

Town of Melbourne Beach

REGULAR TOWN COMMISSION MEETING WEDNESDAY JULY 17, 2019 at 6:30 p.m. (immediately following the Workshop) COMMUNITY CENTER – 509 OCEAN AVENUE

MINUTES

**The Town Commission conducted a Regular Town Commission Meeting
on Wednesday July 17, 2019 in the Community Center
to address the items below.**

Commission Members:

Mayor Jim Simmons
Vice Mayor Wyatt Hoover
Commissioner Steve Walters
Commissioner Sherrie Quarrie
Commissioner Corey Runte

Staff Members:

Interim Town Manager Elizabeth Mascaro
Town Clerk Nancy Wilson
Town Attorney Clifford Repperger

I. Call to Order – Led by Mayor Simmons

Mayor Simmons called the meeting to order at 6:39 p.m.

II. Roll Call

Town Clerk Wilson conducted the roll call.

Commissioners Present:

Mayor Jim Simmons

Vice Mayor Wyatt Hoover

Commissioner Steve Walters

Commissioner Sherri Quarrie

Commissioner Corey Runte

Staff Present:

Interim Town Manager Elizabeth Mascaro

Town Clerk Nancy Wilson

Police Chief Melanie Griswold

Town Attorney Clifford Repperger

III. Pledge of Allegiance and Moment of Silence

Led by Mayor Simmons

IV. Presentations

Officer of the Quarter – Ryan McDuffie

Mayor Simmons read the glowing commendation provided by Police Chief Griswold.

V. Boards and Committees (1:12:20)

Quarterly Departmental updates– Building Department

Beth Crowell

Building Department

Ms. Crowell read from a 10 year tracking report that showed how much construction value has increased. From 2008 through 2018, construction value has increased from \$4,576,669 to \$14,558,935; permit fees have increased from \$64,621 to \$179,412 and the number of inspections has increased from 550 to 2013. She also noted that it takes about 45 inspections to complete a new home with most houses taking between 1-2 years to build. The building official sits with owners to determine what inspections will be required for their project(s). Those who don't apply for a permit and who are subsequently caught working without one are charged double the regular permit fee. Responding to

Commissioner Quarrie who asked about what the Building Department needs, Ms. Crowell said she'd like for the Building Official to work more hours rather than the 3 days he currently works. Commissioner Quarrie then asked if the Town receives a lot of requests for demo permits to which Ms. Crowell answered in the affirmative adding that new houses are being built on properties where the previous house had been demolished rather than on empty lots. Ms. Crowell said the time to build a new house varies depending on a variety of reasons. A licensed general contractor is responsible for the tear down, we just provide the permit. Commissioner Runte asked about tree removal violators and Ms. Crowell said there are violations because it's hard to control. Commissioner Quarrie said the Town's police officers ask to see permits when they see people cutting down trees. Commissioner Runte said having gone through the process, he felt that the Building Department was short staffed; Ms. Crowell agreed adding that staff hasn't increased proportionally. Commissioner Runte added that he wants to make sure that we are providing the service that we're supposed to provide. Mayor Simmons said he's heard that we require more information on our permit applications than other Towns to which Ms. Crowell responded that it's up to the discretion of the Building Official how much information is requested. For instance, we may have more stringent requirements for new windows because of our coastal location. Mayor Simmons thought a forum with the Town Manager and Bldg Dept where those in the building industry could share information would be a useful tool.

The Commission talked about testing the waters by advertising for a full time Building Official especially since our current Building Official may be leaving at the end of 2019. Commissioner Quarrie suggested increasing the Building Department budget so the current budgeted amount of \$97,000 for a Building Official could be increased. The Mayor suggested that the Town Manager reach out to other municipalities to find out how they provide building inspection services and at what cost. The fees paid to the Building Department can only fund building department activities. It's a profitable department so the Town should be able to cover the additional expense associated with hiring a new employee.

VI. Public Comments

No public comments.

VII. Approval of the Agenda

Commissioner Runte made a motion to approve the agenda as presented; Vice Mayor Hoover seconded. Motion carried 5-0.

VIII. Consent Agenda

Site plan review for 406 4th Avenue

Vice Mayor Hoover made a motion to approve the Consent Agenda as presented; Commissioner Quarrie seconded. Motion carried 5-0.

IX. Public Hearings (00:37:00)

A. Second Reading of Sea Turtle Ordinance 2019-01 – Town Attorney Repperger

Town Attorney Repperger read Ordinance 2019-01 by title:

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA RELATING TO SEA TURTLE PROTECTION; MAKING FINDINGS; AMENDING ARTICLE II OF CHAPTER 40, TOWN CODE; AMENDING SECTION 40-20, DEFINITIONS; AMENDING SECTION 40-22, BUILDING AND ELECTRICAL PLANS FOR NEW STRUCTURES; AMENDING SECTION 40-23, EXEMPTIONS FOR NEW DEVELOPMENT, AMENDING SECTION 40-24, LIGHTING OF EXISTING STRUCTURES; PROVIDING FOR SEVERABILITY/INTERPRETATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.

Several months ago, the Code Enforcement Officer suggested to the Town Commission that the Town's Marine Turtle Protection Regulations be revised to be more consistent with the Department of Environmental Protection Rules and Brevard County Code Regulations. The first reading of this ordinance was passed by the Town Commission at the June 26, 2019 meeting.

Responding to concerns voiced at the first reading, Town Attorney Repperger said this ordinance will not affect the Ocean Park parking lot or the emergency vehicle issues. Also, this ordinance does not affect any violations previously noted.

Commissioner Walters said that the sea grape trees are being cut and turtle season is not the time to be cutting them since they block the light on the beach from lower condo units. Mayor Simmons said lights from residences on the beach still need to be shielded.

Vice Mayor Hoover made a motion to approve the second and final reading of Sea Turtle Ordinance 2019-01, as amended; Commissioner Quarrie seconded. Motion carried 5-0.

B. Second Reading of Qualifying Dates Ordinance 2019-02 - Town Attorney Repperger

Town Attorney Repperger read Ordinance 2019-02 by title:

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA RELATING TO THE QUALIFYING DATE TO RUN FOR TOWN COMMISSION; MAKING FINDINGS; AMENDING CHAPTER 13 SECTION 13-6 OF THE TOWN CODE OF ORDINANCES; CHANGING THE DATES PRIOR TO THE TOWN ELECTION TO QUALIFY TO RUN FOR TOWN COMMISSION; PROVIDING FOR SEVERABILITY /INTERPRETATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.

Town Attorney Repperger said that between the first and second read, the Town Clerk had a discussion with the Supervisor of Elections and was told that their qualification dates had been moved back because of new requirements to make all ballots bilingual. Because of that change, the qualifying dates for the Town also need to be moved back. Those dates fall between the 85th and 81st days prior to Election Day.

Vice Mayor Hoover made a motion to approve the second and final reading of Qualifying Dates Ordinance 2019-02, as modified. Commissioner Runte seconded. Motion carried 5-0.

C. Second Reading of Referendum Election and Ballot Language for Clerk reporting Ordinance 2019-03 – Town Attorney Repperger

Town Attorney Repperger read Ordinance 2019-03 by title:

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FL; PROVIDING FOR A REFERENDUM ELECTION AND BALLOT LANGUAGE; AMENDING SECTION 3.03, TOWN CHARTER, TO CLARIFY THAT THE TOWN MANAGER SHALL SUPERVISE AND CONTROL THE TOWN CLERK; PROVIDING FOR COORDINATION WITH THE SUPERVISOR OF ELECTIONS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

In 2017, the electors of the Town voted to amend Section 3.04 of the Town Charter to put the Office of the Town Clerk under the supervision of the Town Manager. Section 3.03 of the Town Charter provides an exemption of the Office of the Town Clerk from direction and supervision of the Town Manager. This exemption (although technically repealed by implication) has created some question in interpretation. The proposed amendment will reconcile the language of Section 3.03 with the language of Section 3.04. The Town Commission also proposes to make references to the Town Manager gender neutral. The ordinance was passed on first reading by the Town Commission on June 26, 2019.

Vice Mayor Hoover made a motion to approve the second and final reading of Referendum Election and Ballot Language for Clerk Reporting, Ordinance 2019-03, as amended; Commissioner Runte seconded. Motion carried 5-0.

X. Old Business

No old business

XI. New Business (01:49:00)

- A. Consideration of June 26, 2019 Regular Town Commission Meeting minutes – Town Clerk Wilson

Town Clerk Wilson said minor changes were suggested and she incorporated those into the draft minutes.

Commissioner Runte made a motion to approve the minutes from the June 26, 2019 Regular Town Commission Meeting as amended; Vice Mayor Hoover seconded. Motion carried 5-0.

- B. Designation of maximum millage rate – Interim Town Manager Mascaro

Interim Town Manager Mascaro said the Commission needs to vote on the maximum millage rate so she can certify it with the County. The budget is based on a 9% increase but it could be set at 10% because it can be reduced but not raised. Mayor Simmons said the budget is good at 9% but the Commission should set the maximum millage at 10% in case they want to add more to the stormwater fund. Town Attorney Repperger said he didn't receive clarification from the Attorney General regarding the maximum millage rate. There are two AGO's that were cited in his initial opinion on the matter but he is still awaiting a response from the Attorney General. He reached out to the attorney for the Cocoa Beach maximum (of 10% over

rollback) who said that maximum millage restriction didn't apply to municipalities. He's convinced that his original opinion (that we can exceed 10% over rollback – that the special act has been repealed by implication) is correct.

The Town Attorney said the House Bill speaks in terms of 10% ad valorem tax revenues specifically; it doesn't mention millage rate. He doesn't know how the two things interplay. Mayor Simmons clarified that the Commission isn't voting on millage, they're voting on a percentage amount over rollback.

Vice Mayor Hoover made a motion to designate the maximum millage rate to 10% over rollback; Commissioner Quarrie seconded. Motion carried 5-0.

Note: 10 mils = 1%

C. Discussion and possible action regarding public records and social media – Mayor Simmons (01:58:35)

In September 2018, after attending ethics training, Mayor Simmons brought up the subject of retention of social media posts. It was decided by the Commission that all Commissioners and employees forward any social media postings and email sent from other than Town accounts to the Town Clerk for retention as Public Records in order to comply with State laws. Compliance has been inconsistent which places the Town at risk of a lawsuit if those records can't be produced if requested. The Town Attorney verified that this assumption was correct. The Mayor thinks that the issue should be codified in an ordinance specifying that when posts are made on social media sites and email is sent from a non-Town address, that the information should be forwarded to the Town Clerk. Commissioner Walters said there is no law saying that social media posts, made in a Commission member's public capacity, need to be provided to the Clerk and added that in his 40 years in Melbourne Beach, the Town has not been sued because a public record couldn't be produced. The Mayor countered that if the Town Clerk can't provide that information, the Town is liable. Commissioners Runte and Quarrie both agreed that social media posts made by the Commission members and employees regarding Town business, should be sent to the Town Clerk for retention.

Commissioner Walters asked for input from the Town Attorney who said that as technology evolves, what becomes a public record changes too. Currently, social media postings made in an official capacity are deemed to be public record. Part of the problem is how to determine what is made in an official

capacity, that determination is usually decided on a case-by-case basis. It is the utilization of the platform and the subject matter that dictates how it is handled. If an employee sends a co-worker birthday greetings, that is not a public record. However, if using the same platforms, a Town incident is discussed, that is a public record. Further, if Commissioner Walters has a Twitter feed and is receiving complaints from constituents, that input would be a public record because someone is talking to him in his official capacity.

The conversation continued about what constitutes a public record.

One question is who will make the determination about what is a public record; that is an analysis that will have to occur and there are many gray areas. The Town Attorney said if somebody makes a public records request for all the social media postings made by a Commissioner, that same Commissioner will either present the information or he won't. If the requestor has an issue with what is provided, they can challenge it. If they win, they can recover their attorney fees. Whether or not the Town has an ordinance or policy about public records, the individual is still responsible for retaining them. One of the biggest concerns is if a post or email is subsequently deleted. In conclusion, Town Attorney Repperger said that the person who is found to be violating public record laws would be subject to prosecution individually. If the Town has a policy that says Commissioners have an obligation to retain social media postings that are public record, they can be held individually liable for not producing those records if requested.

There was Commission consensus (5-0) that a policy will be written regarding social media postings and retention and that, because individual commissioners and employees can also be held liable, an ordinance is not needed.

XII. Staff Reports (02:42:03)

- A. Town Attorney Report – no report
- B. Town Manager Report

The Interim Town Manager said the Town was awarded the *Green Infrastructure Adaptation Planning* grant in the amount of \$39,500. The purpose of the grant is to research small coastal communities to determine how they can improve stormwater management, improve water quality and provide recreational/aesthetic amenities in light of future sea level rise. The funds received will be paid to the Transportation Planning Organization and they will develop a case study. The 3 deliverables are:

- Case studies of similar small coastal communities due on 3/1/2020
- 2 public workshops for input on utilization of the infrastructure types described in the case studies due on 5/15/2020
- Creation of a preliminary adaptation plan for green infrastructure in Melbourne Beach due on 6/15/2020

Interim Town Manager Mascaro announced that one of the Towns' police officers has resigned; he has accepted a job in West Melbourne as an SRO officer. Another officer has asked to serve as a reserve officer and since they'd like him to stay, they're going to give him an opportunity to deal with some personal matters. The Town is, therefore, losing 2 officers and in their place, Chief Griswold wants the Commission to consider a lieutenant's position, someone who would act as the buffer between the Chief and the officers. The lieutenant position would be administrative which would allow her to attend functions and meetings that she has been unable to attend thus far. Chief Griswold said she needs some help; she needs a number two who would be that buffer the Interim Town Manager mentioned. She's up to her ears in trying to train one sergeant and deal with another sergeant. The lieutenant position would help with some responsibilities such as crime prevention, scheduling and would be a patrol supervisor. Mayor Simmons asked if the Town loses 2 road officers, how are their shifts and vacations going to be covered? The Chief responded that the lieutenant would also serve as a road officer when needed and the reserve would be able to cover vacations and overtime. The Mayor commented that if the Town hires a lieutenant to take the workload off the Chief, along with losing 2 road officers, that's a full shift lost. They will be replaced with a lieutenant who will be doing at least some non-road work. The Mayor then asked if the Chief is comfortable that shifts and vacations are going to be covered. She answered in the affirmative saying they are going to be OK with 10 officers which means the 2 officers who resigned are not being replaced but one of the officers' functions will be covered by the reserve officer. Interim Town Manager Mascaro said the 2 sergeants currently perform a lot of administrative tasks so with the addition of a lieutenant, they'll be able to spend more time on the road.

There was Commission consensus (5-0) allowing Chief Griswold to hire a lieutenant.

Interim Town Manager added that a server in the police department needed more capacity because of added data requirements, mainly from video uploads. She asked that Computer Experts be permitted to increase server capacity and replace one laptop which will be prepaid and reversed in 2020.

There was Commission consensus (5-0) to allow funding for the expansion of the PD server and the purchase a new laptop for the police department.

Vice Mayor Hoover said he's been getting positive feedback that residents like the events happening in the community. The police department is going to show another movie in August. The fire department made about \$8,000 from their July 4th event which is being used to make first aid buckets to be distributed to classrooms and churches.

Deputy Fire Chief Brown has researched a program where all employees and the Commission members would become certified in some level of CPR. He thought it would be great if Melbourne Beach was the first municipality where all staff members were trained in CPR.

C. Town Clerk Report – no report

D. Departmental Reports:

1. Building Department – no comments
2. Public Works Department – The Public Works Supervisor provided a map showing what streets will be paved during the next round of paving.
3. Code Enforcement – The Commission commented favorably on the new code board report format. There will be a meeting on August 8th for two boat parking violations. The Mayor asked that the Interim Town Manager find out why we had a citing on a chicken coop and why we are policing rentals shorter than a month – that's an HOA issue.
4. Police Department – no comments
5. Fire Department – no comments
6. Finance Department – no comments

Commissioner Quarrie made a motion to approve the finance report; Vice Mayor Hoover seconded.

Commissioner Walters asked the Finance Manager if there was anything taken out of one fund and put in another. She responded that there was not.

Motion carried 4-1 with Commissioner Walters casting the dissenting vote.

XIII. Town Commission Comments

A. General Comments

Mayor Simmons read and signed a proclamation recognizing August as Florida Water Professionals month.

Mayor Simmons asked if there were any questions regarding the street sweeper. It is being requested that the Commission approve prepayment of the equipment so the Town will have it in case of a storm. Commissioner Quarrie asked who was going to operate it and if the Town's insurance cost will increase. Public Works Supervisor Davis said that no certification is required to operate the machinery and there are no OSHA requirements. Insurance costs will be covered under the Town's general liability policy. Commissioner Quarrie said that Indialantic had a street sweeper that rusted quickly and they said it was a waste of money. PW Supervisor Davis said he would look into that potential problem.

Commissioner Quarrie made a motion to authorize the prepayment of the stormwater vacuum/street sweeper not to exceed the budgeted amount of \$38,000; Vice Mayor Hoover seconded. Motion carried 5-0.

B. Review of Commission Action List (03:05:35)

2 new items were added:

- Salary ranges added – bring back in January
- HR policy added for social media – January

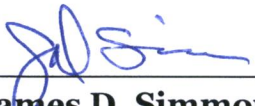
6 items were closed

XIV. Adjournment


Vice Mayor Hoover made a motion to adjourn; Commissioner Quarrie seconded. Motion carried 5-0.

The meeting adjourned at 9:26 pm

ATTEST:



James D. Simmons, Mayor



Nancy Wilson, Town Clerk