

**Minutes of Regular City Council Meeting  
Held Monday, May 15, 2006 at 7:00 P.M.  
In the Council Chambers, 11 North 3<sup>rd</sup> Street,  
Jacksonville Beach, Florida.**



**Call to Order**

The meeting was called to order by Mayor Fland Sharp.

**Opening Ceremony**

Invocation was by Council member Knight; Salute to the Flag.

**Roll Call**

Mayor: Fland Sharp

Council members: Lee Buck Penny Christian Rick Knight  
Dick Matthews Martha Ann Sibley Linda Spence

Also present were City Manager George Forbes and City Clerk Heidi Reagan.

City Attorney Steve Stratford was absent.

**Approval of Minutes**

**Motion:** It was moved by Ms. Spence, seconded by Ms. Sibley, and passed, to approve the following minutes, as presented:

Shade Meeting held April 24, 2006

Regular Council Meeting held on May 1, 2006

**Courtesy of Floor to Visitors**

None

**Mayor "a**

**Presentation to Employees of the Quarter – 1<sup>st</sup> Quarter of 2006**

Mayor Sharp read and presented awards to the following employees:

- Charles Sabiston, Public Works Department
- Sheila Nielsen, Finance Department

Council member Buck stated that today is the day for recognition of Police Officers that have died in the line of duty. In 2005 there were 6 officers that were killed in the state of Florida. A Memorial Ceremony was held today at the Police Department for those officers and flags were flown at half-mast in their memory.

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**City Manager “a”**

**Monthly Departmental Reports for April 2006**

**Motion:** It was moved by Ms. Spence, seconded by Ms. Sibley, and passed, to accept the monthly reports for April 2006.

Motion carried unanimously.

**City Manager “b”**

**Authorize Property Valuation Conducted on City Properties Valued at or Over \$100,000 for Insurance Purposes**

**Motion:** It was moved by Ms. Spence, seconded by Ms. Sibley, to authorize the City Manager to hire *VRM-Maximus* to have a property valuation conducted for all City properties valued at or over \$100,000.

**Discussion:** Mr. Forbes explained that as hurricane season approaches it is important to make sure that all of our properties are valued properly at their replacement value.

Roll call vote: Ayes – Buck, Christian, Knight, Matthews, Sibley, Spence and Mayor Sharp.

Motion carried unanimously.

**City Manager “c”**

**South Beach Parkway and Jacksonville Drive Irrigations Repairs**

**Motion:** It was moved by Ms. Spence, seconded by Ms. Sibley, to authorize repairs to the City irrigation system to *Miller Irrigation* in conformance with a memo dated May 3, 2006, from Gary Meadors, entitled “South Beach Parkway and Jacksonville Drive Irrigation Repairs” (*total amount including a \$5,018 contingency = \$55,196*).

Roll call vote: Ayes – Christian, Knight, Matthews, Sibley, Spence, Buck and Mayor Sharp.

Motion carried unanimously.

**City Manager “d”**

**City Hall Sidewalk and Landscape Improvements**

**Motion:** It was moved by Ms. Spence, seconded by Ms. Sibley, to approve the landscaping and sidewalk construction on the south side of City Hall in compliance with a memo from Gary Meadors, dated May 3, 2006, and titled “City Hall Sidewalk and Landscape Improvements” (*cost of \$50,303.60 which includes a 1,500 contingency; Miranda Construction and B & L Landscape*).

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Roll call vote: Ayes – Knight, Matthews, Sibley, Spence, Buck, Christian and Mayor Sharp.

Motion carried unanimously.

**City Manager “e”**

**Approval for Engineering Design for the South 9<sup>th</sup> Street Improvement Project**

**Motion:** It was moved by Ms. Spence, seconded by Ms. Sibley, to authorize the Mayor and City Manager to execute a contract with *Reynolds, Smith & Hills, Inc.* for the preliminary study, engineering design, and permitting for the South 9<sup>th</sup> Street Improvement Project. (*project cost- \$124,080 including contingency*).

**Discussion:** Mr. Forbes stated that the City held public meetings on the 9<sup>th</sup> Street corridor last year which resulted in a concept plan based on those discussions. This motion is to move forward on implementing the project by awarding a contract for the preliminary design of the 9<sup>th</sup> Street corridor. Ms. Sibley asked what the time table is for getting the design done and beginning the work. Mr. Forbes responded that they hope to have the preliminary design done and approved by Council by the end of 2006 and move right into the final design in 2007. Starting the work will depend on the final cost of the Penman Road project. Mr. Forbes stated that he is confident the City will be in a position to start the work after the final design is complete.

Mr. Buck stated that the 9<sup>th</sup> Street and Beach Blvd. intersection is a bottleneck and he has been assured that this intersection will be included in the study. He went on to say that he has an additional concern about the intersection at 13<sup>th</sup> Ave., S and 9<sup>th</sup> Street as that also is becoming a bottleneck at certain times during the day. He stated he would like to see that included in the preliminary study as well.

Roll call vote: Ayes – Matthews, Sibley, Spence, Buck, Christian, Knight and Mayor Sharp.

Motion carried unanimously.

**City Manager “f”**

**Approval of Franchise Agreement with Comcast of Greater Florida/Georgia, Inc. – Public Hearing (pursuant to F.S. §166.046)**

**Motion:** It was moved by Ms. Spence, seconded by Ms. Sibley, to approve the Franchise Agreement with Comcast of Greater Florida/Georgia, Inc. and authorize the Mayor and City Manager to execute the agreement.

The Mayor stated that there will be a Public Hearing on this issue. The Mayor opened the Public Hearing. There being no one wishing to speak, the Mayor closed the Public Hearing.

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**Discussion:** Mr. Forbes explained there are two items that need to be considered with regard to Cable TV service, one is the franchise agreement and the other is the ordinance. He explained that the franchise agreement allows Comcast to use the city's right-of-way. He stated that the agreement is for a period of ten (10) years, and explained that if there is a conflict between the agreement and the ordinance, the Franchise Agreement takes precedence. He explained that the agreement requires construction bonds to be provided in accordance with applicable city laws and it requires Comcast to relocate their equipment at their cost in the event of a City project requiring such action. He stated that the agreement requires Comcast to provide four (4) free cable outlets and one (1) free installation for each municipal building, and that it provides for a free installation for each public and private school in Jacksonville Beach (excluding home schools). It also includes procedures for revocation of the agreement under specific circumstances and it provides for local event sponsorship for the term of the agreement. In addition there is a "most favored nations" clause in the agreement which states that should Atlantic or Neptune Beach receive a more favorable provision in their agreement that is not in ours, we would be entitled to have the provision added to our agreement. Mr. Forbes added that state law requires that when the council adopts a franchise agreement they must consider the following factors: the economic impact on private property within the franchise area; the public need for such a franchise; the capacity of the public right of way to accommodate the cable system (this is an existing system that is already installed); the present and future use of the public right of way to be used by the cable system; the potential disruption to existing users of the public right of way and the resulting inconvenience that may occur to the public; the financial ability of the franchisee/applicant to perform other societal interests that are generally considered in cable TV franchising; and such other additional matters, both procedural and substantive, as the municipality or county may, in its sole discretion, determine to be relevant.

Roll call vote: Ayes – Sibley, Spence, Buck, Christian, Knight, Matthews and Mayor Sharp.

Motion carried unanimously.

**ORDINANCES**

**Ordinance No. 2006-7923 – Second Reading**

Mayor Sharp requested that the City Clerk read Ordinance No. 2006-7923, on its second reading by title; whereupon Ms. Reagan read the following:

**“AN ORDINANCE REPEALING CHAPTER 7.5 (CABLE TELEVISION), ORDINANCE CODE, IN ITS ENTIRETY AND CREATING A NEW CHAPTER 7.5 (CABLE SYSTEM), ORDINANCE CODE; PROVIDING AN EFFECTIVE DATE:”**

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**Motion:** It was moved by Ms. Spence, seconded by Ms. Sibley, to adopt Ordinance No. 2006-7923 – as read by title on its second reading.

Roll call vote: Spence, Buck, Christian, Knight, Matthews, Sibley and Mayor Sharp.

Motion carried unanimously.

**Ordinance No. 2006-7918 – First Reading – Public Hearing**

Mayor Sharp requested that the City Clerk read Ordinance No. 2006-7918, on its first reading by title, holding a public hearing; whereupon Ms. Reagan read the following:

**“AN ORDINANCE TO AMEND AN ORDINANCE ENACTING AND ESTABLISHING A COMPREHENSIVE LAND DEVELOPMENT REGULATION AND OFFICIAL ZONING MAP FOR THE INCORPORATED AREA OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AS AUTHORIZED BY CHAPTER 163.3202, FLORIDA STATUTES, BY AMENDING DIVISION 2. SUPPLEMENTAL STANDARDS, SECTION 34-407 OUTDOOR RESTAURANTS AND BARS OF ARTICLE VIII. SITE DEVELOPMENT STANDARDS TO MODIFY THE LIMITATIONS AND CONDITIONS FOR OUTDOOR RESTAURANTS AND BARS; TO REPEAL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, AND FOR OTHER PURPOSES:”**

Mayor Sharp read the following statement for the record:

“This ordinance for an amendment to the text of the Land Development Code (LDC) is before this Council for a public hearing and consideration on its first reading. Under the laws of the State of Florida, a request for an amendment to the text of the Land Development Code is handled as a ‘quasi-judicial’ proceeding. A quasi-judicial proceeding means that a governing body is now functioning in a manner similar to a court with the Mayor and Council sitting as impartial decision makers hearing testimony and questioning presenters, who are to provide substantial and competent evidence to support their side of the issue. It is the duty of the Council to arrive at sound decisions regarding the use of property within the City. This includes receiving citizen input regarding the proposed use on the neighborhood, especially where the input is fact-based and not a simple expression of opinion.

It is the applicant’s burden to demonstrate that their application is consistent with the Land Development Code and the Comprehensive Plan. If the applicant is successful in showing consistency, then it is up to the local government to produce competent, substantial evidence of record that the application should be denied. The Council’s decision on the LDC text amendment is based on the criteria set forth in Section 34-211 of the Land Development Code. Each member of the Council has been provided a copy of the criteria.

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In addition, the Council has received a copy of the application and the staff and Planning Commission reports on this text amendment request.

Mayor Sharp opened the public hearing on Ordinance No. 2006-7918.

The Mayor asked Mr. Lindorff to come forward and speak on behalf of the applicant:

Mr. Lindorff stated that the changes made to the proposed ordinance as a result of the workshop include following: Paragraph (b) was changed to set a new limitation to the size of the outdoor seating area based on a percentage of the enclosed seating area. Paragraph (c) was modified to change the number of parking spaces required for outdoor seating to be at the same ratio as parking spaces for enclosed seating. Paragraph (d) was changed to remove the distance requirement in the Central Business District and change the distance in all other areas where there is an intervening structure to 150 feet, otherwise where there is no intervening structure the distance must be 300 feet as measured from the edge of the outdoor seating to the closest residential property line. Mr. Lindorff stated that there cannot be any amplified outdoor sound in the outside seating areas. He further explained that since these are conditional uses and subject to a public hearing and location approval by the Planning Commission paragraph (g) gives the Planning Commission the authority to establish hours and paragraph (h) establishes the Code Enforcement Board as the enforcement agency.

Mayor Sharp asked if the Code Enforcement Board has the authority to revoke the outdoor seating permitted use if the establishment is in violation of the ordinance. Mr. Lindorff stated that it does have that authority.

**Speakers:** Lance Folsom, 1022 N. 23<sup>rd</sup> Street – Mr. Folsom commended the council on doing a good job of listening and responding to the citizens concerns. He stated that he feels this ordinance is a great improvement.

Thad Moseley, 3701 Duval Drive – May 9<sup>th</sup> letter from Thad Moseley was read into the record (copy attached).

The Mayor Sharp closed the public hearing and read the following:

“Before requesting a motion on this ordinance, beginning with myself, each of the members of the council is requested to indicate for the record, both the names of persons and the substance of any *ex parte* communications regarding this application. An *ex parte* communication refers to any meeting or discussion with a person or citizen who may have an interest in this decision, which occurred outside of the public hearing process”

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Ex Parte Communications –

Mayor Sharp – Letter from Thad Moseley and a discussion with David Cole.

Council member Knight – Letter from Thad Moseley and a discussion with David Smith and his wife, a discussion with David Cole and a discussion with Pierce Daltry.

Council member Sibley - Letter from Thad Moseley.

Council member Spence – Letter from Thad Moseley.

Council member Matthews – Letter from Thad Moseley and a phone call from Thad Moseley.

Council member Buck – Letter from Thad Moseley and a phone call from Thad Moseley.

Council member Christian – Letter from Thad Moseley and a discussion with Thad Moseley.

Mayor Sharp read the following:

“Before opening the floor for discussion or questions by the Council, please be reminded that our decision will be based on the criteria set forth in the Land Development Code, and the Council is required to approve a clear statement of specific findings of fact stating the basis upon which such fact were determined and the decision was made.”

**Motion:** It was moved by Ms. Spence, seconded by Ms. Sibley, to adopt Ordinance No. 2006-7918, as read by title on its first reading.

Mayor Sharp opened the floor for discussion.

Ms. Spence stated that she is not in agreement with eliminating the CBD from the distance requirements in other areas of the city, as she feels this is a disservice to CBD residents.

Mr. Buck opined that our Police Department is very responsive and takes care of any noise related issues. He stated he is in favor of allowing the community to sit outside.

Mr. Matthews stated that after his conversations with Mr. Moseley he believes Mr. Moseley is fine with this ordinance now. He stated that not all places will serve alcohol, and allowing outside seating will add a real cosmopolitan look and feel to the city. He also expressed his confidence in the Planning Commission’s ability to establish appropriate hours in each individual case.

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Ms. Sibley asked Mr. Lindorff if he has had any complaints in the downtown area with any of the current outdoor seating.

Mr. Lindorff stated that the only complaint he is aware of is at an establishment on the corner of 5<sup>th</sup> Avenue North and 1<sup>st</sup> Street, and they're grandfathered as their outdoor seating area was there prior to the establishment of the original conditional uses. They remain there and are subject to the noise ordinance. Mr. Lindorff stated that the reason for relaxing the requirements in the CBD is the whole concept of mixed use. He further stated that the C-1 and C-2 zones almost universally back-up to areas that are zoned residential. The idea is to move the CBD area toward a more cosmopolitan area with lots of mixed use.

Mr. Knight stated that he is impressed with the changes. He asked whether revoking the permit would prevent the establishment from re-applying for a permit in the future. He indicated that he hoped that would be the case.

Mr. Forbes stated that would be up to the Code Enforcement Board whether they would consider or issue a permit to the same establishment.

Mr. Knight stated that he felt there should be firm penalties of \$250 for the first offense, \$500 for the second offense and automatic revocation for the third offense.

Ms. Christian stated that she thinks the changes are good and that the needs of the citizens and the business owners have been considered.

Ms. Spence asked Mr. Lindorff, in light of Mr. Knight's comments, how the Code Board establishes penalties.

Mr. Lindorff stated that the Code Board is limited to \$250 per day per offense as that is the maximum allowed under state law. He stated that if we are going to establish a progressive discipline it would have to top out at \$250. He also stated that he is not aware of a prohibition to apply for a permit after a revocation, but that if that situation occurred, the application would be looked at by staff and the board by taking into consideration that there had been a previous revocation.

Mr. Forbes suggested that we allow the Code Enforcement Board to do their job. He stated that we have several outdoor seating areas now and that we have had very few problems. He read from the ordinance that violations are to be handled as follows: "If an approved outdoor restaurant or bar area violates any of the standards set forth in this section, or any other conditions placed on their approval by the Planning Commission, the violation shall be referred to the Code Enforcement Board for a hearing. Upon finding that such a violation exists, the Code Enforcement Board may apply penalties as provided by law, including revocation of the conditional use approval for that outdoor seating area." Mr. Forbes pointed out that there is no need to wait for a third violation, that

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if the violation is serious, the board can revoke the permit the first time. He stated that there are adequate provisions for enforcement in the ordinance.

Mr. Buck stated that he feels that we are getting into micro-managing and is in favor of leaving the ordinance as it is.

Mr. Knight stated that his concern is that some businesses will treat the fines as the cost of doing business and will not be deterred by them. He stated that he still feels it's a good ordinance and will vote for it.

Ms. Sibley stated that the ability to revoke the permit is key and believes it will provide the necessary deterrent to keep noise levels down.

Roll call vote: Buck, Christian, Knight, Matthews, Sibley, Spence and Mayor Sharp.

Motion carried unanimously.

**Adjournment**

There being no further business coming before the Council, Mayor Sharp adjourned the meeting at 7:47 pm.

Submitted by: Heidi Reagan, City Clerk.

Approval:

/s/Fland O. Sharp  
Mayor

June 5, 2006  
Date