



# City of North Port

4970 CITY HALL BLVD  
NORTH PORT, FL 34286

## Meeting Minutes City Commission Regular Meeting

### *CITY COMMISSIONERS*

*Jacqueline Moore, Mayor*  
*Rhonda Y. DiFranco, Vice-Mayor*  
*Cheryl Cook, Commissioner*  
*Tom Jones, Commissioner*  
*Linda M. Yates, Commissioner*

### *APPOINTED OFFICIALS*

*Jonathan R. Lewis, City Manager*  
*Mark Moriarty, City Attorney*  
*Patsy Adkins, Interim City Clerk*

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Tuesday, July 12, 2016

10:00 AM

CITY COMMISSION CHAMBERS

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### CALL TO ORDER/ROLL CALL

The North Port City Commission Regular Meeting was called to order at 10:00 a.m. in City Chambers by Mayor Moore.

Present: Mayor Moore; Vice-Mayor DiFranco; Commissioners Cook, Jones and Yates; City Manager Lewis; Assistant City Manager Schult; City Attorney Moriarty; Interim City Clerk Adkins; Recording Secretary Hale and Police Chief Vespia.

**Present:** 5 - Mayor Jacqueline Moore, Vice-Mayor Rhonda DiFranco, Commissioner Cheryl Cook, Commissioner Tom Jones and Commissioner Linda Yates

**The invocation was provided by Reverent Edward DeJesus, Jr., of New Hope Community Church after which the Pledge of Allegiance was led by the Commission.**

### 1. APPROVAL OF AGENDA – COMMISSION

*A motion was made by Vice-Mayor DiFranco, seconded by Commissioner Yates, to approve the Agenda as presented. The motion carried by the following vote:*

**Yes:** 5 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Cook, Commissioner Jones and Commissioner Yates

### 2. ANNOUNCEMENTS

**A. [16-0385](#)** Current Vacancies for Boards and Committees.

Interim City Clerk Adkins read the Current Vacancies for Boards and Committees into the record.

**B. [16-0386](#)** Upcoming Expiration Dates for Boards and Committees.

Interim City Clerk Adkins read the Upcoming Expiration Dates for Boards and Committees.

### 3. PUBLIC COMMENT:

Public comment was held 10:04 a.m. -- 10:15 a.m.

**4. CONSENT AGENDA:**

***A motion was made by Commissioner Yates, seconded by Commissioner Jones, to approve the Consent Agenda as presented. The motion carried by the following vote:***

**Yes:** 5 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Cook, Commissioner Jones and Commissioner Yates

- A.** [16-0363](#) Cash Receipts Summary - May 2016
- B.** [16-0288](#) Submitter License Agreement with Simplifile LC, LLC for e-recording services.

**5. PUBLIC HEARINGS:**

- A.** [16-0026](#) Ordinance 2016-06, second reading; an ordinance amending Chapter 2, Administration, Article V, Employee Benefits, Division 5, Police Officers' Pension, of the Code of Ordinances of the City of North Port.

Interim City Clerk Adkins read Ordinance No. 2016-06 into the record by title only and City Manager Lewis presented a brief overview of the agenda item, stating the update was due to changes in the IRS Code. He also reported that the Pension Board's Actuary confirmed there is no financial impact associated with the adoption of the Ordinance and the document was reviewed by the Pension Board's Attorney and the City Attorney. There was no public comment.

Following an inquiry, Assistant City Manager Schult stated that both attorneys agreed that Section 2-256 and 2-260 were eliminated from the Ordinance because they were deemed to be unnecessary, and were not addressed by any IRS Code.

***A motion was made by Commissioner Cook, seconded by Commissioner Yates, to approve Ordinance No. 2016-06, amending Chapter 2, Administration, Article V, Employee Benefits, Division 5, Police Officers' Pension, of the Code of Ordinances of the City of North Port. The motion carried by the following vote:***

**Yes:** 5 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Cook, Commissioner Jones and Commissioner Yates

- B.** [16-0367](#) Ordinance No. 2016-13, second reading, Petition No. TXT-16-064, Amending Chapter 53, Section 53-182.A.(1)(b)ii., Buffer Zone & Landscaping Regulations within the Neighborhood Commercial Zoning District.

Interim City Clerk Adkins read Ordinance No. 2016-13 into the record by title only and Neighborhood Development Services Director Williams provided an overview, and requested that the motion incorporate B1 and B2., because it makes language same in both sections and the motion should reflect that. There was no public comment and no questions from the Commission.

***A motion was made by Commissioner Yates, seconded by Vice-Mayor DiFranco, to approve Ordinance No. 2016-13, Petition No. TXT-16-064, Amending Chapter 53, Section 53-182.A.(1)(b)i and (1)(b)ii., Buffer Zone & Landscaping Regulations within the Neighborhood Commercial Zoning District. The motion carried by the following vote:***

**Yes:** 5 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Cook, Commissioner Jones and Commissioner Yates

- C.** [16-0349](#) Petition No. PLF-16-066, re-platting a portion of Alafaya Street within Islandwalk Phase 3D-1 to convert 57 single family detached lots into 32 single family attached lots and 27 single family detached lots, a net increase of two (2) units on the street.

Interim City Clerk Adkins, Notary Public for the State of Florida, as a Quasi-judicial hearing, swore in all those wishing to speak on the public hearing item. The Commissioners had no ex parte communications to disclose.

Mr. Stricklin Smith, representing DiVosta Homes, provided an overview of the replat petition and Neighborhood Development Services Director Williams provided a review of the staff report, noting that the Planning & Zoning Advisory Board voted unanimously in their recommendation for Commission approval of the petition. There was no public comment.

Following a question, Director Williams reported that the only concern expressed by the Planning & Zoning Advisory Board pertained to the housing type change and its relationship to lot lines.

***A motion was made by Commissioner Cook, seconded by Commissioner Yates, to approve Petition No. PLF-16-066, re-platting a portion of Alafaya Street within Islandwalk Phase 3D-1 to convert 57 single family detached lots into 32 single family attached lots and 27 single family detached lots, a net increase of two (2) units on the street. The motion carried by the following vote:***

**Yes:** 5 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Cook, Commissioner Jones and Commissioner Yates

- D.** [16-0378](#) Ordinance 2016-25, first reading, an Ordinance of the City of North Port Florida, changing the name of North Main Street to Rue S. Berryman Street.

***A motion was made by Commissioner Jones, seconded by Vice-Mayor DiFranco, to read Ordinance No. 2016-25 by title only. The motion carried by the following vote:***

**Yes:** 5 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Cook, Commissioner Jones and Commissioner Yates

Interim City Clerk Adkins read Ordinance No. 2016-25 into the record by title only and City Manager Lewis provided a brief review. Public comment was held.

Discussion ensued: (1) Commissioner Cook does not agree that city streets and amenities should be named after people; (2) the location of the street beginning to end was provided on an overhead projection.

***A motion was made by Commissioner Yates, seconded by Commissioner Jones, to continue Ordinance 2016-25, to the July 26, 2016 Commission Regular Meeting for second reading. The motion carried by the following vote with Commissioner Cook dissenting for reasons previously stated:***

**Yes:** 4 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Jones and Commissioner Yates

**No:** 1 - Commissioner Cook

- E. [16-0380](#) Ordinance 2016-24, first reading, modifying the City-Wide Fee Schedule for Fiscal Year 2016-2017.

***A motion was made by Vice-Mayor DiFranco, seconded by Commissioner Yates, to read Ordinance No. 2016-24 by title only. The motion carried by the following vote:***

- Yes:** 5 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Cook, Commissioner Jones and Commissioner Yates

Interim City Clerk Adkins read Ordinance No. 2016-24 into the record by title only, and Finance Director Lear provided an overview including corrections of scrivener's errors and changes to the Ordinances directed by the Commission. City Manager Lewis requested that the phrase referencing the time frame for summer hours be removed from the Ordinance, and the updated correction will be presented to the Commission at second reading. There was no public comment.

Subsequent to a question, City Manager Lewis stated that the summer pilot program is for evening hours only.

Discussion ensued: (1) Commissioner Yates did not support the motion for the following reasons: [a] the ability to rent the dog park was eliminated and she favored leaving it in; [b] no pet friendly events can be held in the City; [c] the rates set regarding the use of pavilions are now cost prohibitive for citizen usage; (2) City Manager Lewis stated that, from a policy perspective, no one would be adversely affected if the paw park rental is left in the City-wide Fee Schedule.

***A motion was made by Commissioner Cook, seconded by Vice-Mayor DiFranco, to continue Ordinance No. 2016-24 to the July 26, 2016 Commission Regular Meeting.***

After a question, City Manager Lewis stated that by leaving the Paw Park Rental in the City-wide Fee Schedule, it will only relate to the Canine Park on Appomattox Drive.

***A motion was made by Commissioner Jones, seconded by Commissioner Yates, to amend the motion to leave the paw park in the City-wide Fee Schedule Ordinance. The motion carried by the following vote:***

- Yes:** 5 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Cook, Commissioner Jones and Commissioner Yates

Discussion ensued: (1) Vice-Mayor DiFranco opposed reducing rates for pavilion rentals because the fees offset City employees who clean up residual debris and whose time and resources are paid by taxpayers; (2) following a question, City Manager Lewis stated that the rates in the fee schedule are the same as last year; staff only redefined the size of the pavilion; and a resident and non-resident fee may be added by Commission direction; (3) Commissioner Cook agreed with Vice-Mayor DiFranco that the current pavilion rental fees offset City cleanup costs.

***A motion was made by Commissioner Yates, seconded by Mayor Moore, to amend the main motion to revise the rates for the pavilion rental, and set them at \$5 an hour for small picnic pavilion/gazebos, \$10 an hour for medium picnic pavilion/gazebos, and \$15 an hour for large picnic pavilion/gazebos.***

City Manager Lewis clarified the existing rates that are in the City-wide Fee Schedule Ordinance would apply to non-residents (\$15, \$20, and \$20 respectively) and new rates would apply to residents (\$5, \$10, and \$15 respectively) and the other fees remain as presented.

***A motion was made by Commissioner Jones, seconded by Commissioner Yates, to amend the amendment, to state that the lower pavilion/gazebo rental fees shall apply only to North Port residents. The motion carried by the following vote with***

*Vice-Mayor DiFranco and Commissioner Cook dissenting for reasons previously stated:*

**Yes:** 3 - Mayor Moore, Commissioner Jones and Commissioner Yates

**No:** 2 - Vice-Mayor DiFranco and Commissioner Cook

*A vote was taken on the amendment, as amended, to set the rates for the pavilion rental, at \$5 an hour for small picnic pavilion/gazebos, \$10 an hour for medium picnic pavilion/gazebos, and \$15 an hour for large picnic pavilion/gazebos; and that the lower pavilion/gazebo rental fees shall apply only to North Port residents. The motion carried by the following vote with Vice-Mayor DiFranco and Commissioner Cook dissenting for reasons previously stated:*

**Yes:** 3 - Mayor Moore, Commissioner Jones and Commissioner Yates

**No:** 2 - Vice-Mayor DiFranco and Commissioner Cook

*A vote was taken on the main motion, as amended, to continue Ordinance No. 2016-24 to the July 26, 2016 Commission Regular Meeting for second reading; to leave the paw park in the City-wide Fee Schedule Ordinance; setting the rates for the pavilion rental, at \$5 an hour for small picnic pavilion/gazebos, \$10 an hour for medium picnic pavilion/gazebos, and \$15 an hour for large picnic pavilion/gazebos; and that the lower pavilion/gazebo rental fees shall apply only to North Port residents. The motion carried by the following vote with Vice-Mayor DiFranco and Commissioner Cook dissenting for reasons previously stated:*

**Yes:** 3 - Mayor Moore, Commissioner Jones and Commissioner Yates

**No:** 2 - Vice-Mayor DiFranco and Commissioner Cook

## **6. RESOLUTIONS**

### **A. [16-0381](#)**

Resolution No. 2016-R-17 directing the City Manager to temporarily suspend enforcement of the Unified Land Development Code, parking and storage of certain vehicles Section 25-19(F), (H) and (J) as they pertain to boats on licensed trailers parked on driveways or side yards, providing for severability; and providing for an effective date.

Interim City Clerk Adkins read Resolution No. 2016-R-17 into the record by title only, after which City Attorney Moriarty provided an overview of the revisions as previously directed by the Commission. Public comment was held.

Questions and discussion ensued: (1) City Attorney Moriarty stated the 45-day provision was inserted as a failsafe measure to insure that anyone receiving a notice of violation in the days preceding the effective date of the Resolution would be covered, and the Commission may determine that 60-days may be assigned in lieu of the 45-days; (2) City Manager Lewis stated that a literal interpretation of the Code would include other "watercrafts" as well unless verbiage is included to provide for exceptions; (3) Vice-Mayor DiFranco disagreed with the motion because: [a] the Resolution addresses a moratorium, not about changing City Code, [b] disagreed with adding the cars and trucks, and [c] the suggested revisions should wait until after the Unified Land Development Code is updated when North Port residents are allowed to provide input regarding boats and trucks; (4) Commissioner Cook voiced concern that adding additional language complicates a simple moratorium on boats on trailers in driveways.

*A motion was made by Commissioner Yates, seconded by Mayor Moore, to approve Resolution No. 2016-R-17 with the following changes: to include*

***"automobiles and trucks" after "boats on licensed trailers" and to change the applicable time frame days from 45 days prior to adoption, to 60 days prior to adoption. The motion carried by the following vote with Vice-Mayor DiFranco and Commissioner Cook dissenting for reasons stated:***

**Yes:** 3 - Vice-Mayor DiFranco, Commissioner Jones and Commissioner Yates

**No:** 2 - Mayor Moore and Commissioner Cook

Recess 11:36 a.m. -- 11:45 a.m.

## **7. GENERAL BUSINESS:**

- A.** [16-0384](#) Discussion and possible action regarding appointment of a Member to the Art Advisory Board.

Interim City Clerk Adkins provided an overview of the vacancy on the Art Advisory Board. There was no public comment and no questions for comments from the Commission.

***A motion was made by Commissioner Yates, seconded by Vice-Mayor DiFranco, to appoint Karen Frustereo as a member to the Art Advisory Board. The motion carried by the following vote:***

**Yes:** 5 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Cook, Commissioner Jones and Commissioner Yates

- B.** [16-0379](#) Opinion from the Florida Attorney General regarding the vacancy of seat 4

City Attorney Moriarty presented a review of the Commission's request to draft a letter to the Attorney General and stated that any response is an advisory opinion and not considered law. The Commission's concerns focus on Section 7.02 of the City Charter and if the request for an Attorney General Opinion (AGO) moves forward it is, in effect, asking her to interpret our City Charter. Public comment was held.

Questions ensued: (1) pending a Commission determination to hold a special election in May, an AGO would be redundant and no further action is needed on Agenda Item 7.B.; (2) the Charter language is not clear-cut regarding the need to hold a special election 90-days prior to a general election when a Commission seat has been vacated; (3) the Commission's direction at the last meeting was understood to be two distinct agenda items regarding: [a] drafting letter to the State Attorney General and [b] contacting the Sarasota County Supervisor of Elections; (4) City Attorney Moriarty's intent was to present the drafted letter for Commission approval prior to mailing it to the Attorney General; (5) Commissioner Yates opposed tabling the item for the following reasons: [a] she favored receiving an AGO response to the question of which date is applicable to the actual resignation of Mayor Moore from Seat 4; [b] does the Commission have the ability to wait until Seat 4 is physically vacant before a special election is called; [c] because the Commission did not immediately call a special election, does the State have authority to appoint someone or mandate how the Seat should be filled; [d] AGO opinions have been provided to other cities; (6) City Attorney Moriarty explained that the next available dates provided by the Sarasota County Supervisor of Elections are March and May of 2017 and any response from the Division of Elections or the Florida Attorney General does not remove the fact that the Supervisor of Elections will run the election on the first available dates given to the Commission; (7) Commissioner Jones stated Seats 4 and 5 are slated for the 2018 election cycle and he was only interested in the election for Seats 1, 2, and 3 at this time. He provided a copy of Section 3.02, Election and Term of Office from the City

Charter to the Interim City Clerk for the record as a statement of his rationale.

***A motion was made by Commissioner Cook, seconded by Vice-Mayor DiFranco, to table Agenda Item 7.B., until after 7.C. is discussed. The motion carried by the following vote with Commissioners Jones and Yates dissenting for reasons stated:***

**Yes:** 3 - Mayor Moore, Vice-Mayor DiFranco and Commissioner Cook

**No:** 2 - Commissioner Jones and Commissioner Yates

**C. [16-0376](#) Opinion from the Division of Elections regarding the vacancy of seat 4**

City Attorney Moriarty provided a brief overview of Commission's direction at the last meeting and reported that the duty of the Division of Elections is to provide opinions relating to any provisions or possible violations of the Florida Election Laws. Citing Florida Statutes (FS) 99.012, Restrictions on Individuals Qualifying for Public Office, and FS 100.3605, Conduct of Municipal Elections, it was stated that both sections defer to local laws or the local charter for a definitive resolution. FS 99.012 states that when a resignation letter is filed; a government entity may presume the seat to be empty for purposes of holding an election at the general election. There has been no violation of Florida Election Laws by the Commission. Public comment was held.

Questions ensued: (1) based on FS 99.012, the questions suggested to be posed to the Attorney General included: [a] a determination of the resignation date based upon the "vacancy created by the officer's resignation"; [b] language in the City Charter; and [c] the North Port City Charter provides that Commissioners serve until new ones are sworn in, therefore, should Mayor Moore continue until her successor is elected and sworn in; (2) City Attorney Moriarty stated that: [a] if a question is asked of the Attorney General that has already been answered, the Division of Elections or the Florida Attorney General will refer the petitioner to the respective AGO numerical answer, and [b] that approving the 2017 dates for a special election and a primary is an action that is consistent with the City Charter.

***A motion was made by Vice-Mayor DiFranco, seconded by Commissioner Cook, to call for a Special Election to fill the remaining term of Seat 4 for the May 9, 2017 with a Primary Election on March 14, 2017. The motion and second were subsequently withdrawn.***

City Attorney Moriarty explained that upon receiving direction from the Commission to move forward with a special election, authorization is needed to notice a Resolution, bring it to the Commission for adoption, and transmit to the Sarasota County Supervisor of Elections, subsequently, the motion and second were withdrawn.

Discussion ensued: (1) Commissioner Jones opposed the motion and is only interested in the General Election for Seats 1, 2, and 3; (2) Commissioner Yates reiterated concerns, stated the community has been aware of the situation since May, and recommended receiving an AGO before scheduling a special election in 2017; (3) City Attorney Moriarty stated that in order for the State to appoint someone on November 9, 2016 to fill a seat that has been vacated, prior to a scheduled special election, there first has to be some type of adjudication of why the seat would otherwise be vacant.

***A motion was made by Vice-Mayor DiFranco, seconded by Commissioner Cook, direct the City Attorney to bring back a Resolution calling for a Special Election to fill the remaining term of Seat 4 for the May 9, 2017 General Election with a Primary Election on March 14, 2017 if needed. The motion carried by the following vote with Commissioner Jones and Commissioner Yates dissenting for reasons previously stated:***

**Yes:** 3 - Mayor Moore, Vice-Mayor DiFranco and Commissioner Cook

**No:** 2 - Commissioner Jones and Commissioner Yates

Recess 12:48 p.m. -- 1:36 p.m.

**B.** [16-0379](#)

Opinion from the Florida Attorney General regarding the vacancy of seat 4

City Attorney Moriarty provided the following answers to Commission questions: (1) the Commission might pose the question of home rule powers to the State Attorney General and whether the Commission has the authority, under the Florida Constitution, to appoint someone to fill a Commission seat vacancy when it is not specifically prohibited or permitted in the City Charter; (2) the brief statement of facts in the backup material regarding the November 8, 2016 General Election was intended to keep the information concise.

Following a short discussion regarding debate procedures, a brief recess was called.

Recess 1:47 p.m. -- 1:51 p.m.

After conferring with City Counsel, Mayor Moore reported that each Commissioner has five minutes for questions and yielding the floor does not relinquish any time remaining for the conceding Commissioner. City Attorney Moriarty cited City Code, Chapter 254(f), paragraphs (6) and (8) which addresses procedures for questions and discussion time frames for Commission meetings.

City Attorney Moriarty's answers continued: (3) clarification was provided that the draft letter outlining Commission concerns to the Attorney General includes a request pertaining to an appointment by the Commission--not the subject of special elections; (4) he considers the vacancy for Seat 4 to be November 8, 2016, which is 90 days before the election in 2018; (5) currently, there is no prohibition in the City Charter to circumvent the Commission from appointing someone to fill Commission Seat 4 until the 2018 election cycle and the Attorney General will only respond to that inquiry with an opinion, not binding law; (6) the Commission can either appoint someone or not appointment someone to Seat 4 because the Charter does not address that issue; (7) an AGO response will merely give political feedback of a secondary source affirming that it is a permissible act.

Discussion ensued: (1) Vice-Mayor DiFranco does not have a problem with requesting an opinion from the Attorney General but disagrees with the idea of allowing the current Commission to continue to sit after he/she has resigned; (2) Commissioner Cook will not support a motion [a] requesting an Attorney General Opinion, [b] is opposed to a decision to allow a Commissioner to continue in a seat for which she resigned, and [c] is against the need for a special election that will ultimately cost the taxpayers \$70,000; (3) clarification was provided that the Commission consideration centers on the potential appointment of someone to fill Seat 4 from November, 2016 until the Special Election on May, 2017.

***A motion was made by Commissioner Yates, seconded by Mayor Moore, to direct the City Attorney to seek an opinion from the Attorney General in regards to the filling of the vacancy in Seat 4 and whether the vacancy was created on June 8, 2016, or November 8, 2016; which date is the next general election in accordance with the Resign to Run Law; whether the State or Commission has authority to make appointments and whether the current seated Commissioner continues to serve until their successor is elected and sworn. The motion failed by the following vote with Commissioner Cook, Vice-Mayor DiFranco and Mayor Moore***

*dissenting. Vice-Mayor DiFranco and Commissioner Cook provided reasons for dissenting but Mayor Moore did not:*

**Yes:** 2 - Commissioner Jones and Commissioner Yates

**No:** 3 - Mayor Moore, Vice-Mayor DiFranco and Commissioner Cook

**D. [16-0382](#)** Approve Employment Contract with Patsy Adkins to be the City Clerk.

City Attorney Moriarty provided a review of the draft Employment Contract for Interim City Clerk Patsy Adkins which was patterned after the City Attorney's Contract, and stated that upon Commission approval, the effective date is today. Public comment was held.

*A motion was made by Commissioner Yates, seconded by Commissioner Jones, to suspend the question and discussion rules for this agenda item to allow for brief discussion prior to the Commission motion. The motion carried by the following vote with Vice-Mayor DiFranco and Commissioner Cook dissenting. Commissioner Cook opposed the undetermined time limit on an item that could end up being lengthy and drawn-out; and Vice-Mayor DiFranco did not provided a reason for dissenting:*

**Yes:** 3 - Mayor Moore, Commissioner Jones and Commissioner Yates

**No:** 2 - Vice-Mayor DiFranco and Commissioner Cook

Discussion ensued: (1) Commissioner Yates proposed the following changes in the Contract: [a] the contract should reflect that this is a Charter Officer position; [b] in place of "employee" to use Ms. Adkins' name or City Clerk throughout the contract; [c] only the Commission has the authority to change the duties and responsibilities of the position; [d] the recitals warrant including a reference to State law; [e] the Performance Evaluation needs clarification with an annual review date and ample time for the City Clerk to respond to the evaluations; [f] language needs clarification regarding how the City Clerk's compensation is determined; [g] the section regarding removal from office should reflect a removal "for good cause" by a majority of the Commission and should concur with language in the City Charter; [h] the City Clerk position should not be categorized under the employee personnel policy regarding severance and the inability to remove without good cause; [i] some amenities are not customary for the position.

*A motion was made by Vice-Mayor DiFranco, seconded by Commissioner Cook, to table the item until the next Commission meeting.*

Discussion ensued: (1) Commissioner Cook did not agree with or approve any suggested revisions made by Commissioner Yates and does not support the amendment to the motion.

*A motion was made by Commissioner Yates, seconded by Vice-Mayor DiFranco, to amend the motion to incorporate all of the concerns mentioned and revise the Contract accordingly. The motion carried by the following vote with Commissioner Cook dissenting for reasons stated:*

**Yes:** 4 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Jones and Commissioner Yates

**No:** 1 - Commissioner Cook

*A vote was taken on the main motion, as amended, to table the item until the next Commission meeting and to incorporate all of the concerns mentioned and revise the Contract accordingly. The motion carried by the following vote:*

**Yes:** 5 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Cook, Commissioner Jones and Commissioner Yates

Recess 3:03 p.m. -- 3:08 p.m.

**E.** [16-0373](#)

Request Attorney-Client Session In Re: Daniel Rice v City of North Port, Housing Discrimination Complaint with the U.S. Department of Housing and Urban Development HUD File No.: 04-16-4671-8; Daniel Rice v. the City of North Port et. al., Circuit Court of the State of Florida in and for Sarasota County, Florida; case # 2015 CA 004080; and Daniel Rice v City of North Port et.al., United States District Court for the Middle District Florida, Tampa Division case # 8:16 CV106T35 TGW

City Attorney Moriarty provided an overview of the complaint of Daniel Rice v. City of North Port and requested permission to meet in a Commission Shade Meeting with a court reporter. At the conclusion of the litigation, minutes of the Shade Meeting will be made public. Public comment was held.

Following public comment, City Attorney Moriarty addressed comments made pertaining to the City not being respectful of members of the armed services, and articulated that the issue at hand pertained to a controversy between two neighbors.

***A motion was made by Commissioner Cook, seconded by Commissioner Jones, to approve the request for Attorney/Client Session in regard to Daniel Rice vs. City of North Port etc. The motion carried by the following vote:***

**Yes:** 5 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Cook, Commissioner Jones and Commissioner Yates

**F.** [16-0387](#)

Discussion relating to the City Clerk and Deputy City Clerk positions.

Commissioner Yates provided a brief overview of the agenda item. There was no public comment.

***A motion was made by Commissioner Cook, seconded by Vice-Mayor DiFranco, to direct staff to proceed with seeking applicants for the position of Deputy City Clerk.***

Discussion ensued: (1) this is an excellent time to move forward to fill the position of Deputy City Clerk; (2) City Attorney Moriarty stated that a decision by Ms. Adkins to remain as the Deputy City Clerk would complicate matters in regard to this agenda item; (3) City Attorney Moriarty forewarned the Commission that the Charter Review Advisory Board is recommending to remove the Deputy City Clerk position from the City Charter, and if successful, there may not be an opportunity to remove it from the Charter if someone is occupying the position.

***A motion was made by Commissioner Yates, seconded by Commissioner Jones, to amend the motion to add "upon execution of a Contract with Mrs. Patsy Adkins as the City Clerk." The motion carried by the following vote with Commissioner Cook dissenting but she did not provided reasons:***

**Yes:** 4 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Jones and Commissioner Yates

**No:** 1 - Commissioner Cook

***A vote was taken on the main motion, as amended, to direct staff to proceed with seeking applicants for the position of Deputy City Clerk, adding "upon execution of a Contract with Mrs. Patsy Adkins as the City Clerk." The motion carried by the***

*following vote:*

**Yes:** 5 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Cook, Commissioner Jones and Commissioner Yates

**G. [16-0388](#)** Discussion regarding job descriptions and annual evaluations of Charter Officers.

Commissioner Yates presented an overview of the contract elements for Charter Officers in regard to Performance Evaluations and how salary increases are implemented. Public comment was held.

Following a question, City Manager Lewis stated that performance evaluations for non-union employees are scheduled near the anniversary of their current position, and union employees' performance evaluations depend on collective bargaining. However, the American Federation of State, County, and Municipal Employees (AFSCME) Union closely follows the non-union employees schedule.

City Attorney Moriarty explained that the rules regulating the Florida Bar Association prohibit him in a conflict of interest situation, from providing legal advice unless Commission consent is granted on the record.

***There was a consensus to waive the Conflict of Interest provision and allow the City Attorney to provide legal counsel to the Commission.***

Discussion ensued: (1) City Attorney Moriarty stated that if the Commission changes a policy or provision that is not consistent with the contract, that action potentially violates the contract; (2) Commissioner Cook did not support the agenda item and disagreed with engaging in a review of Charter officers in a public meeting because it invites public comment to influence the Commission's evaluation and decision; (3) clarification was provided that any changes to the City Attorney's Contract without independent negotiations with the City Attorney is a violation of his Contract, even if it is changing the date of the evaluation; (4) City Attorney Moriarty stated that to avoid a contract dispute, he cannot respond to further questions regarding his contract without an unbiased opinion, therefore, he recommended hiring independent legal counsel to resolve these questions; (5) an assertion was made that the belated evaluations for the City Attorney, City Clerk and Deputy City Clerk were due to the negligence of the Commission and not the fault of the Charter Officer or the City Charter; (6) Commissioner Cook preferred to evaluate the City Manager after the Strategic Plan and suggested to table the item or reject it.

***A motion was made by Commissioner Yates, seconded by Vice-Mayor DiFranco, that the Commission review the Performance Evaluation for the Charter Officers in conjunction with their anniversary date of appointment of their position, and any increases or changes would coincide with the anniversary date at well. The motion failed by the following vote with Mayor Moore; Vice-Mayor DiFranco; Commissioner Cook; Commissioner Jones; and Commissioner Yates dissenting. Commissioner Cook provided reasons for dissenting as stated above. Commissioner Yates dissented stating that after the City Attorney's comments, the motion was perhaps inappropriate. Mayor Moore, Vice-Mayor DiFranco and Commissioner Jones did not provide reasons for dissenting:***

**No:** 5 - Mayor Moore, Vice-Mayor DiFranco, Commissioner Cook, Commissioner Jones and Commissioner Yates

***A motion was made by Commissioner Yates for the Commission to do the Annual Performance Evaluations for Charter Officers in a timely manner and consistent with the applicable Contracts and Personnel Policy. The motion failed for lack of a second.***

*A motion was made by Commissioner Yates, to review Charter Officers' Performance Evaluations because they are public, not private, for determination of any increases as per the options in the Contract and ability under the Personnel Policy at a public meeting. The motion failed for lack of a second.*

**8. PUBLIC COMMENT:**

Public comment was held from 3:49 p.m. -- 3:51 p.m.

**9. SCHEDULING OF WORKSHOPS:**

There were no requests to schedule Commission Workshops.

**10. COMMISSION REPORTS:**

There were no reports provided.

**11. ADMINISTRATIVE AND LEGAL REPORTS:**

City Manager Lewis provided an update regarding the meeting with the Conservation Foundation of the Gulf Coast as it relates to the Orange Hammock Ranch.

City Attorney Moriarty reported that Sarasota City Commissioner Susan Chapman won her court appeal.

**12. ADJOURNMENT:**

Mayor Moore adjourned the North Port City Commission Regular meeting at 3:53 p.m.

City of North Port, Florida

By: \_\_\_\_\_  
Jacqueline Moore, Mayor

Attest: \_\_\_\_\_  
Patsy C. Adkins, MMC, City Clerk

Minutes approved at the City Commission Regular Meeting this \_\_\_\_ day of \_\_\_\_\_, 2016.