving this section in is insulting and disuniting. He wanted it taken out.

Commissioner Thornhill said there had been some historical inaccuracies and reverse discrimination associated with this issue. He said he originally brought the issue up so as not to usurp state laws. He said veterans were entitled to the flag under which they fought. He said he had family ancestors who fought on both north and south. He admitted that he should have researched first to find out if there were any Confederate veterans buried there, but he did not want the City to do something that was against state and federal law. Since no Confederate veterans are buried there anyway, he agreed with the Mayor that it is a moot point.

Ms. Delmar said that she did not think they were doing anything contrary to state and federal laws because the ordinance would not prohibit the use of a Confederate flag. It simply would not say that it is permitted. If someone were to be moved from another cemetery to ours who happened to be a Civil War Veteran, and they wanted to fly a Confederate flag on Confederate Memorial Day, state law would trump the City's ability to deny that request. As it stands, the language in the ordinance is moot and inflammatory. She said we do not need the language in the ordinance because state law covers that circumstance if it should arise.

Commissioner Thornhill said he is offended when people use the Confederate flag for its unintended purpose. He said he is very disgusted with that as well as when they misuse the POW and MIA. He said if the language had to be in there for legal purposes then it should be left in, and if it did not have to be in there then it should be taken out. Mr. Galloway said the clause does not need to be in the ordinance for legal purposes because it is provided for by state law. Mayor Van Sickle agreed that it is provided for by the state statute, but he felt that it should be in there for the sake of clarity, even if never used. He gave his reasons. He said it would apply only one day a year and would keep our ordinance in line with the state and federal ordinances. He thought it should be left in.

Commissioner Rogers said he thought it was a moot point as there were none buried there and he did not think there ever would be. However, if at some point there was one, the federal and state laws say they can fly the Confederate flag regardless. He said nothing would be accomplished by taking it out.

Commissioner Howell made a motion to eliminate the Confederacy terminology in Ordinance 2010-04. The motion was seconded by Commissioner Wheeler.

Roll Call Vote:

| | |
|------------------------|-------|
| Commissioner Howell | "Yes" |
| Commissioner Wheeler | "Yes" |
| Commissioner Thornhill | "Yes" |

Before voting, Commissioner Rogers said he did not see the need to bring this up because, as the City Manager had said, it is moot. There is no Confederate veteran at the Cemetery and there never will be. If there were, the federal and the state law would allow the Confederate flag to be flown. So, nothing is being accomplished other than taking it off the books. He said it does not bother him to take it off the books because we have a federal and state law that upholds it.

| | |
|---------------------|------|
| Commissioner Rogers | "No" |
| Mayor Van Sickle | "No" |

The motion carried 3-2.

Mayor Van Sickle stated that the portion of Ordinance 2010-04 pertaining to the use of the Confederate flag, by vote had been removed and he now needed a motion to approve the remaining part of the ordinance.

Commissioner Wheeler made a motion to approve Ordinance 2010-04, approving the remaining part of the ordinance. The motion was seconded by Commissioner Howell.

Roll Call Vote:

| | |
|------------------------|-------|
| Commissioner Wheeler | "Yes" |
| Commissioner Howell | "Yes" |
| Commissioner Thornhill | "Yes" |
| Commissioner Rogers | "No" |
| Mayor Van Sickle | "No" |

The motion carried 3-2

Agenda Item 10. Appointment – Police Officers’ Retirement Board

Ms. Delmar reviewed Agenda Item 10. The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Clara VanBlargan, City Clerk]

SYNOPSIS

The appointment will fill a vacancy due to a resignation of a Board member.

RECOMMENDATION

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

Police Officers’ Retirement Board – Resident Members & 5th Seat Member are appointed by the City Commission. The board consists of five (5) members. Two (2) members must be legal residents of the City and two (2) members must be full time police officers employed by the Lake Wales Police Department. Resident members are appointed by the City Commission; police officer members are selected by a majority of the police officers who are members of the plan. The fifth member is chosen by a majority of the other four members and appointed by the City Commission. Members may serve a two (2) year term, which expires on October 1 of the second year following the appointment. There shall be no limit to consecutive terms served by an elected or appointed trustee on a board established for the purpose of administering an employee retirement plan (Ordinance 2008-09; 03/18/08).

This appointment is for a 5th Seat member, term to expire 9/30/2011.

Applying for appointment: Thomas D. Scali, resident

The vacancy is due to the resignation of 5th member, Richard R. Williamson.

Mr. Scali was chosen by a majority of the Board at its meeting on February 17, 2010.

FISCAL IMPACT

None. This is a volunteer citizen board.

OTHER OPTIONS

Do not appoint the applicant named above and seek other applicants; however, it may be difficult for the board to obtain a quorum if the appointment is delayed.

[End agenda memo]

Commissioner Wheeler made a motion to appoint Thomas D. Scali to serve as a member on the Police Officers' Retirement Board for a term to expire on 9/30/2011. The motion was seconded by Commissioner Howell.

By Voice Vote:

| | |
|------------------------|-------|
| Commissioner Wheeler | "Yes" |
| Commissioner Howell | "Yes" |
| Commissioner Thornhill | "Yes" |
| Commissioner Rogers | "Yes" |
| Mayor Van Sickle | "Yes" |

The motion carried 5-0.

Agenda Item 11. Appointment – Charter Review Committee

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Clara VanBlargan, City Clerk]

SYNOPSIS

The appointments will fill the five available positions on the Charter Review Committee as required by Resolution 2010-04.

RECOMMENDATION

It is recommended that the City Commission confirm the appointees named by each commissioner.

BACKGROUND

At its meeting on January 19, 2010, the City Commission approved Resolution 2010-04 establishing a five-member Charter Review Committee. Each commissioner is required by the resolution to appoint one member. To be eligible for appointment, an appointee must be a resident of Lake Wales and a registered elector of the city. The appointee may not serve as a state legislator, a county commissioner, or an elected/appointed government officer such as a member of the planning and zoning board.

Each commissioner has provided the City Clerk with the name of the person that he or she wishes to appoint to the Charter Review Committee. All of the persons named are eligible for appointment.

| <u>Appointee</u> | <u>Making Appointment</u> |
|--------------------|---------------------------|
| Chevon Baccus | Commissioner Howell |
| Ed Bowlin | Mayor Van Sickle |
| Robin Gibson | Commissioner Wheeler |
| Christopher Lutton | Commissioner Thornhill |
| Sylvia Rogers | Commissioner Rogers |

The first meeting of the Charter Review Committee will take place on or before March 4.

FISCAL IMPACT

None. This is a volunteer citizen board.

OTHER OPTIONS

Each Commissioner is entitled to name one appointee.

[End agenda memo]

Mayor Van Sickle announced there was a change in the list of appointees. Ms. Alyson Snyder replaced Mr. Christopher Lutton. He read the list of appointees into the record: Chevon Baccus, Ed Bowlin, Robin Gibson, Alyson Snyder, and Sylvia Rogers.

Commissioner Howell made a motion to approve the updated list of Charter Review Committee appointees as required by Resolution 2010-04. The motion was seconded by Commissioner Wheeler.

By Voice Vote:

| | |
|------------------------|-------|
| Commissioner Howell | "Yes" |
| Commissioner Wheeler | "Yes" |
| Commissioner Thornhill | "Yes" |
| Commissioner Rogers | "Yes" |
| Mayor Van Sickle | "Yes" |

The motion carried 5-0.

Agenda Item 12. Discussion of Preliminary Financial Statements for January 31, 2010, Fiscal Year to Date

Ms. Delmar reviewed Agenda Item 12. The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Judy Delmar, City Manager]

SYNOPSIS

The preliminary financial statements report revenues received and expenditures made through the end of January 2010. Revenues were slightly ahead of target in the General and slightly behind in the Utility Fund. General Fund expenditures were slightly over budget, but Utility Fund expenditures were about 10% under budget.

The unaudited financial statements for the City of Lake Wales for the Period Ending January 31, 2009 are presented to the City Commission for review. At the end of January, the City was 33.3% into the fiscal year. Nine of twenty-six payrolls (34.6%) have been expensed through January 31. Revenue and expenditure budgets have been adjusted to reflect changes through Budget Amendment #2.

SUMMARY

The following chart gives a brief summary of overall operating revenue and expenditure performance as of January 31, 2010. Capital expense funded by CRA bond or loan proceeds is excluded from the analysis:

| | | | | | |
|---------------------------|--------------|-------------|-------------|-------------|--------|
| General | | | | | |
| Revenues ¹ | \$10,839,648 | \$5,330,160 | \$5,132,464 | \$197,696 | +1.8% |
| Expenditures ³ | \$11,159,391 | \$3,755,169 | \$3,719,797 | \$35,372 | +0.3% |
| Special Revenue | | | | | |
| Revenues ¹ | \$4,795,650 | \$2,790,641 | \$3,525,083 | (\$734,442) | -15.3% |
| Expenditures ³ | \$3,230,413 | \$664,249 | \$1,076,804 | (\$412,555) | -12.8% |
| Debt Service | | | | | |
| Revenues ³ | \$2,363,120 | \$794,495 | \$787,707 | \$6,788 | +0.3% |
| Expenditures ² | \$2,363,120 | \$1,614,440 | \$1,614,440 | \$0 | +0.0% |
| Utilities | | | | | |
| Revenues ¹ | \$6,608,450 | \$2,237,862 | \$2,326,481 | (\$88,619) | -1.3% |
| Expenditures ³ | \$7,014,814 | \$1,581,015 | \$2,338,271 | (\$757,256) | -10.8% |
| Airport | | | | | |
| Revenues ³ | \$107,193 | \$20,164 | \$35,731 | (\$15,567) | -14.5% |
| Expenditures ³ | \$107,193 | \$30,220 | \$35,731 | (\$5,511) | -5.1% |

¹ Revenue target = prior year performance at same point in fiscal year

² Expenditure target for Debt Service Fund = actual YTD expenditure because we are paying off debt in accordance with set schedules

³ Target = 1/12 of budgeted amount multiplied by the number of months since the start of the fiscal year (October 1); i.e. at the end of January we are 4/12 or 33.3% into the fiscal year. This method assumes a relatively even distribution of expense or revenue from month to month.

In general, most operating revenues are about where we would expect them to be at the end of the first fiscal quarter.

Revenues from water and sewer charges at the end of January 2010 were \$16,004 ahead of where they were in January 2009 (water, -\$17,396; sewer, +\$33,400). If we use 33.3% of the fiscal year as the target level, however, water revenues were \$27,314 under target and sewer revenues were \$8,771 ahead of target. This is a combined excess of \$36,085 compared to the budget. Operating expenditures were running behind target at the end of January. Excluding project costs funded by CRA bond proceeds, Utility Fund expenditures were 5.6% or \$215,699 below the target level.

Operating expenditures in the General Fund are running 0.3% ahead of target (+\$35,372), and operating expenditures in all other Funds are running behind target levels. The 1% lump sum increase for employees was paid out in December, and this has skewed expenditures in relation to target.

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:

| | 9/30/08 | 1/31/10 | Difference |
|--|-------------|-------------|------------|
| Pool/Tax Anticipation Investment Account | \$1,037,852 | \$1,047,220 | \$9,368 |

The City's overall cash position at the end of January 2010 improved slightly over the cash position at the end of January 2009 (+\$150,621). In order to make a more accurate comparison, the following adjustments are be made:

| | 1/31/09 | 1/31/10 | Difference |
|---------------------------------------|-----------|-----------|------------|
| Total Cash & Investments | 7,253,564 | 7,404,185 | 150,621 |
| Due to Other Governments | (122,641) | (102,380) | |
| Deferred Revenues* | (418,455) | (399,755) | |
| Cash & Investments Net of Adjustments | 6,712,468 | 6,902,050 | 189,582 |

* reflected in cash but restricted to a specific future expenditure (grant project, tree replacement fund, etc), at which time revenue will be recognized

After excluding cash that was collected on behalf of other governments and deferred revenues, the City's overall cash position at the end of January 2010 \$189,582 better than at the end of January 2009.

In comparison to total cash and investments at December 31 of \$7,392,654, the January cash and investments position decreased by \$490,604. This is normal with the slow-down of ad valorem tax revenues in January. Between December 1 and December 31, the City received \$3,511,706 in ad valorem taxes and \$994,855 in CRA tax increment revenues from the County. In January, revenues from ad valorem taxes totaled \$302,987.

[End agenda memo]

CITY MANAGER'S REPORT

CITY COMMISSION TRACKING REPORT

There were no additions or changes to the City Commission Tracking Report.

COMMUNICATIONS AND PETITIONS

Richard Sylvia, 2063 Bel Ombre Circle, gave the Commission a brief update on his progress with the problem he had with his swimming pool that was partially built in the easement. He said he received the documents from Mr. Galloway that he needed and he was able to contact six out of his nine neighbors for signatures. Mr. Sylvia explained his repeated unsuccessful attempts in trying to make contact with the other three neighbors to get their signatures. He said he asked the City Attorney if the six neighbors that did sign were enough or if he would have to get all nine signatures, when he did not know how he could contact them. Mr. Galloway said that it was his opinion that he needed to get the other three signatures, but if for some reason he could not, he would address that issue then. Commissioner Thornhill suggested to Mr. Sylvia that he get their vehicle tag numbers and ask Chief Gillis to help, or see if Police Officer David Smith from the Sheriff's Department, present at the meeting, would help. Officer Smith said he would help.

Linda Bran-Heier, General Manager of the Lake Wales Bob Evans Restaurant, told the Commission of a problem she had with the City's banner sign regulation. She said she received two notices over the past three years saying she could not fly banners. She said she does not fly banners. Her sign is bolted down per hurricane standards. The sign was taken down last Thursday afternoon after getting a call from the Planning Department wanting her name and the corporate address, which indicated to her that a letter would be going to the corporate office. She said she would like to resolve this for all the businesses in Lake Wales. She asked the Commission to consider their request that banners be allowed.

Mayor Wheeler asked the City Manager if staff was reviewing the sign ordinance and Ms. Delmar said it was and that a recommendation was expected to be brought before the Commission within the next 30 to 60 days. She added that she did not know how they were addressing banners but that the use of banners had been a problem for a long time and the Commission consistently maintained the prohibition against banners in our sign ordinance. She said staff would bring alternative language to the Commission, but there were other ramifications to the allowance of banners. She said that if the regulation could be narrowly construed in such a way as to accommodate the businesses by allowing them to advertise on a temporary basis, perhaps they could do that. However, that would have to be approved by the Planning & Zoning Board before coming before the City Commission.

Mayor Van Sickle asked if it was possible to impose a moratorium until then. Ms. Delmar asked if he meant a moratorium on the enforcement of the banner. The Mayor said that the banner at Bob Evans Restaurant was located close to the building, held on tightly, and did not flap in the wind. Ms. Delmar said she did not know that it was just a "flapping in the wind" issue, but rather a size issue, along with a number of other issues that were involved. However, if the Commissioners wished to impose a moratorium on enforcement, it was possible to do so.

Commissioner Howell said that Bob Evans was one of our community friendly businesses, especially when it comes to our schools. She said there were banners that she knew needed to be replaced. She suggested there needed to be verbiage stating what was required. She said that the banner at Bob Evans Restaurant almost looked like it was painted on the building. She asked that staff take that into consideration because Lake Wales needed businesses that were not upset with the City. Maybe it should be allowed if done in great taste.

Commissioner Wheeler asked if it would be appropriate to seek a motion to temporarily impose a moratorium on banners. Mr. Galloway said no it was not appropriate. If that was done, you would take away the ability to enforce the ordinance against any other sign violation. You cannot selectively enforce just one kind of sign in the ordinance. Commissioner Howell asked if the banner part of the ordinance could be pushed ahead so it could be fixed. Mr. Galloway said we have to deal with this ordinance as a single issue, because it is a single issue. He acknowledged that a banner is a type of sign, but once you start saying "a regulation of signs" that body of ordinance needs to be enforceable across the board. He said there were some significant issues that came out of a case a few years ago in, he thought it was Neptune Beach, where their ordinance became unenforceable for any signs. If you have that happen, then you have a problem..

Mayor Van Sickle asked that if he made a motion to put a 90-day moratorium on banners and it was seconded, would it get them around the issue without creating a problem. Mr. Galloway said that would create the problem. The Mayor asked if you could pull banners out from under signs and Mr. Galloway said you could not because it was a sign issue and was part of the ordinance. He said if you take out a portion, you aggregate the ability to enforce the balance of the ordinance, which was a first amendment issue. Ms. Delmar said the sign ordinance was modified in the past to allow sidewalk sandwich boards in the downtown area, which is an example of a portion of the ordinance being modified without aggregating our ability to enforce the entire ordinance. Mr. Galloway said we need to address the ordinance itself and not zero in on a specific point.

Commissioner Wheeler asked if the Commission could adopt a motion tonight expressing its desire to have the matter addressed when the recommendation for changes to the sign ordinance were brought forward. Mr. Galloway said no.

Commissioner Howell asked if staff was close to it being ready and Ms. Delmar said that they could put it on the front burner. Mayor Van Sickle said until that happened they would still have the issue of the letter being sent to the corporate office.

Ms. Bran-Heier said she is the one who keeps the property at Bob Evans clean and presentable at all times. Mayor Van Sickle said the Commission would give direction to the City Manager to see what could be done and would get the information back to her in a short period of time.

CITY COMMISSION COMMENT

Commissioner Wheeler said he saw on the Tracking Report that there is finally a modification to the intersection on Mountain Lake Cut-off Road and Scenic Highway in the works. He said it was a long time in coming and there had been many people that helped to make it happen. Florida Progress and the Mountain Lake Corporation donated the land and Mayor Van Sickle helped a great deal with getting funding. He thanked them on behalf of students who had to cross that intersection.

Commissioner Thornhill had no comment.

Commissioner Rogers complemented employee Fran Frances, Receptionist at the front desk. He said one day when he was at City Hall she was cleaning the windows and sweeping the floors, and when asked if that was part of her job classification, she said it was not. He commented that it made him feel good that an employee would take the initiative to get something done. He jokingly said if anyone needed to get some cleaning done to contact her.

Commissioner Rogers also complemented the audience. He said that emotional issues at times were discussed at the meetings. He said he appreciated the way the audience handled differing opinions without coming to blows or calling each other names. He said he wished he could get more people to come forward and give public input for without it, the Commission would not know what was wanted.

Commissioner Howell asked if there was a place that homeless people could go to get out of the cold, get something to eat or get blankets. She said she heard that Winter Haven and Haines City, among others, had such a place and that some cities were able to get a grant to purchase blankets. Commissioner Wheeler said the Lake Wales Care Center does everything it can for them. Commissioner Howell remarked that the Care Center closes at 5:00 p.m. She asked if there was a building where they could go. Ms. Delmar said that the City of Lake Wales does not provide food or shelter but that the Care Center does try to find help for people in need. Commissioner Wheeler said that the demand on the Care Center services was huge and that its food pantry was almost picked clean.

Commissioner Howell asked if the City was going to get an Emergency Care Facility at the hospital other than just the emergency room. Commissioner Wheeler told her to keep her eyes open in the downtown area for something was going to happen in about four months.

Mayor Van Sickle welcomed the new Charter Review Committee members and said they would be challenged, for the five people on the committee might have five different issues in mind for each area. He warned them that it might be nerve-racking, but that the Commission was looking for some good direction from them. He said the new committee would meet in about ten minutes.

There being no further business, the meeting was adjourned.


Mayor/Commissioner

ATTEST:


City Clerk