

Meeting 10 of 48 2010-2011 City Council of Galveston, Texas

THE MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL
OF THE CITY OF GALVESTON HELD SEPTEMBER 23, 2010 -4:00 PM

1. DECLARATION OF A QUORUM AND CALL MEETING TO ORDER.
2. MOMENT OF SILENCE
3. PLEDGE OF ALLEGIANCE
4. ROLL CALL: Present: Mayor Jaworski, CM Puccetti, CM Gonzales, CM Beeton, MPT
Colbert, CM Greenberg, CM Legg
Staff: City Manager LeBlanc; City Attorney Green; City Secretary
Lawrence
5. DECLARATION OF CONFLICT
None
6. APPROVAL OF MINUTES
N/A
7. PRESENTATIONS
 - A. Honoring Johnny Romano: Parents of Johnny Romano thanked the community for it's support. The Skate Park at Menard Park is named after Johnny. Rhonda Gregg announced the second annual Johnny Romano Longboard contest to be held Oct. 3. All proceeds go the Johnny Kicks Cancer Foundation.
 - B. Healthy Neighborhood Workshop: Kathy Tiernan, Family, Children and Youth Board.
 - C. Question and Answer Conciliation Agreement for Round 2 CDBG-DR and associated issues. (Disaster Recovery); Texas Department of Rural Affairs (TDRA), Texas Department of Housing Community Affair (TDHCA), and Housing Advocacy Groups (Texas Appleseed & Texas Low Income Housing Information Service).
Texas Department of Rural Affairs representatives Randy Young, Executive Director, Orelia Cardenas, Director of Disaster Recovery Programs for the Disaster Recovery Division of the TDRA and Texas Department of Housing Community Affairs Keven Hamby were present to answer questions.
Mayor Jaworski announced a Public Meeting to be held October 13, 2010, 5:30 p.m. to 7:30 p.m., at the San Luis Convention Center to have a roundtable of all participants to discuss Round 2 CDBG-DR and associated issues.
8. COMMUNICATIONS AND PETITIONS
 - A. Notices of Claim: 10070-Wil Domigue III, 10071 Floyd Mayberry
 - B. Texas Gas Service: Purchased Gas Adjustment Clause for September 2010
 - C. 2009 Audit Report for Galveston Housing Finance Corporation and City of Galveston Property Finance Authority, Inc.
9. ORDINANCES ASSOCIATED WITH PUBLIC HEARINGS

- A. Consider for approval an Ordinance of the City of Galveston, Texas granting a Specific Use Permit to operate a "Retail Lending Facility" in a Retail, Seawall Development Zone, Zone 4, Height and Density and Development Zone, Zone 5 (R-SDZ-4-HDDZ-5). Property is located at 6600 Seawall Boulevard and legally defined as Hall and Jones Survey, part of lots 89, 90 and abandoned road (89-1) Trimble and Lindsey, Section 1 and part of lot 1, Mosley Addition, in the City and County of Galveston, Texas.
(Planning Case Number 10P-69) (Greenberg/Legg)

ORDINANCE was read by caption: GRANTING A SPECIFIC USE PERMIT TO OPERATE A "RETAIL LENDING FACILITY" IN A RETAIL, SEAWALL DEVELOPMENT ZONE, ZONE 4, HEIGHT AND DENSITY AND DEVELOPMENT ZONE, ZONE 5 (R-SDZ-4-HDDZ-5); PROPERTY IS LOCATED ON SEAWALL BOULEVARD, IMMEDIATELY SOUTH OF WALMART AND BETWEEN SONIC AND MOODY BANK AND IS LEGALLY DEFINED AS HALL AND JONES SURVEY, PART OF LOTS 89, 90 AND ABANDON ROAD (89-1) TRIMBLE AND LINDSEY, SECTION 1 AND PART OF LOT 1, MOSLEY ADDITION, IN THE CITY AND COUNTY OF GALVESTON, TEXAS; PLANNING CASE NUMBER 10P-69; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT.

City Attorney Green stated this item was on the agenda for reconsideration.

Director of Planning O'Donohoe summarized the proposed ordinance.

Mayor Jaworski opened the PUBLIC HEARING.

Don Mafrige, applicant, asked Council to approve the ordinance granting a specific use permit.

Gary Jahoviak, representing Advance America, spoke in support of the proposed ordinance.

There being no one else to speak, the Public Hearing was closed.

CM Greenberg moved approval. Second by CM Legg. After discussion, CM Greenberg amended his motion to add the specific use permit would be non-transferable. CM Legg agreed to the amendment.

Vote in favor: Mayor Jawaorski, CM Greenberg, CM Legg. Opposed: CM Puccetti, CM Gonzales, CM Beeton, MPT Colbert. Motion failed. The request for a Specific Use Permit was denied.

10. PUBLIC COMMENT

Harold Thomas, Observer News, Ms. Margaret's Club, 4525 Ave. R ½, in support of amending the smoking ordinance.

Mark Mahady, President Firefighters Local 571, opposed to Item 11A

Officer Tim Buck, in support of Police jobs.

Steve Everts, 4527 Ave. O ½, Galveston Bar and Tavern Assn, in support of smoking ordinance amendment.

Teresa Everts, 4527 Ave. O ½, in support of smoking ordinance amendment.

Alice Melot, 1502 Market, opposed to smoking ordinance amendment.

Sheila Bell, problems with rental property, need for life jackets, flood concerns.

Ruth Finklestein Suhler, 215 Barracuda, opposed to smoking ordinance amendment.

Dr. Debra Munsell, President Galveston Heart Assn. Board of Directors, read the following letter into the record:

Smoking is the single most preventable cause of death in the United States. Second hand smoke exposure causes heart disease, cancer, respiratory ailments and premature death in non-

smokers. Because of the health risks that are posed with second hand smoke, it is imperative that the City Council maintain its current comprehensive smoking ordinance here in Galveston. Second hand exposure to smoke is a serious workplace safety issue. It is important that smoke free laws cover indoor work places including restaurants and bars. A recent poll by the Coalition of a Smoke Free Texas discovered that 72 percent of Texans polled believe that it is the right of customers and employees to breath clean air in restaurants and bars. The current smoking ordinance protects the general public from the dangers of second hand smoke by exempting bars and private club sites. This leaves hundreds of Galveston workers at risk. The issue is about public health. Isn't it time for all workers, including those in the hospitality industry to have the same protection from second hand smoke as people in other smoke free workplaces. A comprehensive smoke free policy is the most economic and effective effort to protect residents from exposure to second hand smoke. Separate areas, air cleaning or ventilation systems do not eliminate this exposure. Please vote to maintain our comprehensive smoke free ordinance. On behalf of the Galveston Division of the American Heart Assn. Board of Directors, I appreciate your interest in the issue of second hand smoke and trust that the City Council will protect the public from this health threat by enacting a comprehensive ordinance in all indoor public places and work sites. This is really a simple issue. Exposure to second hand smoke is unquestionably dangerous.

Renee Adame, 3328 Ave. O, in support of smoking ban.

David Stanowski, President, Galveston Open Government Project, 2211 Ave. P, opposed to public housing.

Pat Trevisani, LaMarque, in support of smoking ban.

Patricia Toliver, 5313 Ave. M, in support of public housing and in support of smoking ban.

Laura Murrell, 4052 Pirates Beach, in support of diverse and inclusive neighborhoods, in support of smoking ban.

Claudia Rodas, American Cancer Society, in support of smoking ban. Asked to defer for two weeks.

Bob Mahan, Executive Director of Smoking and Tobacco Education Campaign, in support of smoking ban, asked to defer two weeks.

Charles Smith, 3014 Kleinman, not opposed to Seawall Parking, in support of amending smoking ordinance, opposed to public housing, infrastructure of City is horrible.

Dr. Colleen Silva, Cancer Surgeon, 1502 Broadway, in support of smoking ban.

John Giovanannini, 12 Quintanna, opposed to smoking ordinance amendment.

Leon Phillips, 1212 38th St., extended invitation to St. Vincent's Day, September 25, 2010.

Richard Denson, 7149 Spanish Grant, opposed to public housing.

Jackie Cole, 2 Cadena Dr., opposed to smoking ordinance amendment. Supports clean air.

Joel Romo, American Heart Assn., in support of smoking ban. Asked Council to defer decision.

Lee Brown, 2408 Strand, in support of amending the smoking ordinance.

Willie Gonzales, 1801 32nd St. in support of smoking ban.

Crystal Teague, GPD Police Officer, 3409 Ave. Q ½, opposed to downsizing the Police Department.

11. ORDINANCES, RESOLUTIONS AND PROCLAMATIONS

- A. Consider for approval an Ordinance of the City of Galveston, Texas, Specifying the Number of Classified Civil Service Fire Department Personnel Positions at 108 Total

Authorized Strength to Include 3 Battalion Chiefs, 24 Captains, 33 Drivers and 48 Firefighters, Eliminating the Training Chief Classification and in Accordance with Section 143.085 of the Texas Local Government Code Governing Municipal Civil Service, Reducing the Force Authorization from 60 to 48 Firefighters; providing for an effective date.

ORDINANCE NO. 10-075 was read by caption: SPECIFYING THE NUMBER OF CLASSIFIED CIVIL SERVICE FIRE DEPARTMENT PERSONNEL POSITIONS AT 108 TOTAL AUTHORIZED STRENGTH, TO INCLUDE 3 BATTALION CHIEFS, 24 CAPTAINS, 33 DRIVERS AND 48 FIREFIGHTERS, IN ACCORDANCE WITH SECTION 143.085 OF THE TEXAS LOCAL GOVERNMENT CODE, GOVERNING MUNICIPAL CIVIL SERVICE, IN ELIMINATING THE TRAINING CHIEF CLASSIFICATION AND REDUCING THE FORCE AUTHORIZATION FROM 60-48 FIREFIGHTERS; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; PROVIDING FOR AN EFFECTIVE DATE.

Motion to approve by CM Greenberg. Second by CM Legg.

CM Puccetti stated for the record that even though the budget was passed authorizing 108 total positions, she feels that the cuts that have been made were too deep. Today, Council had a discussion about the Kelly Day. Some other information came out and the City Manager is going to do some research and due diligence and bring back some information to Council. One of the things she has asked for in response to his information that calls are down 20% is how many structure fires, how many fires have we had last year as compared with this year and the year before? She thinks he will find that calls are down because there is not the number of the 911 medical calls and accident calls. She thinks he will find that structure fires are at the same or above the level that they were the previous year and that is a big concern for her and should be a concern to property owners in this community.

CM Gonzales stated he would vote against the ordinance. The cuts are too deep.

Vote in favor: CM Beeton, Mayor Jaworski, MPT Colbert, CM Greenberg, CM Legg. Opposed: CM Puccetti, CM Gonzales. Motion carried.

- B. Consider for approval an Ordinance of the City of Galveston, Texas, Specifying the Number of Classified Civil Service Police Department Personnel Positions at 129 Total Authorized Strength to Include 5 Lieutenants, 24 Sergeants and 100 Police Officers and in Accordance with Section 143.085 of the Texas Local Government Code Governing Municipal Civil Service, Reducing the Force Authorization from 165, from 7 to 5 Lieutenants, from 31 to 24 Sergeants and from 127 to 100 Police Officers; providing for an effective date.

ORDINANCE NO. 10-076 was read by caption: SPECIFYING THE NUMBER OF CLASSIFIED CIVIL SERVICE POLICE DEPARTMENT PERSONNEL POSITIONS AT 129 TOTAL AUTHORIZED STRENGTH, TO INCLUDE 5 LIEUTENANTS, 24 SERGEANTS AND 100 POLICE OFFICERS, IN ACCORDANCE WITH SECTION 143.085 OF THE TEXAS LOCAL GOVERNMENT CODE, GOVERNING MUNICIPAL CIVIL SERVICE, IN REDUCING THE FORCE AUTHORIZATION FROM 165 TOTAL AUTHORIZED STRENGTH, FROM 7 TO 5 LIEUTENANTS, FROM 31 TO 24 SERGEANTS AND FROM 127 TO 100 POLICE OFFICERS; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; PROVIDING FOR AN EFFECTIVE DATE.

Motion to approve by CM Greenberg. Second CM Beeton.

CM Gonzales stated he was opposed. Public safety cuts are too deep.

Vote in favor: CM Beeton, Mayor Jaworski, MPT Colbert, CM Greenberg, CM Legg.
Opposed: CM Puccetti, CM Gonzales. Motion carried.

- C. Consider for approval an Ordinance of the City of Galveston, Texas, amending provisions of "The Code of the City of Galveston 1982, as amended", Chapter 11.5, "Clean Air: Smoking in Public Places", relating to smoking in adult venues, fraternal organizations and private clubs, and outdoor seating areas; amending the distance restriction on smoking outside of enclosed public places wherein smoking is prohibited; amending provisions relating to alcohol in retail tobacco stores; providing signage requirements; providing for a penalty clause; providing for an effective date.

ORDINANCE NO. 10-077 was read by caption: AMENDING PROVISIONS OF "THE CODE OF THE CITY OF GALVESTON 1982, AS AMENDED", CHAPTER 11.5, 'CLEAN AIR: SMOKING IN PUBLIC PLACES', RELATING TO SMOKING IN ADULT VENUES, FRATERNAL ORGANIZATIONS AND PRIVATE CLUBS, AND OUTDOOR SEATING AREAS; AMENDING THE DISTANCE RESTRICTION ON SMOKING OUTSIDE OF ENCLOSED PUBLIC PLACES WHEREIN SMOKING IS PROHIBITED; AMENDING PROVISIONS RELATING TO ALCOHOL IN RETAIL TOBACCO STORES; PROVIDING SIGNAGE REQUIREMENTS; PROVIDING FOR A PENALTY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

CM Colbert moved to defer until there has been an opportunity to hear from the other stakeholders regarding the smoking ban amendment. Second by CM Beeton. **Vote in favor: Mayor Jaworski, CM Beeton, CM Colbert. Opposed: CM Puccetti, CM Gonzales, CM Greenberg, CM Legg. Motion to defer failed.**

CM Beeton approval with the amendment to allow smoking in outdoor patios and to change the distance that smokers have to stand outside the primary entrance to non-smoking facilities from 15 feet to 5 feet. Second by Mayor Jaworski. **Vote in favor: CM Gonzales, CM Beeton, Mayor Jaworski. Opposed: CM Puccetti, MPT Colbert, CM Greenberg, CM Legg. Motion failed.**

CM Legg moved approval with changes as stated by CM Greenberg and CM Puccetti.

City Attorney Green stated the changes: The changes would allow an adult venue which would be a bar which excludes minors and the bar would be all facilities including stand alone within a restaurant, hotel, motel or other transient occupancy establishment. The bar must be located in a separate building from any other public place or is independently ventilated or is completely separated from any other public place by impermeable ceilings and impermeable walls.

Second by CM Greenberg.

CM Legg called the question. **Vote in favor of calling the question: CM Legg, CM Gonzales, MPT Colbert, Mayor Jaworski, CM Puccetti, CM Greenberg. Opposed: CM Beeton. Motion to call the question carried.**

City Attorney restated the main motion on the floor: The ordinance as drafted would adopt a definition for adult venue. Adult venue means a bar that excludes minors and meets the following requirements: The bar does not allow the entrance of minors into the establishment including without limitation any guests, patrons or employees that are minors; the bar is located in a separate building from any other public place or is independently ventilated or completely separated from any other public place by

impermeable ceilings and impermeable walls and has the sign posted that complies with the requirements to the ordinance that minors are not allowed. Retail tobacco stores definition would be amended to read: It is a retail store used primarily to sell tobacco products and smoking accessories and in which the sale of other non-tobacco products is incidental. Sales of incidental products shall not include the sale of alcohol. It would allow consumption of alcohol on the premise. Prohibition of smoking in enclosed places would eliminate the private club prohibition. Smoking would be allowed in private clubs. Private clubs picks up the fraternal and patriotic organizations. Private club means an organization whether incorporated or not, used exclusively for club purposes at all times which is solely operated for recreational, fraternal, social, patriotic, political, benevolent or athletic purpose but not for financial gain and which sells alcoholic beverages which, as defined, means any patio, sidewalk café, or similar unenclosed area in which a contiguously situated restaurant or bar provides outdoor service to its patrons. Smoking would be allowed with bars that satisfy all adult venue requirements. Smoking would be allowed in private clubs. The distance requirement would be changed. Smoking is prohibited within a reasonable distance of not less than five feet - changed from fifteen feet to five feet outside entrances, operable windows and ventilation systems required for enclosed areas where smoking is prohibited.

Vote in favor: CM Puccetti, CM Gonzales, CM Greenberg, CM Legg. Opposed: CM Beeton, Mayor Jaworski, MPT Colbert. Motion passed.

Vote in favor: CM Puccetti, CM Gonzales, CM Greenberg, CM Legg. Opposed: CM Beeton, Mayor Jaworski, MPT Colbert. Motion carried.

12. ACTION ITEMS

The following items shall be considered for action as a whole, unless one or more Council Members objects:

- A. Consider for approval the recommendation from the Chapter 172 Health Board of Trustees to award RFP#09-10-019 City of Galveston Medical / Pharmacy Plan Third Party Administration (TPA) to Boon-Chapman and plan reinsurance to Standard Security Life Ins Co of NY (Majestic) for three years effective 11/01/2010. Authorizing the City Manager to execute the TPA services agreement.
- B. Consider for approval for two dual purpose police canines, (certified in Criminal apprehension and narcotic detection), from Worldwide Canine, Inc. located in Spring Branch, Texas for \$21,000.00. Funding source: Public donations and narcotic seizure funds.
- C. Consider for approval five change orders to Holiday Builders, Inc. for the Island Transit maintenance facility renovation/expansion project which was previously awarded under RFB#09-10-011. The total amount of these change orders is \$33,889.35. Funding source: FTA and ARRA accounts.
- D. Consider for approval of the annual bulk tire contract to the lowest responding bidders, A to Z Tires and Southern Tire Mart, for the Island Transit facility.

- E. Consider for approval of the annual auto lubricants contract to ADA Resources, Oil Patch and Pumpelly Oil which were the low bidders for the Island Transit facility.
- F. Consider for approval of the annual contract for the Island Transit bus Parts contract to Standard Auto Parts with Car Parts and O'Reilly being The backup vendors for the purchasing of auto parts and supplies for the Island Transit fleet.
- G. Discuss and consider for action for GHA to extend the DHAP program. (Legg/Jaworski)
City Attorney Green will draft letter.
- H. Discuss and give City Manager direction concerning Kelly-Day and Fire Contract.
(Puccetti/Gonzales)
City Manager LeBlanc will look at new information and report back to Council.
- I. Discuss and request from City Attorney advice regarding Public Housing.
(Beeton/Jaworski)

City Attorney Green said she would be bringing back to the next meeting answers to the questions raised by CM Beeton and CM Greenberg: Can the Housing Authority purchase and operate land outside its jurisdiction? What the roll of Council will be in approving the plan. When is City Council involved-at what point in the continuing process, the scope of the consideration. Come back with the question whether GHA can operate outside its jurisdiction and administer without City Council permission and what the parameters of that operation outside of its jurisdiction are.

- J. Discussion and consider for action giving the City Manager direction concerning Seawall parking project.

No action.

- K. Consider for approval ratification of a one year extension of the current Police Collective Bargaining Contract between Galveston Municipal Police Association and the City of Galveston beginning October 1, 2010 to September 30, 2011.

Motion to approve by CM Legg. Second by CM Puccetti. Unanimously approved.

- L. Consider for action approval for the Lone Star Motorcycle Rally to amend the footprint of the 2010 event by replacing all footage on 25th Street and Santa Fe Place with an extension of Strand Street from 20th Street to 16th Street, to include 16th Street through 19th Street from Harborside to Strand Street.

CM Gonzales moved approval with the requirement the stage back to the neighborhood and the front towards the water and traffic will turn down 18th Street. Second by CM Legg. Vote in favor: CM Puccetti, CM Gonzales, Mayor Jaworski, MPT Colbert, CM Greenberg, CM Legg. Opposed: CM Beeton. Motion carried.

- M. Consider for action authorizing the City Attorney to retain the law firm of Olson& Olson to provide legal services for consultation and representation in arbitration appeals and civil service matters that result in litigation relating to disciplinary actions issued to Galveston Police Officers and Firefighters.

N. Discuss and consider for action calendaring Council Meetings with Galveston Housing Authority and/or any other organization or individual concerning GHA redevelopment plans.

No action.

O. Discuss and consider for action giving direction to the city manager for plans for National Night Out. (Beeton/Greenberg)

Discussion only. No action.

P. Consider for approval the submission of a roadway reconstruction project Application for CDBG non-housing Round 2 Phase 1. The project will include the reconstruction of selected roadways and will also include any necessary water, sewer, and drainage improvements associated with the street reconstruction. Funding Source; CDBG Disaster Recovery Non-Housing Round 2 Phase 1.

Q. Discuss and consider giving the City Manager direction concerning the Conciliation Agreement as it relates to CDBG Round 2 funding and GHA.

City Manager LeBlanc will reserve a location for a public meeting to be held October 13 and there will be a joint workshop meeting between Council and the Galveston Housing Authority on October 28.

**Motion to approve Action Items A, B, C, D, E, F, G, M and P by Mayor Jaworski.
Second by CM Puccetti. Unanimously approved.**

13. MAYOR AND COUNCIL APPOINTMENTS

A. Consider for action Mayor and Council Appointments to various City Boards, Committees and Commissions:
Planning Commission"

CM Greenberg moved to reappoint Johnny Smecca and Dominique Sasser. Second by CM Legg. Vote in favor: CM Beeton, CM Gonzales, Mayor Jaworski, CM Greenberg, CM Legg. Opposed: MPT Colbert
Abstaining: CM Puccetti. Motion carried.

Intermodal Transportation Committee:

CM Puccetti moved to reappoint Jeff Brown, Brad Brown, Jeffrey Nielson, Kathy Modulowski and Leslie Summors. Second by CM Greenberg. Unanimously approved.
CM Beeton moved to appoint Hank Theory. Second by CM Legg. Unanimously approved.

Parks and Recreation:

CM Legg moved to appoint Dr. Fred Thomas as District 1 representative. Second by CM Beeton. Unanimously approved.

CM Gonzales moved to move George Player from District 5 to District 4 representative. Second by CM Legg. Unanimously approved.

CM Beeton moved to appoint Elizabeth Wilson as District 3 representative. Seconded by Mayor Jaworski. Unanimously approved.

MPT Colbert moved to reappoint James Stedham as District 2 representative. Second by CM Greenberg. Unanimously approved.

14. N/A

15. N/A

16. N/A

17. ADJOURNMENT

There being no further business to come before the assembly, the meeting was adjourned at 10:00 p.m.