

City of Gulfport Florida
Regular City Council Meeting Minutes
Tuesday, March 16, 2010

The Regular Meeting of the Gulfport City Council was held on Tuesday, March 16, 2010, in the City Hall, City Council Chambers, 2401 53rd Street South, Gulfport, Florida.

Michael J. Yakes, Mayor, called the meeting to order at 7:00 p.m. The invocation was given by Councilmember Sam Henderson followed by the Pledge of Allegiance.

Oath of Office for newly Elected Officials:

City Clerk DeMuth administered the Oath of Office to Councilmember David C. Hastings, Councilmember Jennifer Salmon, and Mayor Michael J. Yakes.

Roll Call:

Present were Councilmembers David Hastings, Michele King, Jennifer Salmon and Samuel Henderson; Mayor Michael J. Yakes; City Manager James O'Reilly; Interim City Attorney Andrew Salzman, and City Clerk Lesley DeMuth.

Presentation:

Mayor Yakes presented a plaque recognizing outgoing Councilmember/Vice Mayor Robert E. Worthington for his years of service to the City.

Mayor Yakes requested Agenda Items 6 (a) and (b) be tabled at the applicants' request. Motion by Councilmember King, second by Councilmember Henderson to table Ordinances 2010-05 and 2010-06 until the City Council meeting of April 6, 2010.

ROLL CALL: COUNCILMEMBER HENDERSON	YES
COUNCILMEMBER SALMON	YES
COUNCILMEMBER KING	YES
COUNCILMEMBER HASTINGS	YES
MAYOR YAKES	YES

MOTION CARRIED

1. Public Session.

Roz Barbieri, Town Shores, provided copies of an article to Council by New Earth Industries.

Jeri Reed, 5213 11th Avenue S., spoke on the upcoming Citywide Crime Watch Meeting.

Margarete Tober, 1513 59th Street S., congratulated the new Councilmembers and Mayor, and presented each Councilmember a framed copy of the City's Mission Statement.

Lee Stapella, 3025 York Street S., congratulated the new Councilmembers and those who ran for office, and recognized outgoing Councilmember Bob Worthington.

Jean Proach, Boca Ciega Yacht Club, invited Council to Fun Day and the Blessing of the Fleet, and welcomed the new Councilmembers.

Al Davis, 2790 45th Street S., asked Council to recognize his past requests to recognize Mr. Worthington, he expressed his appreciation to those candidates who sought out citizens with concerns about the habitat, and spoke of his concerns of two unelected members being on Council.

2. **City Manager Report.** No Report

3. **City Attorney Report.** No Report

4. **Consider the appointment of a Vice Mayor.**

Motion by Councilmember Salmon, second by Councilmember Hastings to appoint Councilmember Michele King as Vice Mayor.

ROLL CALL: COUNCILMEMBER HENDERSON	YES
COUNCILMEMBER SALMON	YES
COUNCILMEMBER KING	YES
COUNCILMEMBER HASTINGS	YES
MAYOR YAKES	YES

MOTION CARRIED.

5. **Consider approval of the Council Meeting Minutes of September 3, 2009, September 17, 2009, November 17, 2009, January 5, 2010 and January 19, 2010.**

Motion by Councilmember Salmon, second by Vice Mayor King to approve the minutes.

UNANIMOUS APPROVAL BY ACCLAMATION

6. **Consent Items: Resolution**

2010-12, A Resolution of the City of Gulfport, Florida, establishing public hours for Clam Bayou Park; and providing for an effective date.

The City Clerk read Resolution No. 2010-12 by title only.

Councilmember Henderson advised Council he had questions regarding the proposed park hours and requested the item be removed from the consent agenda; there was no objection from Council. The Resolution was scheduled to be heard under Agenda Item No. 8.

7. **Ordinances:**

a. 2010-03, Second Reading and Public Hearing: An ordinance of the City of Gulfport, Florida, amending Article III of Chapter 5 of the Code of Ordinances of the City

pertaining to animals and fowl; creating Section 5-34 entitled "supervision, confinement, and tethering of canines"; providing for the repeal of ordinances or parts of ordinances, in conflict herewith, to the extent of such conflict; providing for severability; and providing for an effective date.

The City Clerk read Ordinance No. 2010-03 by title only.

City Manager O'Reilly explained the amendments which have been made to the Ordinance.

Mayor Yakes opened the Public Hearing.

Public comment received in support of Ordinance No. 2010-03: Lisa Lombardo, 5829 19th Avenue South and Connie Brooks, SPCA Tampa Bay.

Neither hearing nor seeing anyone further who wished to speak, Mayor Yakes closed the Public Hearing.

Motion by Councilmember Henderson, second by Vice Mayor King to adopt Ordinance No. 2010-03.

In response to a question by Councilmember Salmon if it is appropriate to have the two public speakers respond to her concerns, Interim City Attorney Salzman stated it is up to the Council as a whole to take on additional information. Mayor Yakes pointed out there was a First Reading on the Ordinance and a workshop which brought forth the product that is before Council on Second Reading.

Councilmember Salmon suggested a clause be included in the ordinance for a review after two-years to see whether or not the ordinance worked the way it was intended or if there were unintended consequences. Interim City Attorney Salzman pointed out that Council does not need to wait two years for this information. They can have the information brought forward by the City Manager at any time on the effectiveness of the ordinance.

Vice Mayor King mentioned the enforcement of the Ordinance will be complaint driven and that it is a mechanism to protect a dog, or protect people from a dog who has turned vicious. In reference to comments made by Councilmember Salmon, Vice Mayor King stated she has not heard of any dangers from dog crating.

Councilmember Hastings and Mayor Yakes spoke in favor of the Ordinance.

Councilmember Salmon asked that after 18 months a review of the Ordinance be given to Council.

ROLL CALL: COUNCILMEMBER HENDERSON	YES
COUNCILMEMBER SALMON	YES
VICE MAYOR KING	YES
COUNCILMEMBER HASTINGS	YES
MAYOR YAKES	YES

MOTION CARRIED.

- b. 2010-05, First Reading and Public Hearing: An ordinance amending the Comprehensive Plan of the City of Gulfport, Florida; providing for amendment of the Future Land Use Plan; providing for amendment of the Future Land Use Map; providing for a change in the designation of specific parcels of real property within the city legally described in Exhibit "A", Exhibit "B", and Exhibit "C", attached hereto and made a part hereof, and generally located at 2217 - 2219 51st Street South, 2221 - 2223 51st Street South, from Residential Low Medium (RLM) to Commercial Limited (CL), and 2225 51st Street South, and 5119 23rd Avenue South, from Residential Urban (RU) to Commercial Limited (CL); providing for the repeal of ordinances, or parts of ordinances, in conflict herewith, to the extent of such conflict; providing for severability; and providing for an effective date.

TABLED.

- c. 2010-06, First Reading: An ordinance amending Chapter 22 of the Code of Ordinances of the City of Gulfport, Florida, by amending the City Zoning Map incorporated therein, by rezoning specific parcels of real property within the city as described in Exhibit "A", Exhibit "B", and Exhibit "C", attached hereto and incorporated herein, generally located at 2217 -2219 51st Street South, and 2221 - 2223 51st Street South, from Multiple Family Residential (R-3) to Commercial Retail (CL-2), and 2225 51st Street South, and 5119 23rd Avenue South, from One and Two Family Residential (R-2) to Commercial Retail (CL-2); providing for the repeal of ordinances, or parts of ordinances, in conflict herewith, to the extent of such conflict; providing for severability; and providing for an effective date.

TABLED.

8. Resolution:

- 2010-12, A Resolution of the City of Gulfport, Florida, establishing public hours for Clam Bayou Park; and providing for an effective date.

The City Clerk read Resolution No. 2010-12 by title only.

In response to questions by Councilmember Henderson, Police Chief Robert Vincent explained why this issue came forward and why he is recommending that the park be closed from sunset to sunrise. One of the things that he did build in as a compromise was to only close the secluded areas of the park, but he felt closing the park from 10:00 p.m. to 6:00 a.m. was better than Midnight to 4:00 a.m.

City Manager O'Reilly clarified what is being referenced as the secluded area and recommended Council adopt the 10:00 p.m. to 6:00 a.m. closure. If there is a problem, staff will come back before Council.

Motion by Councilmember Henderson, second by Councilmember Hastings to approve the Resolution with an amended closing time of 10:00 p.m. to 6:00 a.m.

Vice Mayor King asked if the dock at the end by the Coast Guard Station was part of the area being closed off and City Manager O'Reilly replied that the one entering the marina is not.

Councilmember Salmon spoke in support of the 10:00 p.m. to 6:00 a.m. closure and the waiver of those hours during City fireworks nights.

Mayor Yakes opened for public discussion.

Al Davis, 2790 45th Street S., spoke on his concerns of public safety in the park and that he felt the extension of hours is favoring a commercial enterprise.

Margarete Tober, 1513 59th Street S., felt the hours should be dawn to dusk, and that the Police Chief is being second guessed.

Lee Stapella, 3025 York Street S., felt Council should abide by the Police Chief's recommendation.

Bobby Reynolds, 1852 53rd Street S., spoke in support of the extended hours.

Jeri Reed, 5213 11th Avenue S., advised Council this issue has been discussed at Crime Awareness Meetings and was happy it is being addressed.

Neither hearing nor seeing anyone further who wished to speak, Mayor Yakes closed the public discussion.

Vice Mayor King suggested actual hours not be used due to day light savings time, and suggested seeing hours of one hour before dawn and one hour after dusk

Councilmember Salmon, Councilmember Hastings and Mayor Yakes spoke in support of the park hours being suggested by Vice Mayor King.

Councilmember Henderson and Councilmember Hastings withdrew their original motion.

Councilmember Henderson moved, and Councilmember Hastings seconded the motion to amend the Resolution to reflect the hours the park will be closed to one hour after sunset to one hour before sunrise.

ROLL CALL:	COUNCILMEMBER HENDERSON	YES
	COUNCILMEMBER SALMON	YES
	VICE MAYOR KING	YES
	COUNCILMEMBER HASTINGS	YES
	MAYOR YAKES	YES

MOTION CARRIED

2010-13, Public Hearing: A resolution of the City of Gulfport, Florida, approving the recommendation of the Planning and Zoning Board/Local Planning Agency to approve Application #S10-01; a site plan for the addition of an accessory outdoor cooking unit, outdoor storage and outdoor seating to a permitted take-out restaurant located at 5145 Gulfport Boulevard South; providing for conditions; and providing for an effective date.

The City Clerk read Resolution No. 2010-13 by title only.

City Manager O'Reilly briefly explained the request and deferred to Community Development Department Staff for a presentation. Myra Schwartz, Planner, advised Council this is a site plan for the addition of an accessory outdoor cooking unit, outdoor storage and outdoor seating to a permitted take-out restaurant. The Planning and Zoning Board has recommended approval of the applications with the following conditions: 1) the proposed project shall begin within one year of approval otherwise site plan will expire; 2) patron seating will be located in the approved outside seating area only; 3) stored wood will be raised 18 inches from the ground and maintained so as not to attract vermin; and 5) outdoor seating will be permitted for a period of 15 years and will expire on March 16, 2025. Planner Schwartz advised Council the restaurant is a permitted use in the CL-2 Commercial Retail Zoning District and has met the criteria listed in the exemptions for site plan review in City Code Section 22-7.08. The site plan before City Council is for the accessory uses only, and Planner Schwartz briefly highlighted individually each of the proposed accessory uses.

Councilmember Salmon advised Council she had provided copies to them of the Rules from the Division of Hotels and Restaurants, and asked questions of Planner Schwartz on the cooking and shelter aspects of the smoker. Planner Schwartz explained through discussions she and the Community Development Director have had with DEP, what is permitted is the applicant may have the mobile smoking unit as an accessory to the restaurant.

John Riesebeck, 6741 10th Avenue Terrace S., explained to Council what he is proposing to do at 5145 Gulfport Boulevard. He stated the smoker is not a certified smoker, he explained how the smoker is proposed to be used and how it meets the requirements of the Department of Business and Professional Regulations. In response to a question by Vice Mayor King on if there is an EPA certified smoker; Mr. Riesebeck stated not that he is aware of. The only thing the EPA regulates is the opacity of the smoke and the odor. Mr. Riesebeck told Council that by having issues in the past and learning how to correct the problems is what he continues to do. If there is an issue he will try to fix it; that is part of being a good business person.

Mayor Yakes opened the Public Hearing:

Al Davis, 2790 45th Street S., expressed his concerns of the request being legally compliant, and being subject to personal bias and not the law.

Lee Stapella, 3025 York Street S., expressed her concerns on the handling of quasi-judicial judicial proceedings, and Interim City Attorney Salzman addressed her concerns.

Margarete Tober, 1513 59th Street S., asked for Council's due diligence in taking a second look at the Ordinances relating to this request.

Public comment received against Resolution No. 2010-13: Valarie Crados, 6785 West Flamingo Way S.; Martha Josey, 6780 W. Flamingo Way S.; Kathryn Parker, 6773 W. Flamingo Way S.; Carol Parker, 6785 W. Flamingo Way S.; Mark Gildauskas, 4917 Newton Avenue S.,

Public comment received in support of Resolution No. 2010-13: Susan Reckmeyer, 6115 10th Avenue Terrace S.; Phillip Lorussa, 6731 10th Avenue Terrace S.; Mark Galvin, 2226 Heron Way S.; Joseph Riesebeck, 6741 10th Avenue Terrace S.; Ernie Figueredo, 911 Pelican Drive S.; Robert Green, 6740 10th Avenue Terrace S.; Matt Dexter, 10425 51st Terrace; Frank Driscoll, 1317 49th Street S.; Pat Horan, 6609 Blue Heron Dr.

Neither hearing nor seeing anyone further who wished to speak, Mayor Yakes closed the Public Hearing.

Motion by Councilmember Hastings, second by Vice Mayor King to approve the site plan application for the addition of an outdoor cooking unit, outdoor storage and outdoor seating to a permitted take out restaurant at 5145 Gulfport Boulevard.

In response to questions from Councilmember Henderson, Mr. Riesebeck explained the size and dimensions of his smoker and modifications to it that he has made. Councilmember Henderson stated at this point the City has no ordinances on smokers and he was hesitant to tell someone they cannot do business because of what may or may not happen. Interim City Attorney Salzman stated if Council chooses he would recommend a workshop to see what ordinances are out there to give them a direction and then they can determine what provisions they would like to put in place, but if something was to put in place it would not affect current businesses.

Councilmember Salmon disclosed that Mark Gildauskas provided her with information and she sought out information on her own. She asked Mr. Riesebeck if any visual emission forms were provided with the inspection reports, and he replied that he submitted to the City what he was given and the inspectors used no devices. Mr. Riesebeck showed pictures of his smoker in operation and explained his cooking process.

Mr. Riesebeck reminded City Council of his request to modify the height of the wood storage to 4 inches off the ground.

In response to a question by Vice Mayor King as to whether or not there is a smoker that is EPA Certified, Mayor Yakes stated that no information is provided that there is, the applicant suggests there is not, and staff has not been able to determine this. Community Development Director Fred Metcalf stated they have contacted the State and the County and no one is aware of any EPA Certified smoker.

In response to a question by Councilmember Salmon regarding the abandonment of use for the outdoor smoker, Interim City Attorney Salzman clarified with Community Development Director Metcalf that if the use was stopped for one year, in the capacity of an outdoor smoker, they would have to come back before Council.

Vice Mayor King disclosed that she had several conversations with Mr. Risenbeck prior to this getting this far and suggested to him that he call the City Manager.

Interim City Attorney Salzman stated Council would be asked before the vote if they have had any ex-parte communications, and explained what needed to be disclosed.

Councilmember Henderson disclosed his contact with the application was just an introduction.

Councilmember Salmon also disclosed Carol Parker called her and she encouraged her to come and speak in front of Council.

Councilmember Hastings disclosed that with his due diligence on the Planning and Zoning Board he always talked to the applicant and he did speak with him at his facility. He also has talked to Wayne Martin, Environmental Program Manager for Pinellas County Air Quality Division, the inspector who will actually be the restaurant inspector for the Division of Hotels

and Restaurants, and a Ms. Bell who is the site plan supervisor from the Division of Hotels and Restaurants in Tallahassee who stated she has approved his site plan pending City Council approval.

Mayor Yakes disclosed he spoke to no one on this particular issue.

Councilmember Hastings stated what we have in his opinion is an applicant that has presented a site plan to the City. He has met all the city requirements with respect to this business he has meet all of the requirements of the division of Hotels and Restaurants. The applicant has not proved that he is a nuisance Gulfport and that is the only statute in the City that controls a smoker. If he opens up his business and he creates a nuisance then we have a statute that covers that, but until he creates a nuisance he did not see how we can deny the applicant the right to prove to us that he is not going to be a nuisance.

In response to Councilmember Henderson request to require a three stage filter, a fan, and the extension of the exhaust stacks raised to roof level, Councilmember Hastings felt the applicant has offered to make and meet additional requirements if the unit is deemed to be a nuisance, but he did not think the City should require more than it does on anyone else until it become a nuisance.

Councilmember Salmon and City Manager O'Reilly confirmed the Police Department's involvement in Code Enforcement issues after hours.

Motion by Councilmember Hastings, second by Vice Mayor King to amend the motion to approve by reducing the height of the wood storage to 4 inches off the ground.

Councilmember Henderson moved to amend the motion for approval to include a three stage filter, a fan, and the exhaust stacks raised to roof level Motion died for the lack of a second.

ROLL CALL: COUNCILMEMBER HENDERSON	NO
COUNCILMEMBER SALMON	NO
VICE MAYOR KING	YES
COUNCILMEMBER HASTINGS	YES
MAYOR YAKES	YES

MOTION CARRIED: 3 to 2

9. Old Business.

Councilmember Henderson spoke on the Gulfport Elementary Yard Sale.

Councilmember Salmon advised Council she asked the City Manager to contact PSTA to get the results of a Ridership Survey so the City would have more information to access the need for bus benches.

10. New Business.

Councilmember Henderson spoke on the upcoming clean-up of Tangerine Pond.

Councilmember Salmon asked Council if there was any objection to a flutist playing a brief Native American prayer as her invocations during the month of April; there were no objections from Council. Councilmember Salmon advised that the South Pasadena Community Band has asked if the City would sponsor the band and allow them to use the Casino the second Thursday night of the month during December, January, February and March. It was the consensus of Council that further information and discussion was needed. Councilmember Salmon asked if there were any objections to the City Clerk putting back on the website the 2008 data that was taken off line; there were no objections from Council.

Vice Mayor King mentioned Spring Fest and the Rely for Life.

Councilmember Hastings advised that April is Oral Cancer Awareness Month and he had discussed with the City Manager the possibility of the City sponsoring an event for free oral cancer screenings; there were no objects from Council on moving forward with this.

Mayor Yakes advised Council he met with Mayor Foster of St. Petersburg, and asked if there was any objection to flying a Tampa Bay Rays banner at 22nd Avenue and Beach Boulevard; there were no objections from Council.

11. Council Reports.

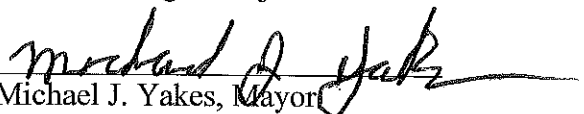
Councilmember Henderson thanked the City Manager and his staff for their quick response in cleaning up graffiti over the weekend, and asked dog owners to please pick up after their pets.

Councilmember Salmon announced she will be meeting with the Developer of the Dollar General tomorrow at 9:00 a.m. at 51st Street and Gulfport Boulevard, and mentioned Clam Bayou and the health of the water is important to her and that she will follow-up on all the information that has been coming in and she would be glad to meet with Mr. Davis.

12. Adjournment.

Motion by Councilmember Salmon, seconded by Councilmember Hastings to adjourn.

Date Approved: 6-1-10


Michael J. Yakes, Mayor


Lesley DeMuth, City Clerk