



**City of Gulfport Florida**  
**Special City Council Meeting Minutes**  
**Monday, November 23, 2009**

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The Special Meeting of the Gulfport City Council was held on Monday, November 23, 2009, in the City Hall, City Council Chambers, 2401 53<sup>rd</sup> Street South, Gulfport, Florida.

Michael J. Yakes, Mayor, called the meeting to order at 10:00 a.m., followed by the Pledge of Allegiance.

**Roll Call:**

Present were Councilmembers Michele King and Samuel Henderson; Vice Mayor Robert Worthington; Mayor Michael J. Yakes, Interim City Manager James O'Reilly; Interim City Attorney Andrew Salzman and City Clerk Lesley DeMuth. Councilmember Judy Ryerson arrived after the Roll Call.

**1. Public Session.**

John Freiberger, 4719 Tradewinds Drive S., gave his thoughts of having Council's discussion on agenda items prior to the public comment at meetings. He requested the 10:00 am or 2:00 pm meetings be held at a time when most citizens are able to attend and having workshop meetings prior to the regular Council Meetings where the agenda items are discussed before a vote.

Lee Stapella, 3025 York Street S., spoke on the Council Meetings being segmented according to First Amendment parameters.

Margarete Tober, 1513 59<sup>th</sup> Street S., stated she read the proposed bench sign ordinance and did not recall seeing that it is limited to non-profit organization. However, Representative Kriseman indicated it was. Interim City Manager O'Reilly explained if a group came forward they would be a not-for-profit, and there would be an agreement to allow the benches on the right-of-way. Advertising will be in the terms of the agreement and it may not be just non-profits; it could be commercial advertising.

Al Davis, 2790 45<sup>th</sup> Street S., referenced a Gabber article regarding comments he made of the toxicity/public health issues of Claim Bayou which are genuine and documented. He felt it was time for Council to carry this effort forward by turning to the agencies that are accountable and demand they do for the taxpayers what they are charged to do under the Clean Water Act.

**2. Resolution:**

2009-114, A resolution of the City of Gulfport, Florida, approving an Employment Contract for James E. O'Reilly, City Manager; providing authorization for the Mayor to sign said Contract; and providing for an effective date.

The City Clerk read Resolution No. 2009-114 by title only.

Councilmember Henderson stated his comments were as they were before. The original severance package was in an amount greater than he could justify, and he felt provisions for compliance with the City Charter and a performance review needed to be added.

Mayor Yakes read Subsections (a) and (b) of Section 3 - Termination and Severance Pay.

Councilmember Henderson advised Council he would like to propose a six month salary severance and a one month accrual up to a cap of six months. He explained at the end of each year, the City Manager would be eligible for one additional month of severance pay. He felt after looking at the data from other cities, which he provided Tuesday night, it is a comparable and generous offer.

Vice Mayor Worthington stated he thought the Interim City Manager has the ability to work well with each Councilmember and he has been honest and forthright with each person. Vice Mayor Worthington thought if the City loses this opportunity to take on this very worthy person, we are going to spend a lot of money on a headhunter to go out and find a new City Manager. Vice Mayor Worthington felt Council needed to examine what we have and he did not feel six months was adequate; one year is better.

Councilmember King stated she did not think Council was debating if they want Jim or not. They are debating an agreement on the employment. If Council did not want Jim to be the City Manager they would not have done away with the residency requirement. Councilmember King stated she felt six months is adequate, but if this Council wanted to do a one month accrual up to six months, she could agree to that. Councilmember King stated she would not like to see a super majority to terminate employment. Three votes is what it has always been and this should not be changed. She would also like to see some of the salary based on performance.

In response to a question by Councilmember King on Section 3(c), Interim City Attorney Salzman explained if Council decides not to adhere to the contract or was treating the City Manager differently than the other employees it would be considered a breach of the contract.

Councilmember Ryerson stated she felt the biggest question is the severance pay and she was comfortable with something between six months and one year. She stated she felt Council needed to know which way Jim is thinking.

Mayor Yakes stated he found that within the six months to one year was very fair, and he believed the six months with the one month accrual, not to exceed one year, is not unjust and could be considered. Mayor Yakes stated he is at the six months level. He pointed out the performance evaluation provision which was added in Section 5(a). He stated for the record, his vote to change the residency was not based upon one person. It was based upon the real estate value and the reality of a person coming from another part of the State to assume residency in our City. The Council can, in fact, still require a City Manager to be a resident of Gulfport.

In response to a question by Vice Mayor Worthington on Section 12 - Retirement, Interim City Attorney Salzman explained the City is only responsible for the retirement plan that it will be providing and funding.

In response to a question raised by Councilmember Ryerson, Interim City Manager O'Reilly asked what the City's formal offer is.

Mayor Yakes opened public discussion.

John Freiberger, 4722 Tradewinds Drive S., stated he thought Jim will make an excellent City Manager, but disagreed with what Mayor Yakes said about the residency requirement due to the fact the City Council did not put it out for other offers. He felt the super majority vote was ridiculous, the three months severance is extremely generous, the car allowance should be eliminated for the City Manager and all Directors, and the salary should not be over \$102,000.

Al Davis, 2790 45<sup>th</sup> Street S. spoke in support of extending Mr. O'Reilly's severance to at least a year. He will have no assurance of what he will be doing from day to day, and has no protection from intimidation.

Jennifer Salmon, 1207 60<sup>th</sup> Street S., added her support for hiring Mr. O'Reilly. She felt a super majority protects him therefore the need for such an extensive severance is less necessary, and she felt the \$108,000 is reasonable. Ms. Salmon asked about disability pay as it relates to retirement pay. Interim City Attorney Salzman explained disability is a standalone issue if the City Manager is unable to perform for 60 days. The retirement benefit he will receive if he qualifies for retirement is separate from the severance issue.

Margarete Tober, 1513 59<sup>th</sup> Street S., felt 24 months was a bit steep, but could understand Jim's desire to protect himself and his family. With regard to termination, she thought it should be 4 to 1, and thought the notion of a performance bonus brought up by Councilmember King bares merit.

Interim City Attorney Salzman stated he wanted people to understand that termination for cause is a simple vote of 3 to 2. The 4 to 1 vote is basically if the Council changes and even though the City Manager is able to do his job, just for whatever reason a new Council comes in and says I do not like you; you have to have a super majority. This is the protection that was put in for those situations.

Lee Stapella, 3025 York Street S., spoke on how the City Manager is in essence a corporate CEO and not a marketing manager. If Council wanted to give him a bonus that is great, but they cannot tie a percentage to or subtract it from his salary. Ms. Stapella felt the super majority vote should be protected and not open to debate.

Neither hearing nor seeing anyone else wishing to speak, Mayor Yakes closed the Public Discussion.

Motion by Vice Mayor Worthington, second by Councilmember Ryerson to approve Resolution 2009-114 with a one year severance, not to increase.

Councilmember Henderson advised Council he would like to see the motion amended to his previous recommendation and that language be added within the performance section of the agreement to the effect that it be in accordance and not in conflict with the City Charter.

Interim City Attorney Salzman pointed out the City Council could not do anything contrary to the Charter as it would be null and void.

Councilmember King stated she thought the severance should be six months with an escalation of one month per year up to an additional six months. She stated she could not vote for one year.

Councilmember Ryerson stated under performance evaluation it says the review shall be in accordance with the criteria developed by the City. The amount of this percentage would be that given to any employee on their evaluation.

Mayor Yakes again complimented and applauded the work the Interim City Manager has done, and felt his capability, knowledge, and desire to serve makes him an excellent choice for the City. Mayor Yakes stated he believed the six months and one month accrual, to accomplish the one year severance pay, is fair.

Interim City Attorney Salzman explained the purpose behind the strong majority vote is that the City Manager is sitting as an at-will employee. This is a protection aspect for the City Manager, and a protection he has drafted many times. If however, he does something wrong which is considered malfeasance, misfeasance or is convicted, that is a simple majority vote of 3 to 2 and the severance is not received.

Councilmember King stated she can understand a super majority if the Council decides to change the City Manager for no reason, but she also thought there is a space in the middle besides something criminal and not doing what the Council has specifically specified. Interim City Attorney Salzman stated that would be misfeasance and malfeasance which are actions considered contrary to that of what his duties are and those definitions are fairly broad.

Councilmember King stated she can live with the super majority under that circumstance, but still thought Council had to take into consideration that a City Manager's salary is based on the fact he is an at-will employee.

Vice Mayor Worthington asked Interim City Manager O'Reilly if the motion on the floor is agreeable to him.

Interim City Manager O'Reilly stated he felt it was in the best interest of the City and himself to respectfully decline and that the City move forward with the process to seek a permanent individual. Interim City Manager O'Reilly stated there is no need to have a vote.

Mayor Yakes asked Council if they wished to move forward on this compromise.

Interim City Attorney Salzman pointed out there is a motion and it will need to be withdrawn and seconded. Vice Mayor Worthington and Councilmember Ryerson withdrew their motion.

Interim City Manager O'Reilly stated there are two items he would like to have addressed. He advised Council that he will ask the two firms who responded to the Requests for Proposals attend the next Council meeting, and he requested Council make an adjustment to the base salary of his other position. There has not been an adjustment to that base salary since January 2008.

Vice Mayor Worthington stated if Council has the headhunters come in, he would like to see Mr. O'Reilly have the ability to apply if he so chooses.

Mayor Yakes passed the gavel to Vice Mayor Worthington and moved to approve the agreement with a one year severance if this is the difference maker of bringing a qualified person on board. Interim City Manager O'Reilly stated he felt this will not be to the benefit of the City and we needed to move forward.

Councilmember Henderson asked that before Council discusses having a headhunter service, the City post immediately some type of ad that the position is available.

Interim City Manager O'Reilly stated there is only one week before having the firms speak to Council and he suggested they start the process with a firm. If Council chooses not to have a firm, then they can put a mechanism in place to do what he is speaking of.

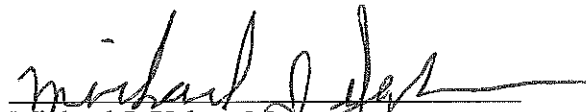
**3. Any other business.** None

**4. Adjournment.**

Motion by Vice Mayor Worthington, second by Councilmember Henderson to adjourn.

UNANIMOUS APPROVAL BY ACCLAMATION.

Date Approved: 1-5-2010

  
Michael J. Yakes, Mayor

  
Lesley DeMuth, City Clerk