



City of North Port

4970 CITY HALL BLVD
NORTH PORT, FL 34286

Meeting Minutes - Draft City Commission Regular Meeting

CITY COMMISSIONERS

Debbie McDowell, Mayor

Jill Luke, Vice Mayor

Christopher Hanks, Commissioner

Pete Emrich, Commissioner

Vanessa Carusone, Commissioner

APPOINTED OFFICIALS

Jason Yarborough, Acting City Manager

Amber L. Slayton, City Attorney

Heather Taylor, City Clerk

Tuesday, September 8, 2020

10:00 AM

City Commission Chambers

CALL TO ORDER

Mayor McDowell called the meeting to order at 10:00 a.m.

ROLL CALL

Present: 5 - Mayor Debbie McDowell, Vice Mayor Jill Luke, Commissioner Christopher Hanks, Commissioner Vanessa Carusone and Commissioner Pete Emrich

Also Present:

Acting City Manager Jason Yarborough, City Attorney Amber Slayton, City Clerk Heather Taylor, Finance Director Kimberly Ferrell, Parks & Recreation Director Sandy Pfundheller, Parks & Recreation Assistant Director Tricia Wisner, Fleet Manager Kenneth Rappuhn, Police Chief Todd Garrison and Recording Secretary Ida Goodman.

PLEDGE OF ALLEGIANCE

There was a moment of silence for employees involved in an accident followed by the Pledge of Allegiance led by Mr. Yarborough.

1. APPROVAL OF AGENDA

A motion was made by Vice Mayor Luke, seconded by Commissioner Emrich, to approve the agenda moving agenda item 20-2596 after agenda item 20-2597. The motion carried by the following vote:

Yes: 4 - Mayor McDowell, Vice Mayor Luke, Commissioner Hanks and Commissioner Emrich

Absent: 1 - Commissioner Carusone

2. PUBLIC COMMENT:

There was no public comment.

3. ANNOUNCEMENTS

- A. [20-2597](#) Current Vacancies and Upcoming Expiration Dates for Boards and Committees.

Ms. Taylor read the announcements into the record.

5. PROCLAMATIONS AND RECOGNITIONS: TIME CERTAIN AT 10:00 A.M.

- A. [20-2596](#) Proclaim September 2020 as Literacy Awareness Month; Presented to Literacy Volunteers of South Sarasota County President Penny Correll, and Mary Seyler.

Commission presented the proclamation to Literacy Volunteers of South Sarasota County President Penny Correll and Mary Seyler.

4. CONSENT AGENDA:

A motion was made by Vice Mayor Luke, seconded by Commissioner Emrich, to approve the consent agenda pulling items 20-2324 and 20-2563 for discussion. The motion carried by the following vote:

Yes: 4 - Mayor McDowell, Vice Mayor Luke, Commissioner Hanks and Commissioner Emrich

Absent: 1 - Commissioner Carusone

- A. [20-2324](#) Approve the Disposition of Surplus Assets in an Appropriate Fashion Pursuant to Chapter 2 Administration, Article VIII Procurement, Section 2-419, Disposition of City Assets and Property (d), (1) of the Code of the City of North Port, Florida

Mayor McDowell introduced the item and noted her concerns regarding the replacement of four 2014 Ford automobiles which are in fair condition with no mechanical issues.

Discussion ensued regarding the condition of the vehicles to be replaced.

Mr. Rappuhn addressed questions regarding the budget approval for vehicle replacements, the need for the replacements and the concerns with using replacement parts from the replaced vehicles.

A motion was made by Vice Mayor Luke, seconded by Commissioner Emrich, to approve consent item 20-2324. The motion carried by the following vote:

Yes: 3 - Vice Mayor Luke, Commissioner Hanks and Commissioner Emrich

No: 1 - Mayor McDowell

Absent: 1 - Commissioner Carusone

- B. [20-2448](#) Approve the Federally-Funded Subaward and Grant Agreement Z1870 with the Florida Division of Emergency Management for COVID-19 Expenses and Allow the City Manager to Execute All Subsequent

Agreements

This item was approved on consent.

- C. [20-2514](#) Approve Amendment No. 1 to Contract 2020-38 with Zep Construction, Inc. in the Amount of \$23,277.18 for the Myakkahatchee Creek Water Treatment Plant (MCWTP) Structural Rehabilitation Project Phase 1 - Flocculation Tank No. 1 Repairs
- This item was approved on consent.*
- D. [20-2516](#) Approve Change Order No. 1 to Work Assignment 2019-01 with CDM Smith, Inc. for the Myakkahatchee Creek Water Treatment Plant Structural Evaluation, for an Additional Amount of \$24,341.00
- This item was approved on consent.*
- E. [20-2528](#) Approve the Sole Source Purchase of Neptune AMR Water Meters, Reading Equipment, Software, and Repair and Maintenance Services from Sunstate Meter & Supply, Inc. on an As-Needed Basis for an Annual Estimated Amount of \$826,900.00 for FY 2020-21
- This item was approved on consent.*
- F. [20-2537](#) Approve Final Renewal of RFB No. 2018-01 EMS Supplies and Equipment with Bound Tree Medical LLC, Henry Schein, Inc., and Quadmed, Inc. at the Attached Unit Prices for an Estimated Annual Amount of \$153,210.00 for Fiscal Year 2020-21
- This item was approved on consent.*
- G. [20-2541](#) Approve the Utilization of City of Deland Bid No. 18-21 - Water and Wastewater Chemicals for the Purchase of Polymer per Unit Pricing, on an "As Required" Basis, from Fort Bend Services, Inc., for an Annual Estimated Amount of \$105,000.00 for Fiscal Year 2021
- This item was approved on consent.*
- H. [20-2542](#) Approve the Utilization of Charlotte County Water and Wastewater Chemicals - Annual Bid No. 19-582 for the Purchase of Sodium Hypochlorite Solution per Unit Pricing, on an "As Required" Basis, from Allied Universal Corporation, for an Annual Estimated Amount of \$210,000.00 for Fiscal Year 2021
- This item was approved on consent.*
- I. [20-2590](#) Approve the City Joining as Amicus All Briefing Relevant to Human Rights Ordinances in the Litigation between Anita Yanes, et al., and OC Food & Beverage LLC, et al., and Authorize the City Attorney to Execute All Related Documents

This item was approved on consent.

- J. [20-2538](#) Appoint David Cavanaugh as a Regular Member to the Environmental Advisory Board to Serve a Two-Year Term from September 8, 2020 to September 8, 2022

This item was approved on consent.

- K. [20-2539](#) Appoint Carl Goodrich as a Real Estate Representative on the Community Economic Development Advisory Board to Serve a Two-year Term from September 8, 2020 to September 8, 2022

This item was approved on consent.

- L. [20-2546](#) Appoint Azure C. Heck as a Youth Member to the Art Advisory Board, to Serve a Term from September 8, 2020 to September 8, 2021

This item was approved on consent.

- M. [20-2563](#) Appoint Nita L. Hester as an Alternate Member to the Planning and Zoning Advisory Board to Serve a Four-Year Term from September 22, 2020 to September 22, 2024

Mayor McDowell introduced the item and spoke to the resume noting that Ms. Hester is employed by the City but is now retired.

Ms. Taylor spoke to receipt of an updated application correcting the employment status.

A motion was made by Vice Mayor Luke, seconded by Commissioner Emrich, to approve consent item 20-2563. The motion carried by the following vote:

Yes: 4 - Mayor McDowell, Vice Mayor Luke, Commissioner Hanks and Commissioner Emrich

Absent: 1 - Commissioner Carusone

- N. [20-2598](#) Approve Minutes for the June 15, 2020 Commission Special Meeting; July 13, 2020 Commission Special Meeting; July 14, 2020 Commission Regular Meeting; July 21, 2020 Commission Budget Workshop Meeting, July 22, 2020 Commission Budget Workshop Meeting; July 22, 2020 Commission Special Meeting; and July 28, 2020 Commission Regular Meeting.

This item was approved on consent.

- O. [20-2461](#) Accept Cash Receipts Summary Report for June 2020

This item was approved on consent.

- P. [20-2564](#) Accept Cash Receipts Summary Report for July 2020

This item was approved on consent.

6. PRESENTATIONS: TIME LIMIT OF 15 MINUTES

- A. [20-2488](#) Presentation of the Comprehensive Annual Financial Report (CAFR) for the Year Ending September 30, 2019

Discussion ensued regarding the online process for public comment.

Ms. Slayton noted that this issue will be coming before the Commission at two different meetings.

Ms. Ferrell introduced the item.

Wade Sansbury, Mauldin & Jenkins LLC, provided an overview of the Comprehensive Annual Financial Report and timeline for upcoming requirements.

Discussion ensued regarding proper terminology of unmodified, difference of forensic and regular audit, and timeline and methodology of a forensic audit.

Mr. Yarborough noted that it is preferred to accept the CAFER by motion.

A motion was made by Vice Mayor Luke, seconded by Commissioner Emrich, to accept the Comprehensive Annual Financial Report (CAFR) as presented. The motion carried by the following vote:

Yes: 4 - Mayor McDowell, Vice Mayor Luke, Commissioner Hanks and Commissioner Emrich

Absent: 1 - Commissioner Carusone

7. GENERAL BUSINESS:

- A. [20-2466](#) Discussion and Possible Action Regarding Proposed Options for a Free Entry Day(s) for North Port Residents to the Aquatic Center

Ms. Pfundheller provided an overview and possible options.

Discussion ensued regarding option 1 and option 2 staff requirements, option 1 participation allowance toward capacity, option 2 considering rain days, time blocks for registration and staff requirements, average times for full capacity, awarding volunteer efforts with day passes, 2.5 hour time block, one day reservations, capacity limit, Aquatic Center hours, no show for free pre-registration, option 2 serving more citizens, projected losses if option 1 open for the full Aquatic Center facilities, Do The Right Thing program, Aquatic Center running on a deficit, methodology of initiating a program to award volunteers with Aquatic Center passes, first come first serve basis and break times for the next group during free days, open full facility during free days and extending hours for more than 2.5 hours, verification on North Port residency, and number of days for free days.

Commissioner Carusone joined the meeting at 10:57 a.m.

Discussion continued regarding timeline for initiating the free day, to approve option 2, changing the free time from two and a half hours to three hours and methodology for completing the process.

A motion was made by Vice Mayor Luke, seconded by Commissioner Carusone, to

approve option two as presented. The motion carried by the following vote:

Yes: 5 - Mayor McDowell, Vice Mayor Luke, Commissioner Hanks, Commissioner Carusone and Commissioner Emrich

There was a consensus to have staff provide ideas and structure to offer free pass days as rewards for volunteer efforts.

B. [20-2467](#)

Discussion and Possible Action Regarding Potential Location and Funding for Relocation of Veterans Park

Mayor McDowell noted information and photographs she provided regarding Veterans Parks in other locations.

Ms. Pfundheller provided a aerial view of the proposed Veterans Park at City Hall.

Ms. Wisner spoke to the recommended location, meetings with the American Legion and AmVets, VFW recommended location and amenities, methodology for determining the proposed locations, concerns regarding parking, electricity, shaded areas and lighting, pros and cons for the City Hall location, leaving the current Veterans Park and creating a new Park, other location considerations, Historic & Cultural Advisory Board and Parks & Recreation Advisory Board recommendations, and proposed park design ideas and monuments.

Mayor McDowell provided an overview of the Veterans Parks she visited in Tampa and Chillicothe, Illinois.

Discussion ensued regarding possible attributes of the City Hall location, creating a sub-committee to determine a Veterans design plan and desired amenities, possibility of community donations and input, Americans with Disabilities Act (ADA) accessibility, providing educational factors, community input methodology including creating a survey for location, design and donations, and the location of the waterfall at the current Veterans Park.

Public comment:

Danny Schumann - City Hall location for a new Veterans Park and Veteran input.

Mr. Yarborough noted the Commission direction that is needed including the need for a professional design.

Discussion ensued regarding possible donated services, developing an Ad Hoc Committee with the Veterans groups and community members to determine the design of a Veterans Park, waterfall at the current Veterans Park.

A motion was made by Commissioner Carusone, seconded by Commissioner Emrich, to direct staff to create an ad hoc committee in collaboration with the Veterans organizations in general and public to plan and develop the new Veterans Park at the area designated at City Hall. The motion carried by the following vote:

Discussion ensued regarding staff providing updates to the Commission on the creation of the ad hoc committee.

A motion was made by Commission Carusone, seconded by Vice Mayor Luke, to amend the main motion to include a timeline of six months for staff to have the ad hoc committee created or an update on the progress. The motion carried by the following vote:

Yes: 5 - Mayor McDowell, Vice Mayor Luke, Commissioner Hanks, Commissioner Carusone and Commissioner Emrich

The main motion as amended carried by the following vote:

Yes: 5 - Mayor McDowell, Vice Mayor Luke, Commissioner Hanks, Commissioner Carusone and Commissioner Emrich

Discussion ensued regarding activities around the water fountain at Veterans Park, Acting City Manager to provide information on decommissioning the fountain, and involving the police to address the utilization of the fountain by the homeless community.

Recess was taken at from 11:36 a.m. to 11:45 a.m.

C. [20-2577](#)

Discussion and Possible Action to Approve a Special Commission Meeting Between October 19 and 21, 2020, to Address the Mediation Recommendation, if any, in Response to Petition for Relief under the Florida Land Use and Environmental Dispute Resolution Act

Ms. Slayton introduced this item and the process of mediation.

Ms. Roberts noted the mediation hearing dates of October 16, 2020 and October 22, 2020 and provided additional information on the process for mediation recommendations.

Discussion ensued regarding purpose of mediation meeting, participants, open portion of the mediation, public participation, authorized participating parties, Special Council representing the City, notice to participating parties and provided documents, public notice when the Commission will consider the outcome of the mitigation, property owners authorized to participate, scheduled Magistrate Hearing, methodology for Commission consideration and Magistrate recommendation, timeline for Magistrate to issue an order, considerations of a mediation, methodology for the Magistrate recommendation and Commission consideration and approval process, and meeting dates and times for the Commission Special meeting to discuss the mediation.

A motion was made by Vice Mayor Luke, seconded by Commissioner Carusone, to schedule a Special Commission meeting on October 19, 2020 at 10:00 a.m. to address mediation recommendations, if any, in response to petition for relief. The motion carried by the following vote:

Yes: 5 - Mayor McDowell, Vice Mayor Luke, Commissioner Hanks, Commissioner Carusone and Commissioner Emrich

D. [20-2499](#)

Review, Discussion, and Possible Action on the City Attorney's Performance Evaluation

Ms. Slayton introduced the item.

Discussion ensued regarding evaluation rating average, previous salary increases, current City Attorney salary, and Fiscal Year 2020/2021 budgeted salary.

Commission expressed gratitude to Ms. Slayton and her staff for the work performed and commitment to the City.

A motion was made by Vice Mayor Luke, seconded by Commission Carusone, to approve a 4.5% salary increase based on the performance evaluation for the City Attorney. The motion carried by the following vote:

Yes: 5 - Mayor McDowell, Vice Mayor Luke, Commissioner Hanks, Commissioner Carusone and Commissioner Emrich

9. COMMISSION COMMUNICATIONS:

There were no Commission Communications.

10. ADMINISTRATIVE AND LEGAL REPORTS:

There were no administrative and legal reports.

Recess was taken from 2:11 p.m. to 4:00 p.m.

GENERAL BUSINESS:CONTINUED:

E. [20-2565](#) TIME CERTAIN FOR 4:00 P.M. - Discussion and Possible Action Related to the Administrative Leave and Workplace Investigation Report Regarding the City Manager

Mayor McDowell reconvened the meeting at 4:00 p.m. and noted those present were Mayor McDowell, Vice Mayor Luke, Commissioners Carusone, Emrich and Hanks, Acting City Manager Jason Yarborough, City Attorney Amber Slayton, City Clerk Heather Taylor, Police Chief Todd Garrison, Recording Secretary Ida Goodman and recognized former Commissioners Jim Blucher, Fred Tower and Joan Morgan in attendance.

Mayor McDowell provided an overview of the process and noted the reasons she requested this item be put on the agenda.

Ms. Slayton introduced outside counsel, Susan Boyd.

Discussion ensued regarding public comment and Mr. Lear's participation.

Ms. Slayton spoke to the process to be determined by the Commission.

Ms. Boyd noted that the Commission should set perimeters for the meeting and spoke to the impact of the investigation.

A motion was made by Commissioner Carusone, seconded by Commissioner Emrich, to allow for public comment, presentation, question and answer, a closing statement from Mr. Lear, motion and deliberation.

Discussion ensued regarding Mr. Lear's opportunity to speak during public comment, allowing Mr. Lear to make a closing statement and length of time to allow for the closing statement.

A motion was made by Commissioner Carusone, seconded by Commissioner Emrich, to amend the motion to allow for the closing statement to last no longer than five minutes. The motion to amend carried by the following vote:

Yes: 3 - Commissioner Hanks, Commissioner Carusone and Commissioner Emrich

No: 2 - Mayor McDowell and Vice Mayor Luke

Public Comment

Jeffrey Scott - City Manager investigation.

Margie Hathon - Commission communications.

Discussion ensued regarding Commission direction regarding contact with Mr. Lear.

Peter Lear - Offered an apology and commented on the investigation.

Gid Pool - City Manager investigation timeline and due process

Connie Brunni - City Manager Lear employment and investigation timeline.

Ms. Slayton noted that any documents regarding a complaint to the Commission on Ethics are confidential and should not be accepted.

Ms. Taylor read the following online public comments into the record:

Marcia Loverdi - Effects of the City Manager investigation.

Kevin Shaughnessy- City Manager investigation timeline.

Maria L - Disposition of City Manager investigaton.

Public comment continued:

Stephanie Gibson - Commission communication and public notification.

Ms. Boyd addressed questions from the Commission and spoke to investigation conclusions Section 6-A regarding International City Manager Association (ICMA) Code of Ethics and membership, Section 10-3 of the Code of Ethics regarding personal relationships, ICMA certification timeline for Mr. Lear and fulfillment of certification dependent on the investigation, Commission authority to make a decision regarding ICMA ethical violations, definition of misconduct versus good cause, violation of employment and City policy 2.12, ethics regarding conducting of business fairly and impartially, City policy 2.11 regarding non-discrimination and harassment policy, and investigator statement regarding a charge of moral turpitude and disrepute.

Discussion followed regarding Commissioners meeting with Mr. Lear during the investigation.

Ms. Slayton addressed questions regarding Resolution 2019-R-7 referring to City employee allegations and process for notification, City Attorney and HR letter to Mr. Lear, and scope of investigation limitations.

Ms. Boyd spoke to questions regarding investigation perimeters and scope of investigation, alleged ICMA Code violations, City Manager contract referring to ICMA membership, ICMA authority to determine a violation, and Florida Statutes addressing misconduct.

Discussion ensued regarding past organizational structure and re-organizational dates and plans, required methodology for organizational changes, communication issues, and City ethics policy regarding City business and violation of non-discrimination and harassments evidence.

Addressing a question, Ms. Slayton noted that the investigator is not present to answer questions.

Discussion continued regarding the purpose of the investigation to determine the conduct of Mr. Lear, review of the investigation in reference to City Codes, legal finding of facts, defensible findings, unethical rules not being fairly enforced, City Clerk department renovation, creation of job descriptions, City Manager duties as the purchasing agent for the City, July 14, 2020 motion to put Ms. Lear on administrative leave, and wrong information and scrivener errors in the report.

Ms. Slayton addressed questions regarding inaccuracies in the report.

Police Chief Garrison spoke to expectations of officers providing accurate information.

Vice Mayor Luke spoke to her conversations with the City Manager regarding City employees prior to the investigation.

Ms. Slayton spoke to the July 15, 2020 email notification to the City Manager regarding Commission decision to put the City Manager on administrative leave, the investigation process and requirements of the administrative leave including not to conduct or participate in City business, Commissioner Carusone's admission to meeting with Mr. Lear to discuss the budget, timeline of hiring the investigator, and interview process and timeline.

Ms. Boyd spoke to average timeline for a workplace investigation, clarification on code of conduct for public employees/officers, investigative effects of errors/scriveners errors within the report, general code of ethics versus specific code of ethics and being subjective, and Mr. Lear's statement in his self evaluation regarding code of ethics.

Discussion continued regarding incorrect dates in the investigation for required ICMA certification, time email sent on July 15, 2020 notifying Mr. Lear of Commission direction, restructuring of Neighborhood Development Services (NDS), investigator beliefs versus facts, recommendation of what the Commission should base their decision, and inability to question the investigator.

Chief Garrison spoke to administrative investigation timelines with the ability to grant extensions, severity of a case not dictating investigative timeline, expectation of factual information, and City Manager requesting determination of the source of an email sent to the Commission.

Discussion continued regarding staff time for the proposed reorganization of NDS and methodology for the investigators conclusions.

Recess was taken from 6:17 p.m. to 6:30 p.m.

Mr. Lear provided his closing statement regarding due process, re-organization of NDS timeline and previous structure of the NDS and Planning Department, Natural Resource Department, job description, no funds being spent to re-design the 3rd floor, inability to provide interpretations of State Statutes during the interview process, required timeline for ICMA certification and ICMA investigation authority, investigated allocations providing no defensive opportunities, facts left out of the report, and lack of notification for issues to defend.

A motion was made by Vice Mayor Luke, seconded by Mayor McDowell, to remove the City Manager from office immediately for good cause as defined in his employment agreement and to terminate his employment with the City, to direct the City Attorney to draft written notice of same and that notice to specify that the City Manager has five days after receipt of the written notice to request a written charge and public hearing with the City Manager's termination being final upon expiration of the five day period if no written request of public hearing is made or upon conclusion of the public hearing if written request for public hearing is made.

Mayor McDowell read a statement into the record regarding the investigated actions of the City Manager.

The motion failed by the following vote:

Yes: 2 - Mayor McDowell and Vice Mayor Luke

No: 3 - Commissioner Hanks, Commissioner Carusone and Commissioner Emrich

A motion was made by Commissioner Carusone, seconded by Commissioner Hanks, to take the City Manager off paid administrative leave, require him to take ethics training and be on suspension for five days without pay after which returning to work at full duty and capacity.

Discussion ensued regarding specifics on ethics training, and ethics training institutions.

A motion was made by Commissioner Carusone, seconded by Commissioner Hanks, to amend the main motion to include that the ethics training be no less than eight hours to be completed within six months through Florida Institute of Government, ICMA or Florida League of Cities. The motion to amend passed by the following vote:

Yes: 4 - Mayor McDowell, Commissioner Hanks, Commissioner Carusone and Commissioner Emrich

No: 1 - Vice Mayor Luke

Discussion ensued regarding investigative interviews, possible misleading information in the investigation, timeline of events leading to the investigation and completion of the investigation, past investigations of Sproat Workplace Investigations, Mayor McDowell's written statement, necessity of ethics training, past suspension practices, validity of the investigation, lack of proof of a break of policy, admitted facts of the investigation and page 12 of the report showing an admittance of a sexual relationship, and doubting the investigation following the required deadline for the report.

There was a request for a consensus to hear additional public comment prior to taking the vote on the motion as amended which failed.

The main motion as amended passed by the following vote:

Yes: 3 - Commissioner Hanks, Commissioner Carusone and Commissioner Emrich

No: 2 - Mayor McDowell and Vice Mayor Luke

Mayor McDowell and Vice Mayor Luke dissented expressing they felt Mr. Lear should be removed from office immediately.

There was a consensus to allow for public comment.

Public comment:

Kate Shakirov - City Manager investigation and employment.

Steve Burke - City Manager employment and holding employees accountable for policy violations.

Jeffrey Scott - Possible corrupt conduct of a public official and Commissioner Carusone's actions.

8. PUBLIC COMMENT:

There was no public comment.

11. ADJOURNMENT:

Mayor McDowell adjourned the meeting at 7:21 p.m.

City of North Port, Florida

By: _____
Debbie McDowell, Mayor

Attest: _____
Heather Taylor, City Clerk

Minutes approved at the Commission Regular Meeting this ____ day of _____, 2020.