

Palmetto City Council  
May 17, 2004 4:00 PM

Elected Officials present:

Larry Bustle, Mayor  
Tamara Cornwell, Vice Mayor  
Shirley Bryant, Council Member  
Mary Lancaster, Council Member  
Brian Williams, Council Member

Staff and others present:

Richard G. Groff, Attorney  
Mary Jean Forrester, Deputy City Clerk  
Chief Garry Lowe  
Chris Lukowiak, Public Works Director  
Jessica McCann, Planner  
Diane Ponder, Administrative Assistant

Mayor Bustle called the meeting to order at 4:00 p.m., followed by an invocation and the Pledge of Allegiance to the United States Flag.

1. APPROVAL OF WORKSHOP AGENDA

Mayor Bustle requested the agenda be amended by deleting item #7, Modification of City's Alcohol Ordinance, move Hazel Smith Bequest to #2, move the Wal-Mart Project presentation to #3 and move the Preview of the Charter Referendum to #4.

MOTION: Ms. Bryant moved, Mrs. Lancaster seconded and motion carried 4-0 to approve the May 17, 2004, 4:00 pm agenda as amended.

2. HAZEL SMITH BEQUEST

Geoff Seger presented Council several choices for displaying a plaque recognizing Mrs. Smith's \$25,000 bequest to the City for use at the cemetery. It was consensus of Council to build two walls out of Savannah brick to create an entrance to the cemetery that could accommodate an arch at a later date. Council also suggested that electricity should be available in the wall for future use. Mr. Seger will bring a rendering of the entrance to the June 7, 2004 Council workshop.

3. WAL-MART PROJECT PRESENTATION

Dave Campbell, Kimley Horn and Associates, discussed the Wal-Mart project, advising Council two annexation considerations would come before them June 7, 2004, for the abandoned CSX railroad and Haskos Road, which is a right-of-way for the County.

Mr. Campbell reviewed the proposed site plan. The Wal-Mart store will be located at the intersection of US 301 and US 41, (10th Street East) on approximately 32 acres. The building will be approximately 205,000 square feet, with an outside, attached liquor package store and a site for a gas station. He stated an urban forester is reviewing the site to preserve several large trees. Mr. Campbell acknowledged the project is an entrance to the City and discussions with the architect are underway regarding the building's elevation.

Wal-Mart intends to improve Haskos Road to City standards and construct a cul-de-sac at the end of the road to provide access to the site. Mr. Campbell discussed the US 301 access management issues that are being addressed with FDOT; relocation of the signalized intersection and raised curbing to create islands that will prevent westerly turns onto US 301. He stated that most of the transportation issues are in the hands of FDOT.

Mayor Bustle stated he and staff members had met with Wal-Mart representatives and the project's impact on Colonial Mobile Manor and Palm Bay Mobile Home Park was discussed. Council discussed the possibility of locating different entrances for the parks such as Haben Blvd. and through the existing commercial center. Mr. Campbell stated that Wal-Mart was willing to make a presentation to the residents concerning the project.

Mr. Campbell informed Council Wal-Mart is under contract with the property owners that comprise the site. Environmental issues on the property have been identified and will be corrected. He stated that if all went well, Wal-Mart hoped to begin construction by November 2004.

#### 4. PREVIEW OF CHARTER REFERENDUM

Council reviewed the draft Charter by section as follows:

##### Section 2. Form of Government

Mayor Bustle commented that elected officers should be changed to elected officials throughout the document. Council concurred.

##### Section 5 Legislative Power

Mr. Williams read, "Except as provided elsewhere in this Charter, the power of the Commission shall not extend to involvement in management of City operations, or any other power granted to the Executive Branch in Part III hereof." He voiced concern that Council would not be able to give direction to the executive portion of the government to perform as requested by Council.

Mayor Bustle discussed the fact a mayor has to carry out policy passed by Council or veto the motion, which can then be overridden by four votes from Council. The Mayor stated the key issue of a balanced mayor/council form of government is to establish and institutionalize the legislative and executive sections of the government. Mr. Williams stated the issue was understood, it was not necessary to formalize the thought in the Charter.

Attorney Groff advised the statement is partially in the current Charter to clarify the distinction between the two branches. He opined there is need for the statement as a means of guiding future Commissions; there is no legal reason to have the statement included - only a minimum statement regarding the branches and the description of how they function is all that is necessary. Attorney Groff cautioned, as an example of why the language might be necessary, that a council may not direct how a policy is implemented; the implementation of policy is an executive function.

Mrs. Lancaster inquired if it would be considered "involved in management" if a Council member approached the mayor about a situation they considered a problem, even though the mayor does not acknowledge the problem. Attorney Groff stated it could be

construed as such. Mayor Bustle stated that Council members should state at a Council meeting concerns they have regarding the mayor's job performance. Mr. Williams debated the statement did not need to be included in the Charter; it is understood who sets the rules and who enforces the rules. Mr. Williams asked that the statement be removed. Mayor Bustle opined it is a key phrase in the balanced mayor/council form of government.

Attorney Groff advised Council the bare minimum to express the government structure doesn't require the statement, that possible compromise language could be developed. Attorney Groff further stated that while it's not his job to offer an opinion on the document, he felt such an important change needs to be as clear in its objective as possible, and needs to be fully explained.

Ms. Bryant discussed her feeling that Council is already doing what the statement says shall be done. She further stated it might be construed to imply Council should not coordinate concerns from the community with the department heads. She stated that is not management, the access to the department heads and employees is expected by the community as part of Council's job. She suggested perhaps Attorney Groff could develop language that would satisfy both the Mayor and Mr. Williams.

The statement will again be discussed once the rest of the draft has been reviewed.

Attorney Groff informed Council the 2nd reading and public hearing for the ordinance must occur at the June 21, 2004 Council meeting, as the referendum has to be in the hands of the Supervisor of Elections by July 1, 2004.

#### Section 6. Commissioners

Discussion ensued on the term legal resident. Mayor Bustle opined paragraph two of the section needs to be reconciled with the residency requirements. Attorney Groff explained that each elected position has a separate section in the Charter, but they are all the same.

#### Section 7. Vice Mayor

Council concurred the vice mayor will be elected on an annual basis in January. If the vice mayor seat becomes vacant, an election will be held and the new outcome will continue until the next annual appointment period. Board appointments will occur as soon as practicable after an election.

#### Section 9. Commission Members-Vacancies

Referencing gender, Attorney Groff stated language will be added that masculine includes the feminine.

Mr. Williams questioned whether a majority or super majority vote is needed when determining the forfeiture of a Council seat. Ms. Bryant read, for the audience, the portion of the document under discussion, as follows: A Commission member shall forfeit his office upon declaration by majority vote of the remaining members of the City Commission if the member: (a) lacks at any time, during his term of office, any qualification for the office as prescribed in this Charter or by law; or (2) shall be absent from the City for a period of more than two consecutive commission meetings without having first obtained the permission of the Commission by a majority vote.

Discussion ensued on the section, with concerns being voiced about the absence from two consecutive meetings and obtaining permission by majority vote. Ms. Bryant stated she felt Council was being empowered too much in the removal of a member by a majority vote. Attorney Groff agreed with Ms. Bryant. Hypothetical examples of an absence were discussed.

Attorney Groff explained the section was designed to remove an elected official who no longer wants to be a legislator, but doesn't want to resign; the section is not designed for unavoidable absences. He commented on the two kinds of majority; the majority of members present and the majority of the Commission. He opined government has the responsibility to do things as best as possible, as a reflection of the citizen's desires; two commissioners making a vote do not reflect the people speaking; a vote can be restricted to a majority of the Commission or a super majority, which is the strongest majority vote possible. He opined that when considering the forfeiture of a member's seat, the people want the decision made with a great deal of caution. After discussion, Council concurred three consecutive regular meetings should be the language in the document.

Mayor Bustle offered the following language as a compromise for Section 9 (b): shall be absent from three consecutive regular commission meetings without having first notified the Commission. Council agreed with the suggestion.

#### Section 10. Mayor-President of Commission

Discussion ensued regarding the language concerning forfeiture of office of a commissioner and that it should also be applicable to the office of mayor. Counsel will research the legality of the action. If the action is permissible for both commissioner and mayor offices, the forfeiture language set forth in Section 9 (b) will also be inserted in Section 3. Council concurred that the language must pertain to both the mayor and commissioners or be deleted entirely from the document.

Council concurred that the Mayor shall be the Chairman of the Commission.

#### Section 11. Ordinances; Mayor Veto

Mr. Williams suggested the following language be removed: "Before going into effect, such ordinances shall be submitted to the Mayor for his approval. If the Mayor approves the ordinance, he shall sign the same." Mr. Williams explained his reasoning for removing the language, citing the Mayor's ability to veto as set forth in the document. Council discussed the veto power; if the ordinance is not signed or vetoed it becomes law; if the ordinance is not signed and vetoed, it comes back to Council for a vote. Mr. Williams opined that either action did not require a mayor's approval. With Council consensus, the language was amended to read: "Before going into effect, such ordinances shall be submitted to the Mayor for his signature."

Ms. Cornwell again commented on a situation where two votes can approve an ordinance and suggested the language must be changed. Ms. Cornwell suggested that when overriding a mayor's veto a super majority was appropriate because the decision carried strength. Mayor Bustle stated his opinion that this is a situation where all five council members should be present and the veto could only be overturned with four votes. Ms. Cornwell cited the present situation, where there are only four council

members, thus the suggested super majority vote. Attorney Groff advised that super majority is a term that means "of the whole body (five council seats), not the remaining body (four filled council seats.)" Attorney Groff further stated overturning a mayor is a very serious matter; the Charter means four votes, regardless who is present at a meeting. He reminded Council the situation today will be very unlikely in the future because the new Charter allows for immediate appointment to fill a vacant seat. Mrs. Lancaster commented on the fact it is just as serious for a mayor to veto an ordinance approved by Council.

Attorney Groff confirmed the language under discussion was included to promote this discussion. He explained a pocket veto, where no action is taken, has to be overcome by the votes. Mr. Williams questioned the necessity of the language, stating if an item is vetoed it comes back to council for a vote; if no action is taken it becomes law. Attorney Groff said he will have to determine if that is expressed in the document. Mayor Bustle stated the mayor must sign the document, as part of the approval process.

Mayor Bustle discussed a scenario where a very controversial item is passed by a 2-1 vote, it is vetoed because council members were absent for the vote, and taken back to council where five members are present and it passes 4-1; the objective is achieved with four votes vs. two votes; "the will of the majority of the council has prevailed."

Mr. Williams still questioned why a mayor has to approve an ordinance. Mayor Bustle stated approving means signing. Mr. Williams then stated the document says a mayor has to sign it for it to go into effect. Attorney Groff advised that approval is a matter of choice of words; another word can be selected to convey the same idea. He also stated, "The act required of an executive to approve the enactment of the council shows the importance of what has been passed; both branches of government have contributed to the enactment of the new law."

With Mayor Bustle's suggestion, it was consensus of Council to amend the language under discussion to read: "Before going into effect, such ordinances shall be submitted to the Mayor for his signature. If the Mayor disapproves the ordinance, he shall veto it, with his objections in writing, and present it to the Commission five (5) calendar days prior to its next regular meeting. The Commission shall cause the Mayor's objections to be entered in full upon the record of such meeting and shall immediately proceed to reconsider such ordinance. If, upon reconsideration, the City Commission shall pass said ordinance by a super majority vote of the remaining City Commission, the ordinance shall become law. Any ordinance which is not signed or vetoed by the next regular meeting shall become law."

#### Section 12. Executive Power

Mayor Bustle advised Council Mr. Free had suggested, and he agreed, that Section 12 needs to be reconciled with Section 13.

#### Section 13. Mayor-Powers and Duties

Council concurred with an amendment to the language to grant the mayor direct supervision over all appointed officers of the City.

Section 14. Appointed officers-Appointment and Removal

Ms. Cornwell commented on the appointment of officers' terms longer than one year taking four members' approval. Attorney Groff discussed the language retaining the one-year appointment method that has been in existence, but allows longer terms by a super majority vote. It was consensus of Council to amend the language to read: "The term for appointed officers shall be one year. All other terms must be approved by the Commission by four (4) members.

Mrs. Lancaster voiced concern about a mayor being able to speak to council members outside the sunshine. She stated a mayor could speak with council members and influence a vote, resulting in wards not receiving service. She voiced concern that because council members are not permitted to speak with department heads, there is nothing that could be done. Mayor Bustle advised that a council member can, at any public meeting, bring forth any problem. He commented on the benefits of a mayor being able to speak with a council member and department head about the way a department is being run. Mrs. Lancaster read "The City Commission may suspend or remove appointed officers by motion adopted by four (4) Commission members." stating the way the Charter is written will allow wards to be neglected.

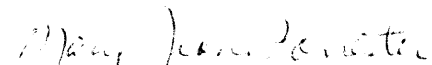
Mr. Williams commented on the suspension or removal of an appointed officer requiring a majority vote, stating it should be majority vote of the full Commission. Mrs. Lancaster stated the same vote requirement should apply to the Commission. Attorney Groff discussed the Committee's motivation to balance the powers between the legislative and executive branches of the government, thus the structure; the mayor appoints and the council approves. If the mayor is not receptive to removing an officer the council may do so, but it takes four out of five affirmative votes from Council.

Mr. Williams moved to continue the workshop at the end of the 7:00 meeting.

Mr. Williams removed his motion. It was consensus of Council to meet Monday, May 24, 2004. Council will be notified of the time of the meeting.

Meeting adjourned at 6:05 pm.

Minutes approved: June 7, 2004

  
Mary Jean Forrester  
Deputy City Clerk