

**CITY OF BROOKSVILLE
REGULAR CITY COUNCIL MEETING
COUNCIL CHAMBERS
201 HOWELL AVENUE
MINUTES**

December 6, 2010

7:00 P.M.

Brooksville City Council met in regular session with Mayor Lara Bradburn, Joseph E. Johnston, III, Joe Bernardini, Frankie Burnett and Emory Pierce present. Also present were Thomas S. Hogan, Jr., City Attorney; T. Jennene Norman-Vacha, City Manager; Janice L. Peters, City Clerk; Steve Baumgartner, Finance Director; Mike Walker, Parks and Recreation Director; Bill Geiger, Community Development Director; Richard Radacky, Director of Public Works; George Turner, Police Chief and Tim Mossgrove, Fire Chief. Members of the Hernando Today and Hernando Times were also present.

The meeting was called to order by Mayor Bradburn, followed by an invocation and Pledge of Allegiance.

OATH OF OFFICE

Swearing in of New Council Members

- Seat No. 1 - Joe Bernardini, for a term of office through 12/01/14
- Seat No. 2 - Frankie Burnett, for an unexpired term of office through 12/03/12
- Seat No. 4 - Emory Pierce, for a term of office through 12/01/14
- Seat No. 5 - Lara Bradburn, for a term of office through 12/01/14

The Honorable Donald Scaglione, County Judge, Hernando County performed the swearing in ceremony.

The newly sworn Council Members introduced their family and friends who were present.

SELECTION OF OFFICERS

Nomination:

Mayor Bradburn nominated Council Member Burnett for Mayor and Council Member Johnston for Vice-Mayor.

Motion:

Motion was made by Council Member Johnston and seconded by Council Member Bernardini for the closing of nominations. Motion carried 5-0.

Council Member Bradburn adjourned the meeting.

**** RECESS FOR COUNCIL MEMBER RECEPTION ****

Mayor Burnett reconvened the meeting at 7:33 pm.

APPROVED BY BROOKSVILLE
CITY COUNCIL
ON 3/7/11 INITIALS [Signature]

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PRESENTATIONS

COUNCIL MEMBER RECOGNITION

Sue Rupe and Jan Knowles of Hernando County Tourism Development presented outgoing Council Member Richard Lewis with a plaque for his years of service as a member on the Tourist Development Committee.

Resolution No. 2010-24 – Outgoing Council Member Recognition

Consideration of Resolution recognizing 14 years of service of outgoing Council Member Richard E. Lewis.

Council Member Bradburn read the resolution in its entirety and presented it to outgoing Council Member Richard Lewis on behalf of Brooksville City Council.

Motion:

Motion was made by Council Member Johnston and seconded by Council Member Bernardini for approval of Resolution No. 2010-24.

City Clerk Peters read Resolution No. 2010-24 by title, as follows:

AN APPRECIATION RESOLUTION ON THE PART OF THE CITY OF BROOKSVILLE CITING RICHARD E. LEWIS FOR 14 YEARS OF DISTINGUISHED SERVICE AND SELFLESS DEDICATION TO THE OFFICE AS A COUNCIL MEMBER OF THE CITY OF BROOKSVILLE.

Motion carried 5-0 upon roll call vote as follows:

Council Member Pierce	Aye
Council Member Bradburn	Aye
Council Member Bernardini	Aye
Vice Mayor Johnston	Aye
Mayor Burnett	Aye

Mr. Lewis thanked City Council, the city employees and citizens for allowing him to serve as a City Council Member. Vice Mayor Johnston thanked him for his years of service.

Margaret R. Ghiotto Beautification Award - Residential Award

Recognition of improvements to the property of Michael Mitchel and previous owner Frank Guckian, located at 501 Howell Avenue.

Scott Renz, Beautification Board Chair, reviewed the award, which he and Mayor Burnett presented.

Overview of the Sunshine Law

Presentation by the City Attorney on the Sunshine Law for Local Government Public Officials.

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City Attorney Hogan and City Attorney Rey presented the Sunshine Law and Public Records Law, as referenced in *Attachment A*, for the benefit of the new City Council members.

Council Member Bernardini asked the difference between posting on Twitter and having a reporter ask his position on an issue and then publishing it in the newspaper. City Attorney Rey indicated it is debatable, but a Twitter account is selectively public depending on authorized security features but can be used to convey information such as agendas and meeting date and time. She recommended it not be used to comment as to opinion, principle feeling or other issues about matters that City Council may take action on.

CITIZEN INPUT

Mayor Burnett asked for citizen input.

Pierre Desjardins congratulated the new City Council. He also thanked Richard Lewis for all his years of dedication to the City. He advised that at the next Board of County Commissioners Meeting one of the Commissioners wants to do away with the Tourist Development Council (TDC). He urged Council to be present at the meeting to speak on behalf of the TDC.

Council Member Bradburn indicated she was at the meeting in which it was recommended the TDC be done away with. She recommended the Mayor send a letter of opposition. Council consensus was to send the letter as recommended.

CONSENT AGENDA

Minutes

November 1, 2010 Regular Meeting

Budget Amendment – Police Department

Consideration of budget amendment authorizing amendments on behalf of approved Special Events expended for overtime in the amount of \$3,387.72.

Surplus Equipment – Fire Department

Consideration of surplus equipment deemed obsolete, uneconomical or inefficient.

Council Member Bernardini questioned the budget amendment for the Police Department and asked if that was the only department with overtime expenses. City Manager Norman-Vacha indicated it has been the majority of the cost but Public Works had some overtime for setting up barricades for the three (3) recent events. She pointed out the firefighters that were present at the Cycling Classic event volunteered their time as an exercise on the Community Emergency Response Team. She indicated there will be a larger presence of firefighters for first aid and assistance at the Christmas Parade on Saturday.

Motion:

Motion was made by Council Member Bradburn seconded by Council Member Pierce for approval of the Consent Agenda. Motion carried 5-0.

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REGULAR AGENDA

Withlacoochee Regional Planning Council (WRPC) Board

Consideration of Council appointment to the WRPC Board for a term beginning December 9, 2010 through December 7, 2011.

Motion:

Motion was made by Council Member Bradburn and seconded by Council Member Bernardini for nomination of Council Member Johnston to continue on the board.

City Manager Norman-Vacha indicated the City of Weeki Wachee has again given their approval for the City of Brooksville to represent them on this board. Vice Mayor Johnston accepted the position. Motion carried 5-0.

Progress Energy Audit Report Update

Update on audit of records for Progress Energy and Withlacoochee River Electric Cooperative regarding assessment, collection and payment of the public service tax.

City Attorney Rey indicated the City has asked for assistance with the public service tax audit. She stated the City has been working with Progress Energy for awhile and has retained the services of Oliver & Joseph to conduct that public service tax audit. The audit has now been completed and the issue will move forward from there in terms of Progress Energy's compliance with the City's public service tax ordinance.

Mary Beth Gary, CPA, Oliver & Joseph, P.A, updated City Council on the Audit Report. This project was approved about a year ago and they have met with Progress Energy representatives wherein timeframes for the audit were defined according to the City Attorney's office. Progress Energy was legally noticed for their failure to collect the appropriate public service tax on bills issued to city residents from 2004 until 2007. In early September Progress Energy provided electronic records which were a summary of all accounts identified by the City as potentially not being billed the public service tax. That information was used for all the locations and calculated what the public service tax collection should have been; \$128,000 plus interest from 2005 to September 2010 of \$94,000 for a total of \$223,000 due the City. The City Attorney's office has sent notice to Progress Energy and is awaiting response from them at this time.

City Attorney Rey indicated this amount is strictly the Public Service Tax collected and does equate to a Franchise Fee calculation which would be separate from this amount. She stated this is an update to the status of the project and will be brought back to Council periodically to advise of its progress.

Council Member Bradburn asked for the difference between the Public Service Tax and the Franchise Fee. She also asked if there is a deadline for collection of the amount.

City Attorney Rey indicated Progress Energy was sent a notice asking for immediate payment given the amount of time it has taken to get a response of records but a response has not yet been received. The Franchise Fee is a separate ordinance with its own

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calculation and collection rate. This was specifically statute-related to Public Service Tax and is very specific. The ordinance is detailed as to how that audit is completed and one will depend on the outcome of the other. She indicated December 15, 2010, is the deadline for Progress Energy to make payment.

Council Member Bradburn thanked Richard Lewis for bringing the issue forward. Mr. Lewis thanked Council for their full support of the issue from the beginning.

Having read the following, Mayor Burnett adjourned the meeting at 8:30 pm for the scheduled Executive Session:

EXECUTIVE SESSION PURSUANT TO F.S. CHAPTER 286.011(8) Pending Condemnation Proceedings

The purpose of the Executive Session is to discuss settlement options and litigation strategy for pending City actions. The persons attending the meeting will be Council Members Joe Bernardini, Lara Bradburn, Frankie Burnett, Joe Johnston & Emory Pierce; Attorney's for the City of Brooksville, Thomas S. Hogan, Jr., Debbie Hogan and Jennifer Rey; City Manager, T. Jennene Norman-Vacha; and court reporter C. Gail Donato of Carolyn F. Engle & Associates. The meeting is expected to last approximately sixty minutes.

Mayor Burnett reconvened the regular Council meeting at 9:50 pm.

REGULAR AGENDA

Professional Services – Retainer Agreement

Consideration for Professional Services – Retainer Agreement.

Motion:

Motion was made by Council Member Bradburn and seconded by Council Member Pierce for approval. Motion carried 3-2, with Vice Mayor Johnston and Council Member Bernardini voting in opposition.

CITIZEN INPUT

Mayor Burnett asked for public input.

Kojack Burnett wished all Happy Holidays and commended Richard Lewis for his service as a City Council member.

ITEMS BY COUNCIL

Thomas S. Hogan, Jr., City Attorney

Commendation to Richard Lewis

Attorney Hogan thanked Mr. Lewis as he was instrumental in the retainer agreement.

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T. Jennene Norman-Vacha, City Manager

Financial Workshop

City Manager Norman-Vacha requested a financial workshop on February 22nd at 6:00 p.m.; Council concurred.

City Hall Tree Decorating

She reminded everyone the tree decorating with the Beautification Board is on Friday at 10:00 a.m. Mayor Burnett asked for a telephone call to confirm the time on Friday, all others will be notified by email.

Christmas Tree Lighting

She reminded everyone the tree lighting at the courthouse will be on Thursday at 7:30 p.m. with the stroll activities beginning at 5:00 p.m.

Christmas Parade

She reminded everyone the parade will be on Saturday and will update City Council on the meeting time and location via email.

Lara Bradburn, Council Member

Thursday Night Stroll

Council Member Bradburn indicated the stroll is a new tradition expected to be a spectacular event and is similar to Dade City's Church Street event.

Christmas Parade

She indicated that she will not be able to attend this year's parade due to her upcoming surgery.

Emory Pierce, Council Member

First Council Meeting

Council Member Pierce stated he enjoyed his first meeting.

Joe Johnston, Vice Mayor

Council Recognition

Vice Mayor Johnston welcomed Council Member Pierce and congratulated Mayor Burnett on his appointment.

Frankie Burnett, Mayor

Council Recognition

Mayor Burnett thanked former Mayor and Council Member Bradburn for making her recommendations on nominations and all of Council for their support.

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Agenda Items

He informed Council Members that should they want an item added to the agenda that was not previously approved by Council to contact the City Manager and it will be put on the agenda as it relates to City business.

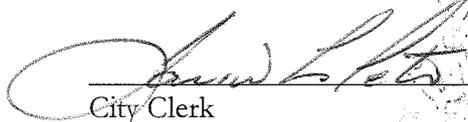
Jennifer Rey, City Attorney

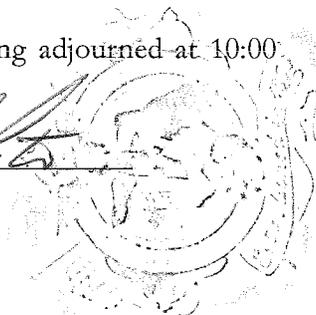
Executive Session

City Attorney Rey requested an Executive Session on December 20th. Council Concurred.

ADJOURNMENT

There being no further business to bring before Council, the meeting adjourned at 10:00 p.m.


City Clerk



Attest: 
Mayor

Florida's Open Meetings & Public Records Law: A Primer for Public Officials and Advisory Boards

Agenda

Sunshine Law

Florida Statutes 119

Questions

The Laws

Article I Section 24 Constitution of the
State of Florida

Florida Statutes Ch. 286 – Open
Meetings Law

Florida Statutes Ch. 119 – Public
Records Law

Art. I, Sec. 24 of the Florida Constitution

every person has the right to inspect or
copy

any public record
made or received

in connection with the official business
of any public body, officer, or employee of
the state or persons acting on their behalf,
except with respect to certain exempted
records.

Art. I, Sec. 24 of the Florida Constitution

All meetings of any:

collegial body of the executive branch of state government; or
of any collegial public body of a county, municipality, school district or special district,
at which official acts are to be taken, or
at which public business of such body is to be transacted or discussed,
shall be open and noticed to the public.

Fla. Stat. Ch. 286

“Open Meetings Law” often referred to as the “Sunshine Law.”

Protects the public from “closed door” decision making and provides a right of access to governmental meetings.

Sunshine Law

Applies to all meetings of:

Any board or commission of any state agency or authority; or of

any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided by law.

At which official acts are to be taken.

Sunshine Law

It requires that:

All meetings of the elected body be “open meetings.”

Reasonable notice of meetings be given.

Minutes of meetings be kept; and that

Meetings must be accessible to the handicapped.

Meetings

Must be open to the public; but no public participation required except for public hearings.

Includes any discussion or deliberation, formal or casual, between two or more elected members about a matter on which the elected body might foreseeably take action.

Includes workshops, telephone conversations, e-mail communications, seeing each other at the grocery store.

Members of the elected body may meet individually with individual members of other boards, but only in a “one on one” manner.

Private discussions between Board members concerning such matters are prohibited.

Notice Requirements

Notice should contain the time and place of the meeting;

be posted at least 24 hours in advance of any public meeting, even in emergencies; and

be noticed in a newspaper of general circulation.

Reasonable Notice

Reasonable notice is ample notice given to the public and press which reasonably and timely conveys all information necessary to enable them to choose to attend.

“Reasonable” depends upon situation’s circumstances.

Meeting held at a facility or location inaccessible to the public or which discriminates due to presence of physical barriers are prohibited.

Agendas

Agendas are not required, but are recommended.

In the absence of an agenda, subject matter summations may be used in the notice.

Minutes

Minutes must be recorded and open to public inspection.

Minutes are not verbatim--but brief summary of meeting's events.

Verbatim transcripts and/or verbatim audio recordings are encouraged and, when taken, must be maintained.

Voting Rules

Votes must be publicly taken;

No secret ballots;

Roll call vote generally not required, unless otherwise provided by law;

All members must vote unless they abstain due to a conflict of interest;

Minutes must reflect the vote by recording of the vote or counting a vote for each member

Quasi-Judicial Matters

When a board acts as a quasi-judicial body or takes official action on matters that affect individual citizen rights, the meeting notice must note that:

if a person decides to appeal any decision made;
with respect to any matter considered at such meeting or hearing;
a record of the proceedings including verbatim testimony and evidence upon which the appeal is to be based must be made.

Independent Private Non-Profit Entities

Sunshine Law may apply to private, non-profit entities

Private, not-for-profit entity is provided for by statute;

Is formed for a public purpose;

Receives public funds;

Receives or operates on public lands; and

Public officials serve on its board of directors.

Independent Private Non-Profit Entities

Examples:

Brooksville Housing Authority

Hernando County Fair Association

Family Services Coalition, Inc. – delegated a public function.

WellFlorida Council, Inc. – a local health planning council.

Advisory Boards

The Sunshine Law applies to Advisory Boards:

created pursuant to law or ordinances; or otherwise established by public agencies; or established by a single public official

The Sunshine Law applies even though an advisory board's recommendations are non-binding upon the elected body.

Advisory Boards

Examples:

Beautification Board

Cemetery Advisory Board

Planning & Zoning Commission

Park Board

CDBG Task Force

Advisory Boards - Exception

A limited exception has been recognized for fact-finding committees.

The committee must be established strictly for, and conducts, only fact finding activities.

The committee strictly gathers and reports information.

Interpretive Guidance

Sunshine Law requirements are generally broadly construed in favor of the public and openness.

Exemptions from the Sunshine Law are generally narrowly construed.

Actions taken at meetings held in violation of the Sunshine Law are invalid.

Interpretive Guidance

Use of evasive devices or methods is prohibited.

Circulation of written reports or emails

Single board member reporting to *each member* what the other members think re: an issue, including information relayed to administrative staff.

Penalties for Noncompliance

It is a second degree misdemeanor to knowingly violate the Sunshine Law.

Imprisonment not to exceed 60 days; or

Fine of up to \$500

Upon indictment, elected officials may be suspended from office.

Upon conviction, officials may be removed from office and a permanent record of offense is established.

Reasonable attorney's fees assessed against official.

Florida Statute Ch. 119

More commonly known as the “Public Records Law.”

Creates a right of access to records made or received in connection with official business of a public body.

Public Records

Florida Statutes Chapter 119 defines Public Records as:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material;

Regardless of physical form, characteristics or means of transmission; and

Made or received pursuant to law in connection with transaction of official business by the agency.

Not applicable to truly personal records.

Public Records

Public records may routinely be removed from the building or office in which the records are ordinarily kept for official purposes.

Public records may be maintained in an off site storage facility, however, costs of retrieving records from such facility may not be passed along to the individual requesting the records

Public Records - Examples

Anonymous letters sent to officials

Computer tapes

Travel itineraries

Training materials and films

Salary records

Voted ballots

Emails

Texts

Exemptions

Documents are not exempt from public record disclosure unless there is a specific statutory exemption.

Exemption is defined as a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of the public records law.

Exemptions

Personal/Personnel Data

Social Security Numbers

Account Numbers

Deferred Compensation Records

Employee Medical Information

Personal data of law enforcement officers
and certain other positions.

Biometric identification information

Exemptions

Security system information and blue prints.

Active criminal investigative information
Pending litigation matters.

Independent Private Non-Profit Entities

Public Records Law may apply to private, non-profit entities.

Analyze applicability of the Public Records Law using the Totality of Factors Test.

Totality of Factors Test

Level of public funding

Comingling of funds

Activities conducted on public property

Contracted services are an integral part of public agency decision making

Performing a government function

Level of public agency involvement

Created by public agency

Public agency has a substantial financial interest in the entity.

Who benefits from the private entity functioning?

Independent Private Non-Profit Entities

Examples of entities subject to public records requirements:

Campus Bookstore

Corrections corporation

Employment search firm

Engineering company

Examples of entities not subject to public records requirements:

Architectural firms

Soft drink vendor

Private security force

Public Record Request

Request can be either verbal or written.

Custodian may not impose a rule or condition on inspection which restricts access.

Custodian must promptly acknowledge receipt of the request and respond in good faith.

Custodian has a reasonable time in which to retrieve the requested records and to redact exempt or confidential information.

Public Record Request

Records may be inspected at “any reasonable time, under reasonable conditions.”

Generally, public information must be open for inspection without charge.

A reasonable fee based on the labor and computer costs actually incurred may be charged when the nature or volume of the request is extensive.

Public Record Request – What Is Not Required

- Does not require the creation of records.
- Does not require provision of records in the format requested.
- Does not require turning records over to an on-the-spot requestor.
- Does not require verbal explanation.

Social Media

Facebook

May be created for a municipal purpose in connection with the transaction of official business.

“Friends” pages may be subject to Public Records Law.

Warning/Disclaimer

Public official should not post updates or comment regarding issues that come before them at a public meeting.

Social Media

Twitter

Public official should not comment on Twitter regarding issues that come before them at a public meeting.

Text Messaging

May be subject to Public Records Law.
Attorney General has taken the position to preserve and treat texts as public records.
Task force has been established to further address the matter.

Conclusion

All City personnel need to know the basics of these two laws to ensure our compliance, but do not need to know the laws in detail.

Submit questions to T. Jennene Norman-Vacha, City Manager, for submission to the Hogan Law Firm.