

**CITY OF VERO BEACH, FLORIDA
DECEMBER 1, 2009 9:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

1. CALL TO ORDER

A. Roll Call

Mayor Kevin Sawnick, present; Vice Mayor Sabin Abell, present; Councilmember Tom White, present; Councilmember Brian Heady, present and Councilmember Charlie Wilson, present **Also Present:** James Gabbard, City Manager; Charles Vitunac, City Attorney and Tammy Vock, City Clerk

B. Invocation

The invocation was given by both the City Manager and Pastor Kent Hawkins of Cornerstone Christian Church.

C. Pledge of Allegiance

The audience and the Council joined together in the Pledge of Allegiance to the flag.

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

Mr. Abell requested that they delete items 9A-1) through 4) and defer them to discussion with the Utilities Commission.

Mayor Sawnick said that he was going to bring this up when they got to it on the agenda. His opinion is that the items probably should go to the Utilities Commission for their recommendations and he was not ready to vote on these issues at this time. He made this in the form of a motion. Mr. White seconded the motion.

Mr. Wilson stated that this was not a surprise to him. He said that if they remove these items off the agenda under Old Business then he will put it on under his matters because they are some important issues that need to be discussed. He said that these issues will be discussed today. He said that if they (City Councilmembers) choose not to vote, that is fine. But to curtail discussion is the same thing that has been happening for the last five years.

Mr. Heady noted that the request is to discuss these things and it seems to him that this elective body should be able to discuss these particular issues that are of such importance to the public. He said to remove the discussion from the agenda is offensive. He would

like to add all of the items being removed to his matters. This will give them two opportunities to discuss them, rather than one.

Mayor Sawnick also wanted to discuss the items. He said maybe it was premature saying they wanted to send the items to the Utilities Commission.

Mr. Wilson felt that it was fine for them to refer these items to the Utilities Commission, but these items appear under Old Business and there is every reason for them to be discussed today and there are members of the public who wish to speak on these items.

Mr. White explained to Mr. Wilson that a City Councilmember has the right to bring up anything on the agenda for discussion. He will never be silenced because of that. He said if these items are removed to go before the Utilities Commission, he can still have his discussion.

Mr. Wilson said that these items are on this agenda, notice has been given and each Councilmember has a choice whether they vote on them or not.

Mr. Heady brought up that one of the items under Mr. Wilson's matters 9A-3) "Issue a written invitation to Florida Power and Light (FP&L) to express their interest in purchasing Vero Utilities as stated during the workshop of November 16, 2009"; that he made a motion at their last meeting to do this and it was denied because no one seconded his motion. He thought that this was not Old Business, but New Business.

Mr. Sawnick restated the motion to remove items 9A-1), 2), 3) & 4) from the agenda. The motion failed 3-2 with Mr. Wilson, Mr. Heady and Mayor Sawnick voting no.

Mr. Wilson made a motion to adopt the agenda. Mr. White seconded the motion and it passed unanimously.

B. Proclamations

1. Santa's for Seniors Day – December 18, 2009

Mayor Sawnick read the proclamation and presented it to Mrs. Jennifer Jones, Campaign Coordinator, for United Way. Santa Clause was also at today's meeting wishing everyone a Merry Christmas.

Mr. Michael Kint, CEO of United Way, talked about the City of Vero Beach's campaign drive and how successful it was this year.

C. Public Comment

1. Maria Kovachek, Main Street Director

Mrs. Maria Kovachek thanked the City of Vero Beach for supporting Main Street. She then went over a lot of the different things going on in downtown Vero Beach. She said that they have their Farmers Market taking place every Friday and tonight they will have the Art Stroll and on the first Saturday of each month they have Art in the Park.

Dr. Stephen Faherty commented on the electric utilities. He said that he would speak more when the electric rates are discussed under public hearings.

Mr. Glen Heran wanted to confirm that he will be able to speak about rates and their need to engage FP&L under item 3-C). He was told that he will be allowed to speak when the public hearing is heard.

Ms. Lee Regan noted that at the last meeting she spoke to the rate rearrangement rate increase and asked Council to defer this until after they know what is going to happen with OUC (wait and see). She wanted to rebuttal some remarks made by Mr. John Lee, Acting Utilities Director, at their last Council meeting. He stated that this rate restructuring could not be done without having approval by the Public Service Commission (PSC). She said that is not so. They are not under PSC. She thought that this Council could remove the 10% tax if they wanted to. She asked Council to wait and see what happens with OUC before passing the electric rate increase and to remove the 10% tax for their utility customers who don't live in the City.

Mr. Joseph Guffanti assured everyone that he didn't enjoy coming to these meetings, but he had to. The City of Vero Beach residents, taxpayers, and those in the County who get utilities from the City have been plagued by FMPA for the last 30 years. He was happy to see that there is going to be an end to the contract with FMPA.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – November 17, 2009**
- 2. Request for Approval of Permits and Interlocal Agreements for Indian River Farms Water Control District**
- 3. Fiscal Year 2009/2010 Vehicle and Equipment Purchases**
- 4. Request from the Tree and Beautification Commission to fund a new Program**
- 5. Solid Waste Franchise Agreement – Anytime Waste Systems, Inc.**

Mr. Heady pulled items 2D- 2), 2D-3), 2D-4), and 2D-5) off of the consent agenda.

Mr. Sawnick made a motion to adopt the consent agenda as amended. Mr. White seconded the motion and it passed unanimously.

3. PUBLIC HEARINGS

- A) An Ordinance of the City of Vero Beach, Florida, amending Title VI Zoning, Article III, C-1A, C-1B, B-1, and C-1, Commercial District Sec. 62.35 to add**

Places of Worship as a permitted use in the B-1 Zoning District; providing for conflict and severability; and providing for an effective date.

Mayor Sawnick read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, reported that this Ordinance is before them for a public hearing that amends the B-1 zoning district to allow places of worship.

Mr. Heady recalled at the last meeting this was discussed and he asked for some things, which he doesn't see in their backup. At this time he asked that the public hearing be delayed giving staff time to retrieve the documents that Council asked for.

Mr. McGarry explained that Council received a copy of the map of the B-1 zoning district under a separate cover.

Mr. Heady said that he did not receive anything as to where this planned business was going to be located. At their last meeting Council was told by staff that the location was not divulged to them because they needed to be independent in their thinking and not be prejudice because of the location. He said that was a little offensive to him. He said that staff thinks they can be independent and not persuaded by the location, but City Council doesn't have that same capacity. He did see the maps, but he did not see the disclosure of the location in question.

Mr. McGarry stated that the location is on 17th Street. He was not trying to say that they should not have that information, but when you look at a permitted use in a district you are looking at it as a legislative item that is Citywide. The location of this facility being on 17th Street should not enter into their decision as to how they are going to vote on this.

Mr. Heady appreciated Mr. McGarry's comments, but still felt that City Council is entitled to the same information that staff has. When information is purposely withheld from City Council in order to help them, to him personally it doesn't help a whole lot.

Mr. McGarry explained to Mr. Heady that staff doesn't look at the location either. He wasn't aware of this location because his staff has been working on this application. He apologized for any misunderstandings.

Mayor Sawnick opened and closed the public hearing at 10:02 a.m., with no one wishing to be heard.

Mayor Sawnick made a motion to approve the Ordinance. Mr. White seconded the motion and it passed 5-0 with Mr. Wilson voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

B) An Ordinance of the City of Vero Beach, Florida, abandoning all that portion of 17th Street right-of-way lying between Highland Avenue and Old

Dixie Highway, South of Block 18 and North of Block 19, Highland Park Subdivision.

Mayor Sawnick read the Ordinance by title only.

Mr. Monte Falls, Public Works Director, reported that this is a request for an abandonment of right-of-way. It is located between Old Dixie Highway and 17th Street. He said that 17th Street is the right-of-way in question. There are four adjacent property owners who have applied to have this right-of-way abandoned. The request has been reviewed by all City departments and outside utility providers and they have no problems with the abandonment of right-of-way subject to easements being retained for utilities that exist there.

Mr. Heady mentioned that at the last meeting they discussed the possibility of adding something to the Ordinance saying that no landscaping, construction, or other improvements are allowed in the retained easements. He was told that was added on page 2 of 3.

Mayor Sawnick opened and closed the public hearing at 10:06 a.m., with no one wishing to be heard.

Mr. Abell made a motion to approve the Ordinance. Mr. White seconded the motion and it passed 5-0 with Mr. Wilson voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes and Mayor Sawnick yes.

C) A Resolution of the City of Vero Beach, Florida, adopting certain new rates, fees, and charges for the Vero Beach Municipal Electric System; providing for an effective date of January 01, 2010.

Mayor Sawnick read the Resolution by title only.

Mr. John Lee, Acting Utilities Director, addressed a couple of comments that Ms. Regan made earlier in the meeting. He explained that the City is not regulated to the same degree as FP&L. However, they have to submit tariffs to them. The process that they just completed was they did a Cost of Service Study. The last one done was in 1991. The rates were designed so that their costs would be covered and obviously they wanted to reduce the costs to their customers. He said what the Cost of Service Study did was break out all the pieces of their rates and their tariffs. What will happen for every electric customer of the City of Vero Beach, whether they live inside the City limits or outside the City limits or they are commercial customers, is their bills will go down. What he going to talk to them about today is a reduction for all of their customers. He went over the handout on the residential electric rate comparisons (please see attached). He then asked Council to adopt this Resolution.

Mr. White wondered why they were adding this 12% increase when they have told their customers that they would be looking at about a 30% decrease on January 1st. He

suggested taking a January, February, and March reprieve on any rate increase this would at least show their customers that they were telling them the truth and that their rates would be lowered quite a bit.

Mr. Lee said that he has heard the term 12.6%. If he takes the difference between \$7.21 and 74 cents that is 10.26%. The problem that he has with percentages is that 10.26% of \$7.00 is 74 cents. There will be a small increase in everyone's bill that will add up to less than one dollar.

Mr. White expressed that he expected to see a substantial decrease. He expected a half way decent decrease in his electric bill because of their exit with FMPA. He was disappointed to see only a 20% decrease when they talked about the customer seeing a 30% decrease.

Mr. Lee explained that reality is that the Cost of Service Study was done and the costs shown in his document is what is needed for them to cover their revenues. The advantages they have is that on January 1st these rates are going to kick in and in April they will be able to review the rates. He said right now they are just dealing with projections and they still have to cover their costs. He feels that this is the right way to approach this.

Mr. White reiterated what he said at the last meeting that for every action there is a reaction. He said that Council is more close to the problem because they pay electric bills. He knows this is a projection, but hates to gamble and find that they are off.

Mr. Lee would encourage Council to keep their feet to the fire on this. This will be a significant cut in costs to their customers who have taken a beating. He said from a business standpoint this is the right way to move forward. He would like to be able to put these rates in place and lower their customers' bills beginning January 1st. He believed that if they did not implement these rates that the current rates would stay until they filed again with the PSC.

Mr. White asked if they left everything alone wouldn't there be a substantial decrease in the bills because of the fuel dropping.

Mr. Lee said one of the things with bundling everything together is that it is hard to understand. If they approve these rates, on January 1st the fuel charge will drop over thirty dollars.

Mr. Wilson thanked Mr. Lee for all the hard work that he has done. He asked him if he was saying that they can't approve decreases unless they approve increases.

Mr. Lee said in his opinion, they have filed a package with the PSC and they approved the package. He would think the right way to do it if they elect not to support the Ordinance would be to re-file with their logic. He said the City presented a Cost of Service Study to PSC justifying these rates to them.

Mr. Wilson asked Mr. Lee when he was doing his comparison between the City of Vero Beach and other municipalities across the State was he also considering the other cities in with FMPA. Mr. Lee answered yes. He said if you look at the top twenty most expensive utilities in the State you will find that fifteen of those municipalities are with FMPA (including the City of Vero Beach).

Mr. Wilson asked Mr. Lee how many accounts does the City have.

Mr. Lee said that there are 35,000 billed accounts, but not all of them are residential.

Mr. Wilson did not like to be in a position where he had to vote for an increase in order to get a decrease. One of the things that he objects to is when we do this reduction we have just heard that we are going to be some percentages above FP&L. Mr. Lee was guessing that number was between 30 and 40%. Mr. Wilson said so the increase that they are getting only increases where they are and where FP&L is. If they put this increase in it just widens the difference between what FP&L would charge and what they would charge. Mr. Lee said mathematically he was correct. Mr. Wilson asked Mr. Lee when he did this rate study, which requires this increase the rate study he just took whatever their expenses are. Mr. Lee said that was correct. Mr. Wilson then said that they don't know whether this 74 cents is required because they are inefficient or because they just have the lowest additional cost needs. Mr. Lee said that was correct. Mr. Wilson said one of the things that he is going to look at in this public hearing and if they pass this Ordinance, that they follow it up with a motion that they take the \$250,000 that they would make from this 74 cents increase out of the transfer from the electricity to the City.

Mr. Heady stated that if this Ordinance is approved by Council that his \$400 electricity bill will go down by \$80.00 and that is not an increase.

Mayor Sawnick hoped before the new budget to be able to eliminate the transfer completely.

Mayor Sawnick opened the public hearing at 10:35 a.m.

Mr. White requested that when people come up to talk that he would like them to state if they are an electric utility customer of the City.

Mayor Sawnick requested that they just state their name and address for the record.

Dr. Stephen Faherty said that he has City water and City electricity. He clarified that in reference to the PSC he understands that there is a Statue in regards to municipal utilities for controlling the rate structure, reporting, territorial agreements and per a 1983 Florida court ruling. He said that it was important for the Council to begin requesting the sources of information be put on slides that are presented, as well as the date. Some of the information shown is outdated information as to who has what rate. He also mentioned that they show a 20% reduction and the question has to be asked, reduction from what.

He also referred to one of Mr. White's questions as whether you have to have an RFP to sell the public utilities. He said based on what Mr. Vitunac said at a prior meeting it can be done sole source. Also per the PSC regulations they would have to give you reasonable or fair market value for it. He said that most of the comments made today have been comparing city to city rates and no comparisons of City to FP&L. He then read a prepared statement (please see attached).

Mr. Glen Heran, stated that he has 150 rental customers on this grid. He encouraged Council to engage in negotiations with FP&L because he feels they are the natural buyer. He agreed with Mr. Lee and his comments. This is what they paid their rate consultants \$65,000 to learn. He showed a chart directly from a chart provided in the study which is the projected bill. He showed the comparison between 1,000 Kwhs and the projection for 2010. He also showed 2,500 Kwhs. He said that when FP&L talks, they talk with gross receipt tax. He noted that City customers will be paying approximately 27% more than FP&L customers. This is assuming that FP&L gets approval for their rate increase. For 2,500 Kwh the City customers will only receive a 12% decrease in their bills. He showed them a press release from the PSC dated November 3, 2009 which confirms that FP&L on their new monthly charges will have a 14% decrease. If they don't get what they want the City will be 35% more expensive than FP&L. The numbers Mr. Lee showed them were from FMPA and these numbers are also from FMPA. He showed the history of their rates for the last ten years. He asked Council to engage in conversations with FP&L, something they should have done years ago (he quoted the year 2006). He showed them a wide use of variables where they could sell the utilities to FP&L.

Mr. J Rock Tonkel, Grand Harbor, commented that at the workshop held a couple of weeks ago he came up with three or four proposals and one thing that effects him is the powerful influence of facts. He said that you can't ignore what is being shown to everyone in the room and in front of this City Council. He had one question for Mr. Lee. He asked in his illustration, what would have been the effect in rates if there had not been transfer of funds to the General Fund.

Mr. Lee said there would have been between a 5-6% reduction in the rates.

Mr. Tonkel continued by saying that he saw the article that appeared in the Press Journal regarding out of line staffing. He said that the City Manager and Council should be doing what any responsible City Manager would do in looking how the City can become more efficient, which he assumes over time would require less money to transfer funds to the General Fund from the utilities. He agreed with Mr. White's suggestion for this deferral of action over a three month period. He identified himself as a City customer and asked the City Council if they are City customers or use another utility.

Mr. Heady told Mr. Tonkel that City Councilmembers are required to live in the City, which would make them City electric customers.

Mr. Joseph Guffanti stated that he lives in the City and receives a power bill. He asked Mr. Lee to bring up the first page of the chart. He said that the 74 cents is based on just

the bill and is not an issue. He indicated on the chart that the bulk power rate went from \$75 per 1,000 Kwh to \$74. He asked Mr. Lee if he could tell him what the bulk power rate would be that FP&L would offer them. Mr. Lee answered no because FP&L would bid on their bulk power. Mr. Guffanti then asked does FP&L sell bulk power to anyone. Mr. Lee did not know. Mr. Guffanti asked if it would be possible for the City to buy bulk power from FP&L. Mr. Lee answered yes that FP&L was the second place bidder behind OUC. He said that they did offer to buy power from the City but their price was slightly higher than OUC. Mr. Guffanti asked if the City would have engaged in a contract with FP&L would it have included a 50 million dollar penalty. Mr. Lee explained that they never got to the point of final negotiations with FP&L so they don't know if they would have insisted on a penalty. He said until you go into formal negotiations you are not going to know all the details. Mr. Guffanti asked once the City found out about the 50 million dollar penalty wouldn't they go back and find out what FP&L has to offer. Mr. Lee felt that the penalty imposed protects both the City and OUC. It is an insurance policy for both sides. It was his understanding that their rates today are \$158.00 compared to FP&L rates at \$105.00. That is a tremendous difference. He asked Mr. Lee what would he speculate the rates will be one or two years from now. Mr. Lee said that he would say that Vero Beach will be \$125 on January 1, 2009 and hope that Council will reduce those rates within the next couple of years.

Council took a five minute break at 11:14 a.m.

Ms. Linda Sponzo (spelling may not be correct), 450 Reef Road, stated that her average electric bill has been ranging from \$300 to \$600 per month and it appears that the City will basically just rubber stamp this increase. She learned today that County utility residents are charged a higher surcharge than City residents, which seems to her to be discrimination. She has been told by local Realtors that when showing property in the City of Vero Beach that the first question asked is what utility company services the property that is being shown. She questioned if they believe that this utility is run properly, do they make a profit and has it made a profit.

Mr. Lee said that the City does have a return to the General Fund and the General Fund represents the taxpayers of the City who are the owners of the Enterprise Fund. It was explained to her that County customers are not getting a return because they are not owners.

Mayor Sawnick reiterated that in the future they would be looking at how they operate their transfers.

Mayor Sawnick closed the public hearing at 11:29 a.m., with no one else wishing to be heard.

Mr. Heady stated that there were a lot of comments from the public that involve a lot of things other than just this Resolution. The bottom line on this is that it equalizes the charge between the City and the County. He understands his role as a City Councilmember is to look out for City residents, but he believes that the health of the

County residents is also important to the City and it is important that they equalize these rates. He feels this is a realignment of fees and they need to move forward.

Mr. White asked again that the City Council consider a 90 day moratorium on this change. He said that if they do have a fuel cost adjustment come in they can lower the rates without having to go before the PSC. This 90 day moratorium will give them a chance to see what is going to happen and then they can put this realignment into place.

Mr. Abell commented that at this point any reduction is good and they are looking at a reduction of about 20%. He said regarding comments made by the public, there will be one customer base. The base charge will be the same for the City customer and County customer. He felt that they needed to go forward with the contract as it is. He understands that there will be reviews twice a year (April and October). They need the contract now with its improvements and by going forward they will have the opportunity to see what Mr. White is looking for and that is a 30 day period to get them into April and then they can take a second review. At all times they need to be looking for any opportunity to reduce costs.

Mayor Sawnick asked Mr. Lee if they do wait until April, is there a way to still remove the surcharge that customers living in the County are being charged.

Mr. Lee stated that if Council doesn't want the 74 cent increase, but still do all the other things, he felt it could be done. However, he suggested going with what they have and looking at it again in April.

Mayor Sawnick noted that the 74 cents will roughly equal the \$250,000 a year. Mr. Lee explained that he puts that money into the general ledger and if they choose not to take it and use it, that would be a political decision and not a billing decision.

Mr. Abell made a motion to accept the Resolution as it is. Mr. Heady seconded the motion.

Mr. Wilson agreed with Mr. Heady that it would be irresponsible of them to delay helping people by issuing these reductions. The problem he has is when issuing reductions in one hand and charging additions in another hand he is not sure that helps the matter.

Mr. Wilson amended the motion that the Resolution be passed with an amendment saying that it goes hand and hand with the requirement that they reduce their expenses by the same amount of \$250,000 that will appear on a different line, so that they can improve what needs to happen to give relief to the public, but that we offset that with a required reduction in their expenses so that it comes out of the pocket of the City who is spending this money and not the taxpayer who is paying this money. The amendment died for lack of a second.

Mr. White added that they used to take 7.4% out of utilities to go into the General Fund. A couple of years ago they voted to reduce it to 5.4%. So they have been trying to reduce the amount of funds taken out of the electric utilities to go to the General Fund. As far as he knew surtax for the County was being used for infrastructure outside the City limits. He expressed that the City of Vero Beach taxpayers own the electric facilities and they get a return on their money that goes back in to the General Fund, which helps them.

Mayor Sawnick explained that the plan is when they enter into the new contract to have lower electric bills. However, when the contract is in effect that doesn't mean that they will stop looking at their bills, because they won't. This is what they feel is best for right now. If it turns out not to be then they will start looking at other issues. This is the first step in many steps in making sure that they have reliable service and comparable rates.

Mayor Sawnick called the question.

The Clerk polled the Council and the motion passed 5-0 with Mr. Wilson voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

A) A Resolution of the City Council of the City of Vero Beach, Florida, releasing from all City Easements the West 3 feet of Lot 78 and the East 3 feet of Lot 77 of Block 21, Royal Park Subdivision.

Mayor Sawnick read the Resolution by title only.

Mr. Falls reported that this was the standard release of easements form brought forth by one of their citizens. This is a typical side lot easement that needs to be released. The application has been reviewed by all the City departments and outside utility providers with unanimous consent. He recommended approval of the Resolution.

Mr. White made a motion to approve the Resolution. Mr. Abell seconded the motion.

Mr. Heady referred to the sketch of the survey. He said that on both sides of lot 76 and lot 79 there is a three foot side yard easement. He asked if the City was keeping those easements.

Mr. Falls answered yes. He said that this request is just for the easements owned by the applicant.

The Clerk polled the Council and the motion passed 5-0 with Mr. Wilson voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

B) A Resolution of the City of Vero Beach, Florida, Endorsing Employer Support for the National Guard and Reserve, in furtherance of our Country's Service Members and their families during time of need; further

instructing the City Clerk to transmit same to the Chairman of the National Committee for Employee Support of the Guard and Reserve.

Mayor Sawnick read the Resolution by title only.

Mr. White made a motion to approve the Resolution. Mayor Sawnick seconded the motion.

Mr. White noted that a couple of years ago the City received an award for supporting the National Guards and Reserves.

Mr. Heady added that there are a lot of Veterans in this community. He said that if there is a Veteran needing help that they can contact Mr. Joel Herman at the Veterans Service office.

The motion passed 5-0 with Mr. Wilson voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

5. FIRST READINGS BY TITLE FOR ORDINANCES AND RESOLUTIONS THAT REQUIRE A FUTURE PUBLIC HEARING

- A) An Ordinance of the City of Vero Beach, Florida, amending the Definition of “Restricted Sales and Services” of Chapter 60, Appendix, Definitions, of Part III, Title VI, Vero Beach Code; Limiting Retail and Personal Service Stores to 4,000 Square Feet of Floor Area; excluding Stores with Warehousing, Health and Fitness Clubs, and Stores that sell Motor Vehicle Parts; excluding Hardware Stores with Outdoor Merchandise Displays and Dry Cleaning Stores with On-site Cleaning and Clothing Repair Services; excluding Stores with Drive-in, Drive-up, or Drive-through Facilities and Stores that offer for sale Predominately Pre-Packaged Food Products, Beverages, and other frequently or recurring needed household items between the hours of 11:00 P.M. and 6:00 A.M., including deliveries between this same time period; providing for conflict and severability; providing for an effective date.**

Mayor Sawnick read the Ordinance by title only.

Mr. McGarry explained that the intent of this Ordinance is to amend the definition of “restricted sales and services” in the City’s Land Development Regulations. Also, the intent of the Ordinance is to eliminate problems with interpretations as well as the application to the definition of limiting retail and personal service stores in the code. The main district that general retail sales and services are located in is C-1A, C-1M Marina District, and Mixed Use District in addition to those districts where “general retail sales and services” are allowed. He said that the overwhelming majority of “restricted sales and service” uses are in the C-1A district on the barrier island centered on the Cardinal Drive/Ocean Drive/Beachland Boulevard commercial district. They have excluded incompatible uses from the definition and have eliminated some troubling language that

is in the code. The final draft approval was recommended by the Planning and Zoning Board. Mr. McGarry recommended scheduling the two required public hearings for the Ordinance to be heard. He also asked that “laundries” be included as a part of the Ordinance.

Mr. Abell made a motion to approve the Ordinance and set the public hearings for January 5, 2010 and January 19, 2010. Mr. Sawnick seconded the motion and it passed 5-0 with Mr. Wilson voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

B) An Ordinance of the City of Vero Beach, Florida, amending Chapter 72, Landscaping and Tree Protection, of the Code of the City of Vero Beach, relating to Landscaping Requirements, Tree Classification and Protection; Providing for Definitions; Providing for Tree Grades and Standards; Providing for Tree Removal Permit Procedures; Providing for Protection of Trees before and during Site Development; Providing for Pruning Guidelines; Providing for Enforcement and Penalties; Providing for Conflict and Severability; Providing for an Effective Date.

Mayor Sawnick read the Ordinance by title only.

Mr. McGarry reported that this Ordinance would amend Chapter 72 of the City’s Land Development Regulations. The Vero Beach Vision Plan adopted by the City Council in 2005 identified the need to better protect the City’s tree canopy. The tree protection aspects of the current Ordinance are difficult to enforce and the penalties for removing trees without a permit, especially older more significant trees, are totally inadequate. He felt that the passing of this Ordinance would clear things up. The Planning and Zoning Board has been very involved in putting this Ordinance together and the Tree and Beautification Commission has reviewed it twice. Both the Planning and Zoning Board and the Tree and Beautification Commission recommend approval. He said that staff made some minor edits to the Ordinance after it was approved by the Planning and Zoning Board and the Tree and Beautification Commission. The Ordinance really deals with the tree permitting process. The proposed system would only require a tree permit for removal of any tree three inches diameter at breast height or more of palm of 12 feet or more in height. This Ordinance is much stiffer than what is in place now. It allows someone to go before the Board of Adjustment and request a variance if they feel that one is needed. He invited Council to come in and discuss the Ordinance with him if they have any questions.

Mr. White made a motion to approve the Ordinance on first reading and set the public hearing for January 5, 2010. Mr. Abell seconded the motion.

Mr. Heady noted that after reading an article in the Press Journal, they said that staffing levels are high for the City. He said that the number of changes in this Ordinance is incredible. It just seems to him that there probably is an easier less time consuming way

to accomplish the goal of making all of these changes. He said the extent of changes that have been made in this Ordinance probably were unnecessary.

Mr. McGarry explained that not everything has been deleted. Some things in the Ordinance are still the same.

The Clerk polled the Council and the motion passed 5-0 with Mr. Wilson voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

C) An Ordinance of the City of Vero Beach, Florida, amending Article III, Section 2-119, of the Vero Beach Code of Ordinances relating to Eligibility for Appointment to the Utilities Commission; providing for an effective date.

Mayor Sawnick read the Ordinance by title only.

Mayor Sawnick recalled that at their last meeting they decided to continue with their current Utilities Commission, but to add an appointed representative from Indian River Shores to be a member on the Commission.

Mr. Vitunac explained that before them they have two different Ordinances. One of the Ordinances states that one of the seven members be from Indian River Shores and the other Ordinance increases the number of members from seven to eight. Since the meeting they had two weeks ago there has been a vacancy of the original seven members. So this allows them to put a person from the Town of Indian River Shores on the Commission and still keep the number at seven members.

Mr. Wilson made a motion to approve the first Ordinance (seven members that includes Indian River Shores). Mr. Abell seconded the motion and it passed 5-0 with Mr. Wilson voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

Mr. White suggested that since there were so many items that remained on the agenda that they take a lunch break and return at 1:30 p.m. Council agreed with his suggestion.

*Please Note – Mr. White was ill and did not return for the meeting.

6. CITY CLERK'S MATTERS

None

7. CITY MANAGER'S MATTERS

A) Florida Design Contractors – Storage Reservoir and Injection Well pump-Station- Change Order No. 1 for Wastewater Treatment Reclaimed Water Booster Station

Mr. Rob Bolton, Water and Sewer Director, explained that the reason for the change order was because when they first started the Deep Injection Well project along with the need for a pump station and a transmission main from the Wastewater Treatment Plant to the Water Treatment Plant, they were originally were looking at a 30 inch main. During design of the main it was brought to their attention that the cost of the pipe and especially the cost of the fittings and the valves would cost about \$1.25 million dollars. Therefore, they looked at what the cost of a pump station would be to pump the water through a smaller main and decided to move forward with the design of a pump station and reduce the size of the main from the Wastewater Treatment Plant to the Water Treatment Plant. When they went out to bid with the pump station and reservoir, this item was not complete because of the delay of time of when they started the design and when the other was ready for bid. He explained that in order to meet the October 1, 2009 deadline, they left this portion out of the original bid with the intention of trying to get a change order. They finished the design on the automation between the two Plants from Florida Design and received the cost. They then submitted that to the DEP in order to make sure they were comfortable with the change order. Since that time, the funding has changed and the DEP approved the change order as it is today. At the last Council meeting, they discussed the funding balance of \$1.2 million and this change order was included in that cost. He recommended approval of the change order. He explained that if they went out to bid, there would be additional costs.

Mr. Heady was concerned that the ink wasn't dry in the agreements from last week and already they have a change order. He asked if there were any other anticipated change orders to the contracts.

Mr. Bolton answered not under Florida Design. The only other change order they were discussing was that they were looking at rerouting around the trees at the golf course, which would cost about \$36,000. He said that this has not been formalized at this time and there could be reductions in the project. He explained that it could be possible to eliminate some pipe or other things. In any project there are some savings as well as some costs. When they begin to overrun on costs, they would bring it to the City Council.

Mr. Heady said that his concern with contracts is that there always is going to be change orders. Having spent a lot of years on both sides, as a contractor it is a way of getting bids in low and getting things approved when they know full well before the contract is signed that there are change orders coming. He did not want to see this happening as a matter of habit.

Mr. Bolton said that in this market that is something that they are worried about and they try to keep on top of it in reviewing things that go out to bid.

Mr. Heady said it is a lot easier to be the low bidder, rather than the correct bid. He said that it is important that they hire the contractor with the correct bid so that they don't get change order after change order.

Mr. Wilson agreed with Mr. Heady. He asked is this the very least that could be done and still do what is required of the City by the DEP.

Mr. Bolton answered yes. He explained that without this pump station, they would only be able to pump from the Wastewater Treatment Plant to the Water Plant at 4,000 gallons per minute and they need to pump at 11,000 gallons per minute.

Mr. Abell made a motion to approve Change Order No. 1 for Wastewater Treatment Reclaimed Water Booster Station. Mayor Sawnick seconded the motion and it passed 4-0 with Mr. White not being present.

B) Field Services Building Structural Hardening – Summit Construction Management, Inc.

Mr. Bolton explained that there was a shortfall in the amount of grant money the City was receiving by the rearrangement of the projects. He stated that they were looking at the hardening of the Field Services Complex and presented their thoughts to the DEP. The cost of this project was \$129,000 for hardening the interior structure of the facility, which is approximately 2,500 square feet. He explained that they would remove steel beams and replace them with concrete and they also would equip it with an automatic transfer switch with a standby generator outside. The cost for construction is \$129,000 and there is \$26,000 in design fees that could be administratively approved for a total of \$155,000. He explained that 85% of that cost would be paid for by grant, which is actually a loan and whatever the loan amount is the City would only have to pay back 15%. He stated that if the cost is \$155,000, the improvements would cost the City about \$22,000 to \$23,000. The hardening of the building would act as a shelter for employees during storm events and also would aid the City with using the facility as an operating center during a hurricane event. At the present they have to vacate the existing site in the event of a hurricane and move to the Water Treatment Plant.

Mr. Heady asked what standards does the City use. He asked does the City build to Miami standards.

Mr. Bolton said that for a Water Treatment Plant they build to 15% above the Code requirements. In this case, they would build it Miami Dade standards plus 15%.

Mr. Heady said that if the City built everything to Miami/Dade standards they would have shelters available.

Mr. Bolton said that the shelter in the County has standards of over 200 miles per hour and Miami/Dade does not follow through to a category 5 hurricane.

Mr. Heady said that the City would have shelters for up to a category 5 hurricane, and if there is a category 5 hurricane they should get out of town.

Mr. Bolton said that there are cases when they could get caught and not be able to get out of town. He said that this project would provide the City with a shelter and would cost the City about \$23,000.

Mr. Wilson understood that, but tax dollars are tax dollars. He said that the huge majority of the \$23,000 was going to a local employer, which about \$17,000 was going towards the contractor's fee.

Mr. Bolton said that Summit Construction was the general contractor and they have sub-contractors doing the work and most of them are local.

Mr. Wilson said what bothered him was that the hardening of the building would allow the building to be used as a shelter from the hurricanes and the cost is \$155,000. He was not willing to spend \$155,000 for a shelter for City employees to go to.

Mr. Bolton explained that it would be a shelter for employees who are scheduled to work, not for employees and their families. These employees are required to be there as first responders after a hurricane event to get the water lines back on line, shut valves down, etc.

Mr. Wilson asked why would they need a hardened building after a hurricane event.

Mr. Bolton explained that employees are scheduled to be in the building during the storm.

Mr. Abell said that the employees are also ready for the recovery as well as to repair what can be repaired.

Mr. Wilson asked are there adequate shelters in this community.

Mr. Gabbard said the City has adequate shelters for City employees, the County provides shelters, the schools provides shelters and the City also used some of their buildings for special needs, overflow, etc. He said that they learned during the hurricanes of 2004, that if they allow employees to go home it is difficult to get them back. Not because they don't want to come back, but because they are unable to get back.

Mr. Abell made a motion to approve the Field Services Building Structural Hardening by Summit Construction Management, Inc. Mayor Sawnick seconded the motion and it passed 3-1 with Mr. Wilson voting no and Mr. White not being present.

**C) Item pulled from the Consent Agenda
2D-4) Request from the Tree and Beautification Commission to fund a new Program**

Mr. Heady noted that there is a request from the Tree and Beautification Commission to expend some of their money for a Fourth grade program. He asked where the money came from that is in this account.

Mr. Karl Zimmermann, Chairman of the Tree and Beautification Commission, explained that the Commission has two accounts and the money in those accounts comes from fines and mitigation.

Mr. Heady wanted to make sure that if this expenditure is approved that none of the money is coming from the taxpayers.

Mr. Zimmermann said that the money is not involved with ad valorem taxes or fees.

Mr. Heady made a motion to approve the request from the Tree and Beautification Commission. Mayor Sawnick seconded the motion and it passed 4-0.

**D) Item pulled from the Consent Agenda
2D-2) Request for Approval of Permits and Interlocal Agreements for
Indian River Farms Water Control District**

Mr. Gabbard reported that these are the annual approval of permits and interlocal agreements for uses of Indian River Farms Water Control District right-of-way for utilities.

Mr. Abell made a motion to approve the request for approval of permits and interlocal agreements for Indian River Farms Water Control District. Mayor Sawnick seconded the motion and it passed unanimously.

**E) Item pulled from the Consent Agenda
2D-3) Fiscal Year 2009/2010 Vehicle and Equipment Purchases**

Mr. Heady thanked Mr. Falls and staff for lowering the expense on this item.

Mr. Abell made a motion to approve the 2009/2010 vehicle and equipment purchases. Mayor Sawnick seconded the motion and it passed unanimously.

**F) Item pulled from the Consent Agenda
2D-5) Solid Waste Franchise Agreement – Anytime Waste Systems, Inc.2D-5**

Mr. Falls explained that this is the standard franchise agreement issued to a dozen of private haulers around town.

Mr. Heady noted that there was a 6% franchise fee in this agreement. He asked Mr. Falls if he had an estimate on what that totals for a year.

Mr. Falls said that he does not have that information with him, but could get what they received in franchise fees last year.

Mr. Heady asked does this franchise fee pay for the expense of those items that you identified as City expenses to this.

Mr. Falls explained that the only City expense is for administrative work. He said that there would not be a staff reduction if these were not done.

Mr. Falls told Mr. Heady that he will provide him with the information that he has requested.

Mr. Abell made a motion to approve the Solid Waste Franchise Agreement. Mayor Sawnick seconded the motion and it passed unanimously.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

Mayor Sawnick requested that the items listed under New Business go to the Utilities Commission for their recommendations. He said that they could also discuss them today if Mr. Wilson chooses to do so.

Mr. Wilson felt that this in part was a parliamentary maneuver. The reason that he feels that it is so important to discuss these items right now is because of the OUC contract turnover date, which is January 1, 2010. There are a number of provisions in this contract that he would like to discuss with the City Attorney. There are a certain amount of steps that they have to take before they can request information from FP&L. If they delay this discussion it will kill the discussion with FP&L because OUC doesn't meet again until January. If they have this discussion and they are able to answer these questions and take action on these three issues, which are 1) To take OUC up on its suggestion that we want to make an amendment (must be done in writing) and ask them (OUC) to consider dropping the \$50 million dollar penalty. He has given Council a copy of St. Clouds contract and their contract has no penalty in it. 2) Agree to actively consider a sale of the Vero Electric Utilities under certain circumstances. He said in order to engage FP&L there are things required from the City before they will consider it. One of the things they will consider is that there is a willing seller and a willing buyer. He said so far the City has not been a willing seller. He said that he has talked to many people in this community who feel that they should sell this Plant and he has only found four people who are not in favor of selling the Plant and unfortunately they are the other four Councilmembers. For them not to engage in negotiations with FP&L is the same mistake that was made in 2006. He understands why it would be nice to go through the Utility Commission and he understands why some people may not want to vote on this issue. But the fact is that there is a deadline date and that deadline date is the turnover date. He expressed that this \$50 million dollar penalty was held secret for two years. He said that this is probably the most important vote that he will ever make. The idea of trying to take these items off of the agenda and send them to the Utilities Commission so

that this deadline date will pass is offensive. He requested that his items be taken in order. The first thing that they need to do is ask OUC to drop the \$50 million penalty clause, which was not their idea. If they delay this to January it will be a mute discussion.

Mayor Sawnick said that he wants to wait until March. He wants to have the first few bills come in and compare them. He said regarding the \$50 million dollar penalty it protects the City and OUC. He is not comfortable with voting to look at eliminating it at this time.

Mr. Wilson did not understand why they could not at least go through the discussions and if the Mayor still wants the items to go to the Utilities Commission then they can send them.

A. Old Business

1. Request of Orlando Utilities to agree to an amendment to the Orlando Utilities and Vero Utilities contract eliminating the penalty clause

Mr. Wilson made a motion that they notify in writing OUC as requested in the workshop on November 16, 2009 that they would like to request an amendment in the OUC contract eliminating the penalty clause. Mr. Heady seconded the motion.

Mayor Sawnick reiterated that at this point he doesn't have enough information to know that this is the best interest for the City and the ratepayers.

Mr. Wilson explained that the problem is with the \$50 million dollar penalty. It changes the entire dynamics. He said that this penalty clause has been redacted for about two years.

Mr. Vitunac explained that OUC requested that all of their financial numbers be kept secret. They thought that information about these penalties would give vital information to other bidders. He agrees that this is a significant penalty, but this is also a large contract and having the penalty in place is important for both parties. We are dealing with a energy provider, which if they found a higher price consumer they could just leave us in a lurch if it wasn't for this high penalty being in place. This is a type of insurance that both parties are taking this contract seriously and intend to fulfill it. Staff believes that this is a great contract for the City and don't intend to get out of it. In spite of some of the testimony that has been heard, staff feels that this will be a great thing for the City.

Mr. Wilson stated that in his conversations with St. Cloud, they told him that the only thing OUC requested be redacted is the way they calculated their rates. He asked Mr. Vitunac if what he was saying is that the \$50 million dollar penalty clause was put in because it benefitted them (the City).

Mr. Vitunac said it does benefit the City. It is their protection that OUC will honor its contract. The City Council who approved the contract also intended to comply with the contract.

Mr. Wilson commented that it sounds like Mr. Vitunac wishes to continue with the contract even though it has come out that this \$50 million dollar penalty is in there. He said that Mr. Abell was the only person who was on the Council when this was approved (Mr. White was not present for this portion of the meeting, but did serve on the Council).

Mr. Abell stated that he has a contract that he has had for two years that has not been redacted. The City Manager made available to them a copy showing the redacted contract and a copy of the contract that was not redacted. He said that the contract that was not redacted was made available to all the City Council and it was also provided to the Utilities Commission.

Mr. Wilson questioned Mr. Abell if he knew about the \$50 million dollar penalty clause being in the contract and still approved it.

Mr. Abell said that he knew about all of the different penalties.

Mr. Vitunac noted at the Special Call meeting held two weeks ago they had everyone involved with the contract at their meeting. These people could have answered Mr. Wilson's question, but he did not ask it then. The question that he has asked should be asked to someone in the electric business.

Mr. Wilson said to Mr. Vitunac that he asked him about the Statute.

Mr. Vitunac stated that he answered that it is proprietary information because it gives information to FP&L as to how they value this contract.

Mr. Wilson asked Mr. Vitunac if he understood that there is a giant stumbling block to sell the Power Plant that has been placed there by them.

Mr. Vitunac recalled that five years ago the challenge to the City Council was they chose not to sell the Power Plant and that they wanted a binding, long term power provider. It took staff close to three years to pick one. He said that there were hours of public meetings held in choosing OUC. He said that there was no biased against FP&L. He said FP&L would not offer them their residential rates. Mr. Vitunac continued by saying that he has a degree in economics as well as a law degree and he has been in the utility business since 1975. He said that come January 1, 2010 they want to turn on the power switch and have a low cost power provider, which is what they have done. What Mr. Wilson is trying to do is undo this and it will end up costing the City a fortune in penalty fees at a high rate.

Mr. Wilson still had some concerns about the penalty clause being kept secret for two years.

Mr. Vitunac said that it was not kept a secret. He said that the contracts were released earlier than they had to be according to law because the public interest was so high.

Mr. Wilson said the fact is that he is interested in selling the Plant and Mr. Vitunac is not. The steps that they have to take in order to sell the Plant is they need to see if this contract is enforceable. He is not giving up that they can't do anything about this contract. He has nothing against OUC and the people that he spoke to in St. Cloud are very happy with OUC. He also does not care who purchases the Plant, but he does care that they stay in the electric business when they have no business being in the electric business. He said that if they could be competitive in the electric business then they need to be there, if they can't be then they don't need to be there. It looks to him that for the last five years staff has tried to limit the information that they have tried to gain to be able to make an accurate, completely informed decision about the balance of selling the Plant and operating the Plant under different versions. He said that they could still ask FP&L to participate. But, what he has seen is that everything that has been done since 2006 not to consider a sale.

Mr. Abell told Mr. Wilson that was not true. He said that option was on the table in 2006 and the Council at that time did not think that was the proper way to go for one big reason and that was because of the recovery from the hurricanes in 2004. He is willing to pay a little bit of a premium to get that kind of service.

Mr. Wilson asked if Mr. Abell was willing to pay 35%.

Mr. Abell said frankly he didn't care what it was. He said lets take one step at a time and move forward and try to reduce the costs as much as they can.

Mayor Sawnick called the question.

Mr. Heady felt that they needed a little bit more discussion. He said judging past Councils' is not productive at all. He said that if you change one member of Council or change who the Mayor is, you have changed the dynamics of the Council. He feels that they need to stick to what this Council wants to do. He said clearly on this Council there are some members who want to discuss the OUC contract. He asked the attorney with the contract as it is written, would it go to the aires of this contract. Mr. Vitunac answered yes. Mr. Heady said that the successors of that contract would include a purchaser, such as FP&L. There is nothing in that provision that would restrict FP&L from the purchase of their utilities, including the current contract. Mr. Vitunac said that is correct. All their rights would be subjected to whatever the rights are for OUC. Mr. Heady said that the \$50 million dollar penalty clause runs to the City and to OUC. Mr. Heady asked if it possible within the terms of this contract to add a clause that OUC acknowledges that there is some interest by this Council to sell the Power Plant and in the event of the sale of the Power Plant that the \$50 million dollar penalty would not kick in (meaning there would be no penalty to them for selling the Plant). Mr. Vitunac said that you can ask them. Mr. Heady asked Mr. Vitunac isn't the reason for the penalty not to

prevent them from selling the entire system but to prevent them from incrementally buying portions of their power. Mr. Vitunac explained that it is really to give OUC the benefit of the contract that they have already entered into and spent a lot of money on, just like the City has been putting a lot of money and time to get ready for the connection to occur on January 1st. If OUC walked out on the City they would be required to pay the City \$50 million dollars according to the penalty clause. He said that the \$20 million dollars is for other penalties. Mr. Heady wondered if there was time between now and their next regularly scheduled meeting for Mr. Vitunac to contact OUC (or their attorney) and find out whether or not there is some room for the City to put into the contract a provision that it is the understanding of OUC that Council may approve seeking a buyer for the Power Plant and for the Distribution Center. Mr. Vitunac felt that there was sufficient time, but before he made such a request he would like to discuss it with their utility experts to make sure that this would not cost the City any money. Mr. Heady asked why this would cost the City any money to let them know it is their intentions to put all options on the table. Mr. Vitunac did not know if it would or not, but they should be cautious and he would at least like to ask Sue Hersey, their consultant, and R.B. Sloan, the former Utilities Director, and anyone else involved.

Mr. Abell felt that Mr. Wilson was making this sale of the Electric Plant similar to selling a pair of athletic socks. He said it is not that simple. It requires a lot of time and research. They have been told that it will take \$300,000 for a study to be done and then somewhere between one million and a half dollars to implement it. This is something that wouldn't take place until the next year or even five years. He assumes if they are going to look at doing this then they need to be looking at somewhere down the line in the exit period of their OUC contract, which would be seven years out. The fact that FP&L keeps coming up is ridiculous because there are four power providers of this magnitude.

Mr. Wilson reiterated that the \$50 million dollar penalty is the road block to considering a sale. He doesn't want to be here in January saying they could have made a sale if it wasn't for that \$50 million dollar clause.

Mayor Sawnick said that regardless of the penalty, he was for trying to get the lowest rate possible. He said right now he thinks their contract with OUC will do that, but if it turns out different and several months down the road they decide to sell the Plant, he does not think the penalty will make that much difference.

Mr. Wilson said that the lawyers he has been speaking to about this issue have told him that this penalty is a poison pill. He said that this \$50 million dollar penalty would bankrupt the City.

Mr. Abell explained that if OUC participates in improvements to the facility that \$50 million dollars is protection for them for anything that they put in for the facility.

Mayor Sawnick suggested asking if selling the Plant would trigger a penalty clause. They are not asking OUC to take the clause out.

Mr. Wilson stated that if OUC will waive the penalty clause in case there is a sale, he would consider that a compromise.

Mr. Abell felt it was too early to get into that. They need to stick with the contract that they have.

Mr. Wilson recalled that when OUC attended their November 16th meeting they said that they would consider this if it was put in writing.

Mr. Heady looked in the audience and saw someone shaking their head and he wanted to know what the “no” was in response to. With respect to the \$50 million dollar penalty if you look at Mr. Heran’s documents, he has demonstrated even with the \$50 million dollar penalty that they could sale the Plant, pay the penalty and still return money to the ratepayers. He wasn’t sure that he could buy into the statement made that the \$50 million dollars would bankrupt them. He would like to know why Mr. Lee was shaking his head. He felt that they could all agree on a compromise to add a clause in the contract before the turnover date that OUC acknowledges and understands that there is some interest by the City Council to sell the Plant.

Mr. Wilson did not see that there was a penalty in asking.

Mayor Sawnick rephrased the motion. He said that the initial request was to ask OUC to eliminate the 50 million dollar penalty clause. He did not want to do that. What he wants to ask them if they did this would that trigger the penalty.

Mr. Vitunac suggested letting him write a letter to that effect to OUC. He will run it by Sue Hersey first, show it to Council and once they approve the letter it will be sent to OUC before January 1st.

Mayor Sawnick said that the motion would be that they are asking OUC if they sell the Plant will that trigger the penalty clause.

Mr. Wilson felt that it should be stipulated that if they decide to sell the Plant that they would not seek the penalty.

Mr. Gabbard expressed that when Mr. Sloan left he wrote him a note and he indicated in his one on one meeting with Mr. Wilson on November 19th that he was asked by Mr. Wilson to contact OUC to seek relief from the section of the contract that they are discussing today. Mr. Sloan told Mr. Wilson that he could not do that unless he had direction from the Council. He also said that Mr. Wilson insists Mr. Jan Espcius is willing to recommend deletion of the penalty. He said that he spoke with Mr. Espcius who told him that he denies any willingness to comply. Mr. Gabbard said that Mr. Wilson has already been negotiating for them.

Mr. Wilson explained that he was trying to find out information before they held their workshop so he called Mr. Espcius and talked to him over the telephone. He asked him about the penalty clause and was told him that it was not OUC's idea. His question is if it wasn't OUC's idea then how could it be proprietary redacted information held from the public for two years.

Mr. Gabbard said that he gathered by the conversations that took place at their November 16th meeting that it was a mutual consideration. He has been told that this is an industry standard and a practice that is normally done when people enter these large contracts to make them stay in the contract. He made it clear that everyone involved has been acting at the direction of the City Council. He said that this has been going on for the last seven years. He said to imply that somehow staff is trying to manipulate this to keep the Plant or T&D itself for some sneaky reason is not true.

Mr. Wilson stated that he was not implying anything. He is saying it straight out that for the last five years virtually every decision that this Council has made has been for the benefit of the City employees and to the detriment of the ratepayer.

Mr. Gabbard told Mr. Wilson that he has heard reference to sell to FP&L in the late seventies. He said if you talk to John Little, a former City Manager, one of the cornerstones of that sale was that all of the City employees effected in the utility system would be hired by FP&L.

Mr. Wilson read memos from staff stating the reasons that they needed to keep the Plant and the reasons that they did not. He said virtually all of those reasons have to do with their employees. He referred to the St. Cloud contract and said that when OUC took over they hired all of their employees.

Mr. Gabbard explained to Mr. Wilson when they were going through the negotiation process that there was no will to sell the Plant or the system. He said that staff will do whatever the Council directs them to do.

Mr. Wilson reiterated that they have an option to discuss the sale of the utilities. He listed the steps that you need to take to get there. The first thing is to limit their exposure which right now is enhanced by a \$50 million dollar penalty. Then this Council needs to decide under what circumstances they would approve a sale. He would think that the circumstances would include if it is in the best financial interest of the taxpayers, if there is no serious burden of considering the transfer and if all of their employees can be hired. He said this is where he wants to go. He wants to get out of the \$50 million dollar penalty, he wants to ask FP&L if they are interested, ask them to make the City a deal and ask staff to cooperate.

Mr. Gabbard told Mr. Wilson that FP&L could have been their partner. He said that one of the things they asked them early on in negotiations was can we get the rate that your customers are paying and they said no.

Mr. Lee added that what concerns him most is since they signed the contract in April is that they have been working with OUC weekly and to say they need an answer quick is unfair. He doesn't see any problem with negotiating longer term. He said that this is a process and it is unfair to OUC to do it this way.

Mr. Wilson said all we are asking from them is if they agree.

Mr. Lee explained that they were not asking "them." They were asking an organization that has channels. He reiterated that this is too short of time to put OUC under those constraints.

Mayor Sawnick brought up again that he would like to hear from their Utilities Commission. He thinks that this contract will be good, but if it turns out that it is not good then they can start going through these channels and look at other options.

Mr. Wilson said all he wants to do is simply ask them. If they say no then fine.

Mr. Abell felt that it was totally premature for Mr. Wilson to be spending this time on this issue.

The motion on the table failed 3-1 with Mr. Wilson voting yes, Mr. Heady no, Mr. Abell no and Mayor Sawnick no.

Mr. Wilson made a motion to ask informally OUC if we (the City) were to decide going forward and try to sell the Plant would that trigger the penalty. Mayor Sawnick seconded the motion.

Mr. Gabbard said that he would set this up and get an answer.

The motion passed 3-1 with Mr. Abell voting no.

2. Vote to agree to actively consider a sale of the Vero Electric Utility under certain circumstances

Mr. Wilson explained that he put this on the agenda just so it is understood that they would be willing to sell their utilities if it was good for the ratepayers and all the legal requirements have been met. He said that if FP&L has this vote then they can move on to the next step.

Mayor Sawnick commented that was a step that he was not interested in taking at this time.

Mr. Heady explained that the request on the table is to agree to consider a sale. He felt that Council would do a disservice to the residents if they didn't agree to listen to someone who may be interested in purchasing their utilities. He said that FP&L has said that they wanted to be invited to the table and the only way they are going to be invited to

the table is if the City allows them to bring an offer and if it is acceptable it will be considered. This information should be relayed to FP&L.

Mr. Abell reiterated that it was premature to consider this vote to consider an offer from FP&L. He said that they keep mentioning FP&L, but there are four power suppliers that they need to talk with.

Mr. Heady said that the motion could be that the City Council would agree for the sale of the Vero Beach Electric Utility under certain circumstances. This would be for anyone that wants to bring them a nice offer to the table.

Mr. Lee stated that the way he would like to see this happen is that they do refer this to the Utilities Commission and they could invite FP&L to attend the Utilities Commission meeting and they could ask questions of FP&L and FP&L could ask questions of them. If they are looking at a long term sale and FP&L says that they are interested, then there are questions that need to be asked. The Utilities Commission could give them some insight as to what some of the stumbling blocks may be.

Mr. Wilson explained that if they make this invitation to FP&L then they are going to go to the Utilities Commission, as well as staff and City Council.

Mr. Lee said that his point is that if they make it part of their motion to send this to the Utilities Commission then he will set up a meeting.

Mr. Wilson stated that if it makes you feel better to take this to the Utilities Commission that is fine. However, they have to request it first and then it can be taken to the Utilities Commission.

Mr. Abell commented that he asked to have this deferred to a Utilities Commission meeting and they have now wasted another hour and he will vote no on all of these proposals because he still thinks that they need to be sent to the Utilities Commission because this Council does not have the background that those members have to know what loopholes that there are.

Mr. Wilson appreciated Mr. Abell's position and was not surprised that what he is attempting to do here is kill this. All he is asking is for them to make a statement and that statement is if they can get a deal they will take it.

Mayor Sawnick made a motion to move items 2, 3, and 4 to the Utilities Commission and invite any parties (utility providers) who want to communicate with them regarding the sale of the Power Plant. Mr. Abell seconded the motion.

Mr. Wilson said there is nothing that stops them from saying to these providers if they can make us a good proposal that we will listen to it and when they come to them they can tell them that it is going to go to the Utilities Commission.

Mr. Vitunac expressed that his experience with these big utility deals is that you just don't have someone come in and make an offer and you will see if it is good or not. You have your own consultant draw up a proposal and specs and get a letter of intent. Then you establish a staff Committee to meet with them, which is a long drawn out expensive process.

Mr. Wilson told Mr. Vitunac that FP&L stood at the podium at their November 16th Special Call meeting and told them they would come before them and provide them information. They had two requirements and they are if the right situations arises that the City is interested in a sale they would be willing to talk to them and the second question they brought up was will staff be cooperative. He is responding to that request. This is what all of his items are on the agenda for. To accommodate an offer to come to the City. This Council has to invite them to come.

Mr. Abell said this is not the first time that they have refused looking at a sale. He thinks that all of the Council agrees that this needs to be researched and it is something that will take time and professional help. He withdrew his second to the motion. The motion died for lack of a second motion.

Mr. Wilson made a motion to notify FP&L that we would like to take them up on their kind offer and under certain circumstances if it is best for the residents and taxpayers and ratepayers of the City of Vero Beach that they would consider a sale. Mr. Heady said that he would second the motion with an amendment that they eliminate FP&L and include any power providers (anybody that is interested in the purchase). Mr. Wilson amended his motion to include power providers and not just FP&L. Mr. Heady seconded the motion with this amendment.

Mayor Sawnick would like to see these three items go to the Utilities Commission this month and get their recommendations and bring it up at their next meeting.

Mr. Heady said that there was nothing at all wrong with this going before the Utilities Commission. He felt that the nuts and bolts that Mr. Wilson was looking for was an agreement by the Council that if someone comes to the table with a pile of money that they would look at it. This is not hard and he did not understand the resistance.

The Clerk repeated the motion.

Mayor Sawnick wanted to see an amendment to the motion that they would not make this offer until after they have talked to OUC. He has always been in the opinion of keeping options on the table.

The motion passed 3-1 with Mr. Abell voting no.

Council took a five minute break at 3:00 p.m.

3. **Issue a written invitation to FP&L to express their interest in purchasing Vero Utilities as stated during the workshop of November 16, 2009**
4. **Motion to direct staff to prepare a financial comparison showing the relative pro's and con's of a. continuing to operate under the OUC Contract b. contract to operate by an outside source c. sale of all electric assets including timeline, benchmarks, and obstacles including proposed solutions to those potential difficulties**

These items were discussed earlier in the meeting.

B. New Business

1. **Officially eliminate the three minute rule and substitute the will of the chair which can be overridden by council majority to cut off or extend comments. Also provision to allow public comments under old business, new business, City Manager's matters and City Attorney's matters**

Mayor Sawnick said that the three minute rule is pretty much gone. He said that as Mayor and City Council they can decide if someone is talking about something that is not relevant to City business that they need to come back to point.

Mr. Wilson trusted the Mayor's judgment and told him that he was doing a splendid job. He said that the problem is the public doesn't know if they are allowed to talk, other than under Matters by the Public when different issues come up on the agenda. He wanted to officially open public matters to other areas.

Mayor Sawnick said that they could try this next month and see if it works.

Mr. Abell suggested checking with the City of Sebastian and Indian River Shores and see what they do.

Mr. Vitunac also suggested allowing comments to be made under first reading. He said that if this works after a month then he would bring up the necessary paperwork to change the Ordinance.

2. **Travel by Council to require prior approval by the Council except in the case of an Emergency which may be approved by the Mayor and brought before the Council for information**

Mayor Sawnick felt that if a Councilmember requests to travel that it be put on the consent agenda for approval.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Kevin Sawnick's Matters

- 1. Correspondence**
- 2. Committee Reports**
- 3. Comments**

A) Tax Abatement

Mayor Sawnick provided Council with the Tax Abatement information that was passed by Sebastian in their last election. He asked the City Attorney to write up something similar to Sebastian's Ordinance and also a similar Ordinance that Indian River County may adopt and then bring it to Council.

Mr. Brian Carman, Executive Director of IRNA, commented that this kind of tax abatement program is something that would be a disadvantage if the City did not have. He said that the IRNA endorses such incentives.

Mayor Sawnick made a motion to direct Mr. Vitunac to write up a sample Ordinance to bring back to them next month or however long it takes. Mr. Heady seconded the motion.

Mr. Abell suggested including this in their quarterly workshop.

The motion passed unanimously.

Mayor Sawnick reminded Council that on December 8th they would be holding their quarterly budget meeting, then on December 10th he would be meeting with all the different Mayors of Indian River County for an informal meeting, he would be attending the Royal Palm Pointe Tree Lighting Ceremony and Boat Parade that will be held on December 11th.

B. Vice Mayor Sabin Abell's Matters

- 1. Correspondence**
- 2. Committee Reports**
- 3. Comments**

Mr. Abell reported that he attended the Dedication of Little Flower and Legislative Action Day in Orlando.

C. Councilmember Tom White's Matters

- 1. Correspondence**
- 2. Committee Reports**
- 3. Comments**

Mayor White was not present for this part of the meeting.

D. Councilmember Brian Heady's Matters

1. Correspondence

Mr. Heady brought up the letter that they received from Mr. Jim Schlitt, concerning a hardship that he was having moving some mobile homes off of the City right-of-way. He asked the City Manager to place this on the agenda for their next meeting so that they could discuss it.

Mr. Gabbard said that he would have it on their agenda for December 8th and he would have Mr. McGarry at the meeting to discuss it.

2. Committee Reports

3. Comments

A) Request for Staff

Mr. Heady asked that staff correct him if he should say something that is not correct. He said that if he makes a statement that is not accurate and he is not corrected that he will walk away at the end of the day thinking what he said was correct.

B) Contract law/arbitrary

Mr. Heady brought up that at their last meeting Council gave an approval to a group to pay \$5,000 for an event. He said that there are a lot of things that need to be considered. He would hope that someone on Council would make a motion to reconsider the motion that was made. He said that if you do this for one group then you have to open it up for everyone. He said that the other word that he has under his matters is “arbitrary.” He said with arbitrary you can’t pick or be selective. You must treat parties equally.

Mr. Wilson explained why he could not go for reconsideration. He said that the Hibiscus Festival came to them not for a \$5,000 donation, but essentially for rain assurance. They traded this as part of a sponsorship. He said that perhaps when they come before Council next year they could do it in a different way where it is clear that they are trading the sponsorship for what they need. He said that Rain insurance is available commercially. It may be that instead of sponsorship that the City could look into purchasing Rain insurance in order to help the Hibiscus Festival Committee.

Mr. Vitunac stated that you don’t need a motion to reconsider the motion because that was done at a previous meeting. If you want to make a new motion that could be done.

Mr. Heady did not feel that this is a proper use of tax dollars. He said that maybe at their next meeting some Councilmember could make a motion to eliminate this.

Mr. Gabbard wanted it made clear that this \$5,000 was not because if the event was cancelled because of rain. It was a sponsorship in case the Hibiscus Committee did not earn enough money in order to hold the event.

Mr. Heady understood that they did this the first year to generate support and that support from the community is there. He said that there is no reason this one will not be just as successful. He said the point is that they are guardians of tax dollars. He is tired of authorities in charge taking dollars and using them for these kind of expenses. He will probably add this to his matters again for the next meeting.

C) Matters by the Public/Advisory

Mr. Heady felt that their Advisory Committees should follow suit and do the same thing that Council does and have their Matters by the Public comments put on first on their agendas. He wanted this message sent to their Advisory Committees to be discussed.

D) Meeting times: January/February/March

Mr. Heady brought up the times of their Council meetings. He suggested changing their second meeting of the month (third Tuesday) and having it at 7:00 p.m.

Mr. Wilson was in agreement with that but preferred to start the meeting at 6:00 p.m. rather than 7:00 p.m. Mr. Heady agreed with 6:00 p.m.

Mr. Heady made a motion that their second meeting of the month (third Tuesday) will be held at 6:00 p.m. Mr. Wilson seconded the motion.

Mr. Vitunac said that he would make this change in the Ordinance when he makes all the other changes.

The motion passed unanimously.

E) Workshops/Councilman Expenses

Mr. Heady felt that they needed to consider the expenditures necessary when they have a Special Call meeting. A special call meeting needs to be called only if there is something that can't be brought up at a regular meeting.

F) Council Travel

Mr. Heady discussed Council approval of a Councilmember traveling somewhere. He will ask for Council approval before he goes anywhere. He has a problem with the Mayor giving approval for an emergency travel expense. That puts the Mayor in a position to approve or disapprove what may or may not be an emergency travel expense. He then asked Council for approval to go to Institute of Elected Officials (IEMO) from January 22-24. He said that the class will be held Gainesville, Florida and Mr. Abell has suggested that he attend.

Mayor Sawnick reminded Mr. Heady that travel expenses for the Council will be put on the consent agenda for approval.

Mr. Abell said that he is in favor of Council attending this class because it is a great help to new Council members. Mr. Abell made a motion in favor of Mr. Heady attending the IEMO class. However, he did not think it is was necessary to get approval because it is almost expected of them.

Mr. Heady said that when a Councilmember spends tax dollars the issue should be brought before Council for approval.

Mayor Sawnick seconded the motion and it passed unanimously.

G) Council Pay

Mr. Heady recalled that he brought this up at the last meeting. He said that Council receives a salary and if they identify the salary as to what it has always been and that is a partial reimbursement for their expenses and the other part for salary. If they do it this way it doesn't cost them any more then what they receive, but what it does do is lower the amount that the City has to pay and include pay roll taxes, insurance, etc., so that the end result of this kind of change would save the taxpayers money.

Mr. Vitunac stated that he asked their Finance Director about this. Their Finance Director spoke to their tax accountant and was told that if their expenses are lump summed and given to them as part of their salary they are taxable and social security taxable. If you itemize the expenses independently or are reimbursed by the City then they are not taxable. When the last Charter Review Commission met they recommended to lump all of the salaries together. So any change made would have to go to referendum and they would have to change the Charter.

Mr. Heady thought that this change was doable because there is a certain per diem that they are allowed under the rules.

Mr. Steve Maillet, Finance Director, spoke to Ms. Crum, their tax partner for their auditing firm, and she said that if you itemize your expenses for your employer and this would include per diem like Mr. Heady is talking about, then it is not subject to income or social security taxes. If they are given a salary or expense money that they don't need to report back to their employer that is subject both to income and social security taxes. He has asked Ms. Crum to put this in writing and if you (City Council) change the Charter back to the way it used to be this could be broken down.

Mayor Sawnick suggested waiting until Mr. Maillet receives this information before voting on this.

H) Golf

Mr. Heady mentioned that there was a story in the newspaper on the Dodgertown golf course. He said that the City spent a lot of money on purchasing this golf course and it

has been an open field ever since. He said at one point there was an effort by some people to get the City to restore the golf course to its original nine-hole course. In the meantime he has had some conversations with people in the educational community and one of things that we hear is that when our children are raised in Vero Beach that they leave because there are no jobs here. One of the things that provides jobs in the State of Florida is golf. He said that this could provide educational opportunities at the high school and college level. In doing this there are grants that are available. He said right now they have a piece of property that contributes nothing. If they did open it up they would have a small income coming to the City. This would provide some recreation for seniors and youth and also supply some employment opportunities. At this time he was not asking for any tax dollars, rather he brought it up so that he could get some type of consensus from the City Council. He wondered if this would be something that they would be interested in. Mr. Craig Callan has indicated that MiLB would be interested in participating in this type of program.

Mayor Sawnick thought that this was a great idea. He asked the City Manager to provide them with some information on what this is going to cost.

Mr. Heady told the Mayor that this was fine, but thought that maybe he missed one of the points he was making and that was that he is not looking for this City Council to assign any money to this. He said that there are people in this community who have said that if Council agrees to this that they think they can get some grant money in order for it to happen.

Mr. Abell told Mr. Heady that one thing that he may or may not know is that the Baltimore Oriels that was discussed as one of the possible uses for the land. Also with their discussions with MiLB they think that there might be a need for it, but they are only six months into their contract and are trying to develop a schedule and looking into all kinds of things. He said at this time they should find out what Mr. Callan and MiLB can come up with.

Mr. Heady agreed with the comments made by Mr. Abell and explained that the first thing that he did was meet with Mr. Callan about this and after talking to him he said that MiLB would support this type of use of that property.

Mayor Sawnick commented that anyone who has ideas for this property that Council will listen.

E. Councilmember Charlie Wilson's Matters

- 1. Correspondence**
- 2. Committee Reports**

Mr. Wilson reported that he attended an Economic Development Committee meeting.

- 3. Comments**

A) City Attorney to give an update on red light cameras and contract

Mr. Wilson asked where they were with the red light cameras and does the contract that they entered into have any out in it in case legislation changes and they are not able to use the system.

Mr. Vitunac noted that he talked to Council back when they signed the contract and indicated that there were approximately six law suits throughout the State. He suggested that they go slow even though they had a contract. He didn't think that there is an out to the contract, because the contract states that they will install the cameras. However, they have talked to the vendor about slowing this down to see if there is going to be a State law that makes it illegal, which in that case it would not be done. If they put these lights in they would become an immediate defendant City like the other cities who have red light cameras.

Mr. Don Dappen, Police Chief agreed that they are moving slowly on this. He has met with the vendors on several occasions and explained their concerns to them. There is no cost to the City of Vero Beach for this system. It is put in solely by the vendor. He said right now the vendor that they chose has 45 cities that they are doing business with. They have probably about 12 stagnant lawsuits. Everyone seems to be waiting to see what the Legislature is going to do. He said the vendor has actually put cameras at the intersections that they have provided to them where they have had their worst accidents at. Out of those intersections there are twelve of them and they have found that seven of them meet their standards to install cameras. He was surprised over a twelve hour period that one intersection had 39 violations. He said that is a lot of people running red lights in a twelve hour period. He said that if everything went like clock work, without any road blocks the vendors have said that they can expect to be operational by the end of February for their trial period. He is figuring sometime in March or April and he is sure by then that the Legislature will have determined what they are going to do with this. He believes that it will pass this time around because there is a tremendous amount of support for it.

Mr. Wilson wondered if there was any sort of rental fee or monthly maintenance that they were paying.

Chief Dappen answered no. He expressed that the vendor does have an out clause to where if this wasn't working to their advantage there would not be any costs to the City.

Mr. Heady felt that there would be some monetary implications if they chose to vacate the whole contract, which is what he would like to see happen. Chief Dappen noted that there were 39 violations in a 12 hour period, this would probably pay for an officer to sit at the intersection and write traffic tickets. The advantage to this would be the person who is getting the ticket would have something on their drivers license and if they continued to do it their drivers license would be taken away from them. Mr. Heady felt that having these contracts was always about money and if there was a way to vacate the contract he would be in favor of knowing what it would cost them.

Chief Dappen said that he does not have enough officers to sit at an intersection and write tickets. As far as receiving money back from the State on a traffic ticket, the City gets \$2.00 out of the \$200 that it costs an individual who runs the red light. He hopes that the money that they receive from having this contract will be used for some driver safety or some type of law enforcement. It has been proven around the Country to reduce accidents in the jurisdictions where it is being used. He has talked to other Police Chiefs who utilize this and they have told him that their accidents have gone down by having the cameras.

Mr. Wilson wanted to see some of the traffic fatality data. He was unconvinced about the red light cameras.

B) Request to City Attorney to discuss the redaction of penalty clause in OUC Contract

Mr. Wilson asked Mr. Vitunac to explain to him the significance of the effective date and the turnover date of OUC contract.

Mr. Vitunac stated that the contract was signed in April 2008 and the turnover date is January 1, 2010.

Mr. Wilson stated that the turn over date appears to identify the term beginning as of the turnover date which is January 1st. He asked with the redacted contract and the second contract in this the book provided to him by staff, are they the same.

Mr. Vitunac said that one is redacted and one is not and he believes they were the same.

Mr. Wilson said that as far as he knows there was no contract provided to Council when they entered into the agreement with OUC. He is trying to determine if the contract that Mayor White signed is the same contract as the one presented to this Council.

Mr. Vitunac explained that the contract that was shown individually was an unredacted version of the contract. A redacted version of the contract was on the web and made available to the public and to the Utilities Commission. The signed contract was not redacted and is the same as the redacted contract.

Mr. Wilson said that most of the changes between the redacted contract and the contract that was not redacted is the insert of new dates. The numbers are not changed, but there are new dates inserted. They change from effective date to turn over date in about fifteen different cases and in a number of cases the turnover date is added into the contract between the redacted version and the unredacted version. He asked Mr. Vitunac to tell him what the significance of changing these dates would be.

Mr. Vitunac told Mr. Wilson that he has had these questions for at least three weeks and this is the first time that he has heard them. If he would have asked him before this

meeting he could have given him a proper answer. He said that he would respond to Mr. Wilson in writing after talking to their consultant (Sue Hersey) to make sure that his answer is correct.

Mr. Wilson said if the contract was different then the one approved by this Council was the Mayor authorized to sign a different contract then the one authorized by the Council.

Mr. Vitunac said if there were changes that the Mayor would not be authorized.

Mr. Wilson stated that there are differences between the redacted contract and the contract that was not redacted. He will give Mr. Vitunac his book that shows where they are. He wanted to know how this effects the validity of this contract and how could the Mayor be obligated to sign a contract that is different.

Mr. Heady asked Mr. Vitunac to get back to the Council with this information.

C) City Attorney to discuss the Ordinance defining residency for City Election, Proceed with changes

Mr. Wilson mentioned that apparently an Ordinance defining residency was drafted a couple of months ago and has never been brought to Council.

Mr. Vitunac said that he had a point of privilege here to present. He said that tomorrow afternoon there will be a Circuit Court hearing in which a taxpayer from the City wants to oust Mr. Wilson from his Councilmember seat. He will be a witness at the hearing, as will the City Clerk and perhaps the City Manager. He will be testifying in his opinion that Mr. Wilson is not qualified to sit in the Council seat. Some of the evidence may pertain to what he (Mr. Wilson) is trying to discuss now and he is trying to get them to say something on the record twenty-four hours before the Circuit Court hearing. He has been advised by their attorney, Mr. Wayne Coment, not to respond because it hurts the City's position. He respectfully asked to wait until the Circuit Court action is over to discuss any future remedies.

Mr. Wayne Coment, Assistant City Attorney, stated that he has advised the Canvassing Board of the City that this is very much the subject matter of the lawsuit that will be discussed tomorrow before the Circuit Court. He said it was not appropriate for them to be discussing this matter at this time.

Mr. Wilson made a motion to move Ordinance #2009-____ that changes the residency requirements for the City of Vero Beach from its current wording to say there shall be a City Council of five members elected at large by the electors of the City. Only qualified electors of the City with a minimum of one full year of residency in the City immediately proceeding the qualifying deadlines shall be eligible to be members of the City Council. He said that he is doing this so this never happens again.

Mayor Sawnick wondered if this was the appropriate time to bring this up.

Mr. Vitunac said that if it was the appropriate time he would have put it on under his matters. He said that it was not timely.

Mr. Heady seconded the motion.

Mr. Abell commented that if that Ordinance exists in those terms then there has to be an additional statement made that once elected you have to be a resident of the City while you are serving as a City Councilmember.

Mayor Sawnick did not have a copy of this Ordinance so he has not reviewed it.

Mr. Wilson suggested placing it on the December 8th agenda.

Mr. Abell did not want it on that agenda because of all the other items that are on the agenda.

Mr. Vitunac suggested waiting until the Court rules and then take whatever action is necessary, if any.

The motion failed 2-2 with Mr. Abell and Mayor Sawnick voting no.

Mayor Sawnick made a motion to put this proposed Ordinance on their January 5th City Council agenda unless the Court case has not been decided. This Ordinance will only be on the agenda for discussion purposes. Mr. Wilson seconded the motion and it passed unanimously.

Mr. Wilson commented that there are a couple of items that he will be discussing in the future and they are pensions and benefits, as well as outlawing the resign and rehire policy. This allows people to resign for thirty days and then get rehired again. Also when discussing the benefit package they need to talk about banking of sick time and vacation leave.

D) Contract with current City Attorney

Mr. Wilson stated for the record that he was not calling for a contract review. He recalled last year that there was a discussion about whether or not to review Charter Officers and he thinks that they should be reviewed whenever the appropriate time is. He brought up the position of the City Attorney and how important that position is. As he looks at all of the things that have been done in this City since the first FMPA contract was signed, that it is warranted to look at the legal advice that is being received by this Council. He said for the record that he has damaged ability to trust the legal advise that they receive. He wanted to have a review of the legal department at some future date.

Mayor Sawnick commented that the Charter Officers serve at the will of the Council, so anytime that there is an issue it needs to be brought up and discussed.

Mr. Vitunac stated just to clear the implication that he was the attorney for either of the FMPA contracts, he was not. He was not employed by the City when the original contract was signed and he will see Mr. Wilson tomorrow in Court.

11. ADJOURNMENT

Mr. Wilson made a motion to adjourn today's meeting at 4:23 p.m. Mr. Heady seconded the motion and it passed unanimously.

/tv