

A workshop meeting of the City Commission was held on October 4, 2011 at 5:00 p.m. in the Commission Chambers at the Municipal Administration Building. The meeting was called to order by Mayor Michael S. Carter.

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

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

[Meetings are recorded but not transcribed verbatim]

Agenda Item 2. Presentation of Draft Impact Fee Study by Dwayne Guthrie of Clarion Associates

The full staff memo is incorporated into the minutes.

[Begin Agenda memo]

Dwayne Guthrie of Clarion Associates will present the findings of the study to update the city's impact fees.

The study is a 5-year update of data used to calculate appropriate impact fees for sewer, water, police, fire, parks and library services. The study providing the basis for fees must be updated periodically to reflect current data as required by state law. Developers are charged impact fees to offset the city's capital costs to provide required services to new growth. The fees cannot be used for operating expenses.

The study uses projects in the Capital Improvements Plan to determine costs for providing expanded and new capital facilities to serve new growth.

Once the study is finalized, an ordinance to adopt the study and the adjusted fees will be brought forth for adoption.

[End Agenda Memo]

Planning and Zoning Director Margaret Swanson introduced Dwayne Guthrie of Clarion Associates and said this is an initial presentation of the draft Impact Fee Study. The staff memo stated that the "study is a 5-year update of data used to calculate appropriate impact fees for sewer, water, police, fire, parks and library services. The study, providing the basis for fees, must be updated periodically to reflect current data, as required by state law. Developers are charged impact fees to offset the city's capital costs to provide required services to new growth. The fees cannot be used for operating expenses."

There will be at least two hearings on the ordinance to adopt the study and the new fees. The Sept. 29, 2011 draft was distributed to the Commissioners just before the meeting.

Dr. Guthrie gave a PowerPoint presentation explaining the recommended impact fee calculations. He said the updated fees are more conservative than they were five years ago, the biggest decrease being in water and sewer. The impact fee update incorporates 2010 census data and the cost of growth-related capital improvements to be constructed in Lake Wales over the next five years. Also, the fee schedule for nonresidential development was simplified by eliminating size thresholds for commercial and office development, lowering the proposed fee amounts for small businesses that tend to be locally owned and operated.

In addition to the aggregate change in impact fees, Dr. Guthrie presented the individual fee calculations for each type of infrastructure. The updated fees for parks and libraries decreased slightly from the current amounts. Updated fees for fire increased in both the north and south service areas, but for different reasons. The increase in the north reflects the increased cost of the new fire station that will improve response times in northern Lake Wales. Fire fees increased in the south because the City continues to make annual debt service payments, thus decreasing the credit included in the fee calculations. The updated police impact fees will increase for residential development and decrease for nonresidential development due to an improved cost allocation methodology based on residents and jobs within Lake Wales.

Dr. Guthrie presented the water and sewer impact fees, based on the City's capital improvements plan. Impact fees will fund less than half of the total cost of projects anticipated over the next five years, the remainder being rehabilitation and maintenance costs, not eligible for impact fee funding. Water impact fees did not change significantly, but the updated study recommends that residential fees be imposed based on the number of housing units instead of meter size. Changing to a fee per housing unit provides certainty for developers, is easier to administer, and could be more affordable for multifamily housing. Sewer impact fees decreased significantly due to the lower cost of improvements needed to accommodate new development.

Commissioner Wojcik asked for confirmation that the figures listed for the high school and elementary schools were strictly based on the construction of new schools and Mr. Guthrie confirmed.

Mayor Carter asked the following questions:

- Mayor Carter asked what economic growth was used to determine the reductions of impact fees. Dr. Guthrie showed a bar graph depicting the increase in housing units by decade. Although growth had been significantly reduced during the last part of the decade, the first part of that decade was exceptionally high. It is estimated that future growth for residential will be approximately half of what it was the previous decade, and all other categories including things like churches, retail and industrial, will be half of what it was the previous decade.
- Mayor Carter asked what the growth rate was during the last two years. Dr. Guthrie said it was pretty close to zero. The Mayor asked why he thought it would improve. Dr. Guthrie said there have been signs of activity both nationally and locally over the past month or two. Planning and Zoning Director Margaret Swanson said they have had about 15 single-family residential permits submitted in the past couple months, which was a pickup from what they have been seeing.
- Mayor Carter asked if future presentations would be in workshop format. Ms. Swanson said a workshop can be scheduled if the Commission thinks it is needed but there will be two City Commission meetings on the ordinance, one of which will be a public hearing. The Mayor said this was the first time they had seen the study and would need time to digest the material so they can ask intelligent questions, which he thought would be more productive in a workshop format rather than a Commission meeting. He asked for Commission consensus and received it.
- Mayor Carter asked if part of the calculation takes in account how Lake Wales stacks up to other municipalities. Ms. Swanson said, by case law, impact fees are based on each city's particular circumstances and capital improvement plans. Our impact fees are customized for Lake Wales, though we can certainly compare our fees to those of other jurisdictions. The Mayor said he thought it would be helpful and worthwhile to compare our fees to cities of similar sizes like Haines City and Auburndale to see how we stack up to them. Ms. Delmar said that whenever an ordinance change is considered, a comparison study is usually provided showing fees in relationship to the surrounding cities. As far as our current impact fees, Lake Wales is in the top third with Winter Haven and Auburndale being a little different.
- Mayor Carter said it would be helpful to get input from Economic Development Director Harold Gallup and the Chamber of Commerce to find out how they view the fees. Ms. Delmar said they could do that, but to bear in mind that the improvements have to be done, and there is a tight balance. If the impact fees are not funding a project, citizens have to pick up the cost or infrastructure standards will decline over time.

Commissioner Thornhill asked if they were using statistics on things like foreclosures and Dr. Guthrie said only additional units, not sales.

Commissioner Howell asked if there was a deadline for this to be approved and Ms. Swanson said there was no deadline but we are required to have a study and fee schedule every five years and this is the fifth year. She said she would like to have them look at the possibility of adopting the lower fees as soon as possible so we don't continue charging developers more than is necessary. A 90-day public notice is required to increase impact fees, but the decreased fees could be adopted without delay.

Commissioner Wojcik made the following comments:

- She said she recalled a past discussion they had as to whether or not they should charge impact fees. Ms. Delmar explained that they can't waive impact fees for development. They have to be paid. The discussion was whether or not they should have the fees paid with CRA funds, which they have done on occasion in the past for an economic development incentive. Commissioner Thornhill explained that at the time of that discussion, the County wanted a moratorium waiving impact fees but the citizens voted against it because they did not want those fees passed on to them.
- Ms. Wojcik said for clarification that there is a cost for each type of development, and if the developer or business does not pay those fees, they are passed on to the residents.
- Ms. Wojcik asked Dr. Guthrie if he would be available to answer questions during a future workshop. Dr. Guthrie explained that he is required to be at the public hearing but a special trip could be arranged for him to return from Washington D.C. for a workshop if they would like him to be there.

Agenda Item 3. Alleyway Discussion – Solid Waste Collection

The full staff memo is incorporated into the minutes.

[Begin Agenda memo]

On July 5, 2011 the City Commission approved Ordinance 2011-09 relating to the provision of solid waste collection, recycling and disposal services. The ordinance contained several new items to be implemented during fiscal year 2011'12.

ELIMINATION OF SOLID WASTE ALLEYWAY USE WHERE POSSIBLE:

City staff and Florida Refuse will begin implementation of elimination of solid waste alleyway use where physically possible. In instances where there are concerns relating to the safety, health, or welfare of the community, the alleyways will continue to be used.

City staff has reviewed 53 alleys currently used for solid waste collection purposes. Staff has provided recommendation for elimination of certain alleyways (Attachment A). Staff is seeking direction from the City Commission to begin the implementation process.

NOTICE TO RESIDENTS:

Staff recommends that residents affected by the change in alleyway use be provided with two notices. The first notice is recommended to be provided during November 2011. This notice will provide residents with sufficient time to contact city staff with questions and concerns.

The second notice will be provided one week before the effective change as a reminder for residents to move their totes to a front curbside location for collection service.

Both notices will include the following information:

- Due to the elimination of alleyway use for collection purposes, residential solid waste/recycling fees for fiscal year 2011'12 will be reduced by \$2.34 per month (annual saving of \$28.08). The City will passing this reduction on to residents by lowering the monthly solid waste/recycling fees from \$20.77 to \$18.43. The reduced fee for services will be passed on to the customer beginning with their November utility bill (for services provided in October).
- Chris Mimbs, Billing Specialist for the City of Lake Wales, is the contact person for residents having questions or concerns relating to the elimination of the alleyway use for collection purposes. Mr. Mimbs' contact information will be provided and he will keep a written log of the calls he receives relating to the conversion.
- A reminder of City Code Section 17-11 (h) which allows back-door pickup of solid waste/recycling services for residents with a medical or physical condition. Customers interested in this service will be directed to call Mr. Mimbs to begin the process. Residents will be required to complete an application for back door collection service and also provide a physician's certification which states that the individual is unable to move their container to the roadside for collection purposes.
- A reminder of City Code Section 17-11 (i), which requires that totes be removed from the curbside promptly after solid waste/recycling items have been collected.

CUSTOMER SERVICE ISSUES:

City staff will begin training on Florida Refuse's "Info Pro" software. This software will allow staff the ability to track the progress and results of customer complaints.

Per the Ordinance 2011-09, Section D (2), City staff shall direct first time customer complaints to Florida Refuse's customer service personnel. Instances in which customers have previously contacted Florida Refuse and satisfactory resolution has not been achieved, or in which customers have been redirected to contact the City causing City staff to become involved in handling solid waste customer complaint issues, Florida Refuse shall reimburse the City its personnel service costs associated with staff members involved.

Each month the City receives a complaint log from Florida Refuse which identifies customer's complaints received by Florida Refuse and how those issues were resolved. Jacquie Hawkins, Deputy City Clerk, shall randomly contact customers from this list to inquire about customer satisfaction relating to Florida Refuse.

Mr. Mimbs has been designated as the primary staff member responsible for assisting customers with solid waste complaints unresolved by Florida Refuse for services which are a contractual obligation under the City's solid waste contract.

DISCUSSION OF LIQUIDATED DAMAGES, SECTION 3-11:

The Finance Department has received a request for the full Commission to discuss the topic of disbursing fees collected from the contractor for "liquidated damages" back to the citizen who was affected by the breach of contract.

Within Section 3-11 of the City's contract, if the contractor fails to perform in accordance with the provisions of this agreement, the following amounts, not as a penalty, but as liquidated damages for such breach of contract may be charged:

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|--|-------------------|
| (1) Unsatisfactorily resolved complaints over 15 per month | \$20.00 each case |
| (2) Failure to clean up spillage promptly from vehicles | 25.00 each case |

or after having emptied containers, whether on private or public streets, alley, etc.

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| (3) Failure to clean vehicles or change containers as request by customer. | 25.00 each case |
| (4) Failure to keep vehicles closed or covered | 25.00 each case |
| (5) Load vehicles left standing on the street unnecessarily | 25.00 each vehicle |
| (6) Failure to maintain schedules established and given as a requirement of the contract, in writing, to the public and the City (Section 3-4) | 250.00 per violation of route schedule |

Staff does not recommend disbursing fees collected from the contractor for "liquidated damages" back to the citizen who was affected by the breach of contract for the following reasons:

- (1) Per the City Attorney, public purpose doctrine prohibits such payments. Upon payment, these funds become a part of the City's general revenue. Payment of these funds as contemplated would result in an unconstitutional gift in violation of Article VII, Section 10 of the Florida Constitution. The cited provision prohibits distribution of public funds for private purpose. (Attachment B)
- (2) For unresolved complaints, only complaints over the first 15 per month would be eligible for liquidation damages. (Section 3-11(1))
- (3) Staff is concerned the volume of complaints will increase if the City creates the expectation that a "refund", in the form of a liquidated damage fee, can be obtained through the issuance of a complaint.
- (4) In instances where there is spillage, failure to clean vehicles, vehicles standing unnecessarily on the street, or failure to maintain schedules, the identification of who should receive payment would be unclear. (Section 3-11 (2),(3), (4),(5),(6))

[End agenda memo]

ALLEYWAY PICKUP CLOSURE

Finance Director Dorothy Pendergrass reviewed Agenda Item 2 and explained what information would go on the door hangers.

Commissioner Howell made the following comments:

- She said she assumed that many residents will not be able to remove their garbage tote until after work, but she wanted to make sure they know that if garbage is picked up on Monday they can't wait until Thursday to remove them.
- Commissioner Howell asked if people living with a street behind their houses could place their garbage totes there instead of on the street in front. Ms. Pendergrass said there was only one area that had streets both in front and behind their houses and staff was recommending the pick up to remain the same as now.
- Commissioner Howell asked for confirmation that people who now get their garbage collected from alleyways, may have to put their totes at the front street for pick up. Ms. Pendergrass confirmed and said totes would need to be placed in the front yard but not blocking the sidewalk.

Ms. Pendergrass said that on the first door-hanger they will include contact information for Chris Mimbs who will address their concerns and questions. Staff hopes that all these types of issues will be worked

out before the conversion takes place. Once all the complaints and concerns have died down, probably in no more than a month, the second door-hanger will be placed so they know when they need to start moving their totes to the front yard.

Commissioner Thornhill had a concern that customers on the 35 identified alleys may insist on alleyway pickup claiming health or safety concerns. He asked how staff would determine if there truly is a concern. Ms. Pendergrass said that each alleyway complaint will be addressed on a case-by-case basis and staff will be reasonable. If there was only one health issue on the alleyway it might be that the resident qualifies for back-door pick up service and the rest of the residents along that alleyway would have front-curb side pickup service. If all the residents or many of them band together because of a health or safety issue, staff will listen to their concerns because those residents will know about those issues better than staff because they live there. Commissioner Thornhill said that keeping the heavy garbage trucks out of the alleyways is a way to address citizen complaints about pot holes, so there has to be give and take. Ms. Pendergrass said the City, through the City Manager, makes the final decision as to which alleys have health or safety issues, so there is no need for negotiation with Florida Refuse.

Mayor Carter asked the following questions:

- Mayor Carter asked if residents would have to get a medical permission slip in order to receive back-door pick up and Ms. Pendergrass that was true. Once they submit the doctor's recommendation it is a done deal with no judgment call made by the City. A health or safety issue for the entire alleyway may be for things like too steep of a slope, residents having no place to put the tote for pickup, or if the front of their houses face a busy street such as First Street or Central Avenue.
- Mayor Carter asked if there was a time limit on receiving back-door pickup. He said someone may, for example, qualify because of a broken leg but would not need the service once the leg healed as compared to those who are permanently incapacitated. Ms. Pendergrass said once the doctor signs the form, they are approved for the service. No time limit will be placed on it unless the doctor puts one on the form. Ms. Delmar said it is based on the honor system.

The consensus was for staff to move forward with the alleyway closure.

CUSTOMER SERVICE

Finance Director Dorothy Pendergrass reviewed the new process called the Info Pro system that staff will use to follow customer unresolved complaints, tracking customer satisfaction, and concerns identified with liquidated damages.

Commissioner Wojcik said she had hoped the collected fees could be passed on to customers but she now understood why they couldn't. She said that liquidated damages amounts to fining Florida Refuse for not doing a good job, and is a way to hopefully improve service. Ms. Pendergrass said she sees it as a corrective measure and not as a revenue source, a way of getting their attention so that issues can be resolved.

Mayor Carter made the following comments:

- Mayor Carter said he understood that funds can't be distributed to individual residents, but asked if it would be possible to put the money in a separate fund to be distributed evenly among all customers once or twice a year or when the fund reaches a certain amount.

City Attorney Chuck Galloway said he thought the compiled credit approach, distributing the funds between all customers, would work but the other approach would violate the Florida Constitution. He said the public purpose for liquidated damages will be as an enforcement tool to make the vendor comply with the terms of the contract.

- Mayor Carter asked for an update on the invoice that was sent to Florida Refuse for unresolved issues. Ms. Pendergrass said Ms. Hawkins called residents listed on one of the complaint logs

and found that several residents had unresolved issues so an invoice was sent to Florida Refuse. She said she expected to hear back from the company and their attorney and was not disappointed. Florida Refuse Management talked with their customer service people who made some corrections, so you might say it worked. She and the City Manager will review the letter from their attorney. The letter brought to everyone's attention the problems that we are having with Florida Refuse's Customer service. Mayor Carter said it seemed to be very clear in the contract, with no gray areas, that there was something wrong, Florida Refuse did not perform, and they agreed in the contract when they signed to pay the liquidated damages. He said it didn't look like the City was in the driver's seat if the invoice was sent but not paid. Ms. Delmar said that happened during the old contract and Ms. Pendergrass said that most of that wording was carried forward in the new contract with just a change in the dollar amount. She said there were normal steps to be taken, which they will work through. Mayor Carter said it seemed to him that some tightening up of the contract is needed because neither side seems clear on the definition of terms. Ms. Delmar said if there is ambiguity in the contract it needed to be brought back with different terminology.

- Mayor Carter said the noise made by garbage trucks early in the morning, as early as 4:40 a.m., still continues. It was his understanding according to the contract that they pick up no earlier than 6 a.m. so they are violating the contract. Ms. Pendergrass said she would check into that and get back with him.

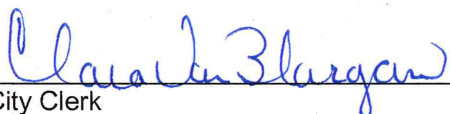
The consensus was to have staff move forward with this item.

There being no further business, the meeting was adjourned at 5:48 p.m.



Mayor/Commissioner

ATTEST:



City Clerk